

COMMITTEE ON PUBLIC UNDERTAKINGS (1967-68)

(FOURTH LOK SABHA)

FIFTH REPORT

Contract entered into by

State Trading Corporation of India Ltd.

with M/s Oval Industries Inc., New York for import of
sulphur

(MINISTRY OF COMMERCE)

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LOK SABHA SECRETARIAT
NEW DELHI

December, 1967

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Fifth Report of the Committee on Public
Undertakings (1967-68).

Page	Para	Line	For	Read
		11 from bottom	'We'	'be'
9		5 from bottom	'Signing+or'	'Signing-of'
13	40	14	'form'	'from'
13	40	last line	'post'	'past'
13	42	7	'slphur'	'sulphur'
19	55	5	'H.T.C.'	'S.T.C.'
25	Sub para(7)	2	'consequent'	'consequence'
32	87	4	'therefor'	'therefore'
41	112	6	'966'	'1966'
51	137	5	<u>delete</u>	'due to arrive under the various'
70		11	'long Beach'	'Long Beach'
84	10	3	<u>insert</u>	'by' <u>after</u> 'made'
89	2	6	'7-38'	'37-38'
97		15	'altered'	'alerted'
98		9 from bottom	'evidence'	'evident'

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COMMITTEE ON PUBLIC UNDERTAKINGS
(1967-68)

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SECRETARIAT

Shri N. N. Mallya, *Joint Secretary.*

Shri A. L. Rai, *Deputy Secretary.*

Shri M. M. Mathur, *Under Secretary.*

*Left for New York on the 25th September, 1967 to join the Indian delegation to the XXII Session of the U.N. General Assembly.

**Appointed by the Speaker as Chairman during the absence of Pandit D. N. Tiwary out of India.

INTRODUCTION

I, the Chairman, Committee on Public Undertakings, having been authorised by the Committee to submit the Report on their behalf, present this Fifth Report on the contract entered into by the State Trading Corporation of India Ltd., with M/s. Oval Industries Inc., New York for import of sulphur.—

2. The aforesaid matter had been referred to the Committee by the Speaker for examination and report and an announcement to this effect was made in the Lok Sabha on the 25th July, 1967.

3. This Report is based on the examination of the contract entered into by the State Trading Corporation of India with M/s. Oval Industries on the 7th September, 1966 for import of 360,000 tonnes of sulphur. The Committee took the evidence of the representatives of the Ministry of Commerce and the State Trading Corporation of India on the 5th October, 1967.

4. The Report was considered on the 27th, 29th and 30th November, 1967 and adopted on the 30th November, 1967.

5. The Committee wish to express their thanks to the officers of the Ministry of Commerce and the State Trading Corporation of India for placing before them the material and information that they wanted in connection with their examination.

SURENDRANATH DWIVEDY,
Chairman,
Committee on Public Undertakings.

NEW DELHI;

December 13, 1967.

Agrahayana 22, 1889 (Saka).

CONTRACT WITH M/s OVAL INDUSTRIES

A. Introductory

On the 21st July, 1967 during the course of supplementary questions raised on Starred Question No. 1291 in respect of a contract entered into by the State Trading Corporation of India with an American firm for the import of over three lakh tons of sulphur, Shri Madhu Limaye, M.P. suggested that a Committee of five members of the House might be set up to go into the deal. Later, Shri Limaye gave notice of a No-Day-Yet Named Motion suggesting that the Speaker might request the Committee on Public Undertakings to examine the matter. Shri N. G. Ranga and Shri S. M. Banerjee, M.Ps. also suggested that one of the three Financial Committees, especially the Committee on Public Undertakings, be asked to examine the matter.

2. The Speaker decided to refer the matter to the Committee on Public Undertakings for examination and report at an early date. An announcement to this effect was made in the Lok Sabha on the 25th July, 1967.

3. The Committee have accordingly examined the contract (See Appendix-I) entered into by STC with the firm *viz.* M/s Oval Industries Inc. of New York and their recommendations are incorporated in chapter I of this report.

4. The contract with M/s Oval Industries has to be viewed in the context of the policy adopted by Government for import of sulphur during the years 1965 and 1966. It is understood that from the beginning of 1965 there was a world wide shortage of sulphur and Government felt that the imports by the established importers would not be adequate to meet the country's requirements. STC was, therefore, asked to negotiate with foreign firms for supply of sulphur. The decision to enter into a contract with M/s. Oval Industries for import of sulphur was taken on the 23rd August, 1966. On the 27th August, 1966 a Public Notice was issued canalising all imports of sulphur through STC. However, by another Public Notice issued on the 7th January, 1967 canalisation was discontinued. In the course of examination of the contract with M/s Oval Industries, the Committee have considered at some length the role of STC in the sulphur trade and the policy of the Government regarding the import of sulphur. The recommendations of the Committee on some of the aspects examined by them are incorporated in Chapter II of this report.

B. Brief history of the contract

5. Prior to 1961 actual users and established importers were getting licences for import of sulphur against free foreign exchange. From early 1961, on account of foreign exchange difficulties, licences for import of sulphur were issued against DLF/AID loans. Actual users were finding it difficult, to import sulphur under these loans in small lots. It was, therefore, decided in the last quarter of 1961 to bulk the requirements of the actual users and issue licences to two firms—M/s Dharamsi Morarji & Co. and M/s EID Parry Ltd. who were the agents of the USA suppliers.

6. There was no real shortage of sulphur till 1964. From the beginning of 1965, as already indicated, a world shortage of sulphur appears to have occurred and imports by established importers were found to be inadequate to meet the full requirements of the consuming industries. Therefore it became necessary for the Director General of Technical Development to distribute sulphur to the consumers on a rational basis, taking into consideration the importance of different industries. India's requirements of sulphur for the year 1966 were estimated at 450,000 tons. Till February, 1966 the quantity of sulphur contracted was 115,000 tons and Sulphur Export Corporation (Sulsexco) were expected to offer another 100,000 tons. Thus a shortage of about 235,000 tons was anticipated during the year. The matter was considered at a meeting held on the 17th February, 1966 between the representatives of the Ministries of Industry, Finance, Commerce, Petroleum and Chemicals and those of the STC and the fertiliser industry. To augment the supplies of sulphur it was thought that purchases from stray floating supplies from the United States/Mexico could be made at prices to be negotiated on the spot, subject to a ceiling to be determined in consultation with the Finance/Economic Adviser. STC was asked to formulate proposals in this regard.

7. Thereafter STC started contacting firms for supply of sulphur. As a result an offer was received from Oval Industries Inc. of U.S.A. This firm offered to supply 360,000 tons of sulphur at \$55 per ton FOB California. (value US \$19,800,000 equivalent to Indian Rs. 14.85 crores.) The offer was contained in a letter dated the 20th August, 1966 (See Appendix II) received from M/s Amarjyothi of New Delhi who stated that they were Indian agents of Oval Industries. The offer was considered at an inter-Ministerial meeting in which the Secretaries, Ministry of Finance (Department of Economic Affairs), Industry and Agriculture and officers of STC participated. On the 23rd August, 1966 a note (see Appendix III) was put up to the Finance Minister recommending acceptance of the offer. The Finance Minister after observing that he was not given sufficient

Finance

time to consider the proposal approved it the same day that is 23rd August. The acceptance of the offer was communicated to Oval Industries on the same date. On the 24th August, STC advised Oval Industries that a representative of the firm should reach India at the earliest within one week to finalise the contract. On the 25th August, STC addressed cables to the Indian Embassy, Washington and to the General Manager, Handlooms and Handicrafts Exports Corporation (a subsidiary of STC) requesting them for Dun and Bradstreet Report on the credentials of Oval Industries. The accredited representatives of the firm, viz. Mr. H. Muskat, Vice-President and Mr. Tauber, Attorney, arrived in India on the 5th September, 1966. Negotiations were held between the representatives of the firm and the STC and the contract was signed on the 7th September, 1966 before Dun and Bradstreet report had arrived on the firm.

8. According to the terms of the contract, Oval Industries were to furnish to STC a performance bond within 12 business days of the signing of the contract. On 15th September, 1966 Oval Industries informed STC that furnishing of performance bond was impossible without a confirmed letter of credit. After considering the situation, STC agreed to open a letter of credit with the stipulation that it would become operative on Oval Industries furnishing the performance bond. Due to various reasons the firm could not furnish the bond within the stipulated period, and STC terminated the contract on the 30th September, 1966. A negotiated settlement was reached in the beginning of 1967 in which Oval Industries agreed to reimburse to the STC all the infructuous bank charges and other expenses. They also agreed to make a payment of Rs. 75,000 to the STC even if the infructuous expenditure actually incurred by STC came to a smaller figure.

C. Approval of offer of Oval Industries

(i) *Establishment of Oval Industries*

9. M/s Oval Industries was incorporated in January, 1966 prior to which they had been functioning as a private company since 1963. This firm was reportedly formed to enter into import export business and to deal in worldwide commodities. Mr. Jack Muskat and Mr. H. Muskat are the President and Vice-President respectively of the firm.

10. Dunbar Boot Company is the sister Corporation of Oval Industries. The former is handling leather trade between STC and USA and is the buying agent for Acme Boot Company Inc., Tennessee. Mr. Jack Muskat and Mr. H. Muskat are also the President and Vice-President respectively of Dunbar Boot Company.

11. Both Oval Industries and Dunbar Boot Company share their office in a building in New York.

(ii) *Discussion by Chairman, STC with Oval Industries in April, 1966*

12. The earliest contract between STC and Muskat brothers, Chief Executives of Oval Industries and Dunbar Boot Co., was in April, 1966 when STC signed a contract with Dunbar Boot Company on behalf of Acme Boot Co. for export by STC of 500,000 pairs of boot uppers to U.S.A. During his meeting with Muskat brothers in the course of visit to USA in April, 1966, Chairman STC had discussion relating to export possibilities of leather footwear and components. During these discussions Chairman, S.T.C. made a casual mention that India was interested in importing sulphur.

13. Asked how the question of sulphur arose with a firm dealing in leather footwear, Chairman S.T.C. stated in evidence before the Committee that S.T.C. was taking a general interest in the matter and he thought that as businessmen Muskat brothers would be interested in developing their business. Asked whether he had any knowledge as to whether Muskat Brothers were doing any sulphur business, Chairman, S.T.C. replied that at that time he did not go into that aspect. In reply to a question, he stated that he did not have any specific proposal for discussion on sulphur with this firm. Asked whether enquiries were made from other firms dealing in sulphur, Chairman, S.T.C. stated that he had talks with the Sulphur Export Corporation in New York and had also made certain enquiries about the possibilities of obtaining sulphur from Mexico and Canada.

14. *It is seen that Oval Industries had not done any business in sulphur prior to the time the discussion was held between Muskat brothers and Chairman, STC in April, 1966. It is only as a result of this discussion that this firm took interest in sulphur and subsequently made an offer in August, 1966. As events proved, the supplies envisaged under the offer did not materialise.*

15. *The Committee find that in February, 1966, STC had been asked by Government to look into the possibilities of importing sulphur into India. There would, therefore, have been no objection in Chairman, STC enquiring about availability of sulphur from Embassies abroad or persons or firms established in the trade.**

*At the time of factual verification, it has been stated that Chairman, STC had contacted Various Diplomatic and Consular Offices and trade interests.

(iii) *Offer of Oval Industries*

16. The offer of M/s. Oval Industries for supply of sulphur was communicated to S.T.C. through a letter dated 20th August, 1966 (see Appendix II) signed by Major Vipin K. Khanna on behalf of M/s. Amarjyothi, Indian agents of Oval Industries. A few days earlier, on the 17th August, Major Khanna had a meeting with Shri G. S. Sial, Director of S.T.C. in which the offer of the firm was verbally mentioned. On the 18th August, Shri G. S. Sial wrote a letter to Shri S. S. Marathe, Economic Adviser in the Ministry of Industry suggesting that S.T.C. might be permitted to negotiate and conclude this deal on the most favourable terms. The letter dated 18th August from Shri Sial to Shri Marathe, the letter dated 20th August from M/s. Amarjyothi to S.T.C. and the note recorded by Shri Sial on the same date are reproduced below:—

Letter dated 18th August, 1966 from Shri G. S. Sial, Director of STC to Shri S. S. Marathe, Economic Adviser to the Government of India, Ministry of Industry:—

“I have received the following firm offer for sulphur from a party in U.S.A. They have offered to us 30,000 tons of sulphur monthly, minimum 12 months contract with the option to us to make arrangement for a period of 5 years. It is our intention, if the deal is found acceptable, to restrict our commitments for a period of one year only but at the same time we propose to retain option to make arrangement for the period ending 31st October, 1968, on prices to be negotiated in the light of the circumstances prevailing at that time. The price for the 12 months shipment is 57 dollars per ton F.O.B. California. The first shipment shall be available at once, second 90 to 180 days later and supplies will thereafter be made from month to month. They have also agreed to furnish a performance bond to our satisfaction for the due fulfilment of the contract. The contract will meet specifications of 99.5 per cent. The party desires to have our acceptance by 22nd of August, 1966. I have been trying to persuade the party to reduce price to which they have not responded favourably so far. Nevertheless, we shall press for a reduction and it is my feeling that we might be able to get a small reduction. I shall be grateful if the S.T.C. could be allowed to negotiate and conclude the deal at the most favourable terms that we may be able to secure. I am sending a copy of this letter to Secretary Economic Affairs, Secretary Industry and Secretary Chemicals as well.”

Letter dated 20th August, 1966 from M/s. Amarjyothi to S.T.C.

"Reference the undersigned's personal meeting with the Chairman and the Director Mr. G. S. Sial, we are pleased to inform you that we are in receipt of the following firm offer from our principals M/s. Oval Industries Inc., New York, for the supply of sulphur:—

- (a) Quantity 30,000 tons monthly, minimum 12 months contract with option to you for 5 years.
- (b) Price, 55 \$ per ton F.O.B. California.
- (c) First shipment is available at once second within 90 to 180 days. However, this can be expedited. Thereafter, shipment shall be monthly.
- (d) Performance Bond shall be supplied by our principals.....

It is submitted for your kind information that the price has been reduced to \$ 55 by hard bargaining and by foregoing our commission in U.S.A. as advised by Mr. G. S. Sial and his assurance that we will be given reasonable commission on the total value of purchase in India.

Our principals have also confirmed that the sulphur being offered is not being diverted from Sulphur Export Corporation. A copy of their latest cable is attached herewith for your information. However, we request you to kindly note that as submitted personally, the offer is open through August 22, 1966."

Note dated 20th August, 1966 by Shri G. S. Sial, Director of STC

"A few days back Mr. M. R. Dutt had met me and said that they were in a position to import sulphur in the country if S.T.C. were interested. I had told him that we would be interested in any firm offer backed by a performance guarantee. On the 17th the representative of Mr. Dutt, Major Vipin Khanna met me and said that their principals in America had made a firm indication for 30,000 tonnes of sulphur to be supplied every month during the next one year.

Major Khanna met me and presented the cable kept in the file confirming the verbal talk. Thereupon I dictated a letter, with the approval of Chairman, to Marathe and sent its copies to Secretary Industry/Commerce/Chemical/Agriculture.

The same day we took up with Major Khanna I also told him to get the price reduced and bring it to the lowest possible level. Major Khanna also showed me a letter from his principals from which I could see that they would give a commission of 1 per cent or more to the Indian Party in foreign exchange. I told Major Khanna, with the approval of Chairman, that their price should be reduced to that extent and that their reasonable commission could be paid in Indian rupees. This was acceptable to Major Khanna”

(iv) *Scrutiny of offer by Ministries*

17. A joint note (see Appendix III) was prepared after discussion at an inter-Ministerial meeting, in which the Secretaries, Ministry of Finance (Department of Economic Affairs), Industry and Agriculture and officers of S.T.C. participated. It was actually signed by Shri B. P. Patel, Chairman, S.T.C., Shri S. S. Marathe on behalf of Secretary (Industry), Shri C. S. Krishnamoorthi, Joint Secretary, Ministry of Finance (Department of Economic Affairs) and Shri Boothalingam, Secretary, Ministry of Finance (Department of Economic Affairs). The note signed on 22nd August, 1966 was put up to the Finance Minister (Shri Sachin Chaudhuri) on 23rd August, 1966. In para. 4 of the note it was stated that “the firm (Oval Industries) is in the nature of a commission agent. The S.T.C. has *prima facie* reason to believe that the offer is genuine and workable”.

18. *From the aforesaid note it is seen that the Secretaries of the Ministries of Finance, Industry and Agriculture knew that Oval Industries themselves were not mining sulphur nor were engaged in the sulphur trade. Most of the sulphur producers in USA were known in the trade circles. Offers of supply of sulphur from non-traditional sources had been in small quantities. Therefore the offer of any firm to supply 360,000 tons of sulphur over 12 months i.e., about 30,000 tons a month especially from a firm which had not done any business in sulphur in the past, could raise doubts about the possibilities of such supplies materialising.*

19. *Considering the fact that Oval Industries as well as their agents in India M/s. Amarjyothi were fresh entrants in the sulphur trade and also considering the magnitude of the contract coupled with tight sulphur position in the world market, the Committee feel that before putting up the proposal to Finance Minister, the Secretaries of the Ministries concerned should have asked S.T.C. the basis on which it considered 30,000 tons of sulphur per month as genuine offer and one workable even for a major sulphur producer of the world.*

(v) Approval by Finance Minister

20. When the note dated 22nd August, 1966 recommending acceptance of the offer of Oval Industries was put up, the Finance Minister recorded the following note:

"I have just received this at 2.30 P.M. It is strange that this proposal which involves many factors for consideration and has been through many channels was not put up before me earlier. I have certain queries and would like Secretary, E.A. (Economic Affairs) to see me at about 4.00 P.M. to-day."

21. After discussion, the Finance Minister recorded the following note:—

"I have discussed the matter with Secretary and Shri Krishnamoorthi. I understand the question has been discussed thoroughly by the concerned officers. While price seems to be steep the risk of losing the bargain is also real. The lesser of the two evils seems to be to accept the offer".

22. Since Finance Minister's approval was being conveyed over the telephone to the Chairman, S.T.C., he further instructed that the Chairman should be alerted to the need for taking adequate guarantees and warranties for performance by the firm.

23. The offer of Oval Industries was communicated in writing to S.T.C. on the 20th August 1966. It was open for acceptance till the 22nd August in the first instance and was got extended till the 23rd August, 1966. The case was put to Finance Minister on the last day on which a decision had to be taken, i.e. on the 23rd August. The Finance Minister expressed dissatisfaction over this delay.

24. A perusal of the offers received for supply of sulphur during the year 1966 show that most of them were open for acceptance for a longer period, sometimes a week or ten days. In the case of Oval Industries, as events proved later, the mines from which sulphur was to be supplied by their associate firm M/s. North and South Trust Co., had not produced any sulphur since 1953 and even their rights over the mines were not clear. There was therefore no justification for Oval Industries to ask S.T.C. to rush through this deal.

25. It is seen from the notes of the Finance Minister, dated 23rd August, 1966 that he had certain reservations in accepting the offer.

He gave his approval on the understanding given to him by the Secretary, Department of Economic Affairs that "the question has been discussed thoroughly by the concerned officers". He had also instructed that "the Chairman should be alerted to the need for taking adequate guarantees and warranties for performance by the firm".

26. *The Committee find that very little scrutiny was exercised by the S.T.C. and officers of the Ministries concerned on merits of the offer. The decision of the Secretaries concerned related to the acceptance of the offer at \$55 per ton which was higher than the rate at which purchases had been made previously. As regards the genuineness of the proposal, they had relied solely on the judgment of S.T.C. The Committee are of the view that the statement of the Secretary, Department of Economic Affairs that "the question has been discussed thoroughly by the concerned officers was misleading in as much as no enquiries about the genuineness of the parties or the sources of their supplies were made by the concerned officers nor the S.T.C. deemed it fit to bring it to their notice that the transaction had developed at their initiative and that the Indian and American firms were new to the business.**

27. Finance Minister's approval of the proposal was communicated over the telephone on 23rd August, 1967 by the Joint Secretary in the Ministry of Finance to the Chairman S.T.C. and was later followed by a letter. On the same day Shri Sial, Director of S.T.C. communicated to Oval Industries the acceptance of their offer. In a letter to M/s. Amarjyothi it was stated that Oval Industries would have to furnish a bank guarantee of 5 per cent of the total value of the contract for due performance before the signing of the contract.

28. It is noticed that inspite of the above stipulation, the contract was signed on the 7th September, 1966 even before the bank guarantee was furnished. Asked about the reasons, Chairman, S.T.C. stated during evidence that the Corporation would have liked the guarantee to come early, but then the other party had to agree to it. Bankers also required a contract and wanted to see whether the other party was opening a letter of credit before they gave a performance bond.

D. Signing—or the contract

(i) *Verification of antecedents of Oval Industries*

29. M/s. Oval Industries in a cable dated 24th August, 1966 desired that a representative of S.T.C. might reach New York to finalise the contract but they were advised by a cable on the same date that

*The Ministry of Finance (Department of Economic Affairs) was not separately examined by the Committee on this transaction. However, at the time of factual verification, the Department of Economic Affairs have furnished a note which is at Appendix—XIV.

the contract would be signed in India and that they should reach India, at the earliest within one week. The accredited representatives of the firm, viz. Mr. H. Muskat, Vice-President and his Attorney arrived in India on the 5th September, 1966. Negotiations were held from 5th September and the contract was signed on the 7th September.

30. The Committee discussed the question why antecedents of the firm Oval Industries were not verified before signing the contract. The Corporation's case is briefly as follows:

The offer of sulphur to S.T.C. was made by the President of M/s. Oval Industries, Mr. Jack Muskat and the Vice-President, Mr. Hy. Muskat. Mr. Jack Muskat and Mr. Muskat were also the President and Vice-President respectively of a sister concern M/s. Dunbar Boot Company. S.T.C. had entered into contracts with Dunbar Boot Company, as agents of the Acme Boot Company (a well known importer of leather footwear in U.S.A.) for export of cowboy shoe uppers, other components of shoes and Wellington boots to U.S.A. S.T.C. had signed a contract with Dunbar Boot Company in April, 1966 for Rs- 27 lakhs for export of 5 lakh pairs of shoe uppers and negotiations for further contracts were afoot. Mr. Turrentine, the President of the Acme Boot Company had visited India in June, 1966 along with Mr. Hy. Muskat and, at the time, introduced the latter to S.T.C. as their authorised and trusted agents to conclude substantial business.

31. It is seen that the first contract between Dunbar Boot Co. and S.T.C. for supply of leather footwear was signed in April, 1966. A great deal of work had to be done to produce goods according to the buyers specifications and arrangements had to be made before supplies under that contract commenced. In the meantime the offer from Jack Muskat on behalf of Oval Industries was received. S.T.C. signed the contract without verification of antecedents of Oval Industries because its President and Vice-President were known to S.T.C. as representatives of Dunbar Boot Company.

32. *In as much as Muskat brothers came in contact with STC for the first time in April, 1966 only and the supplies under the first contract had not materialised, the Committee feel that the S.T.C. would have been well-advised not to have entered into a much bigger contract running into several crores with a firm then hardly known to it and which was proposing to enter a new line of business whose supply position was very difficult.*

(ii) *Dun and Bradstreet Report*

33. As stated earlier the acceptance of the offer of Oval Industries was communicated to them on the 23rd August, 1966. On the 25th August, STC addressed cables to the Indian Embassy, Washington and Shri M. Varadarajan, General Manager, Handlooms and Handicrafts Export Corporation (a subsidiary of STC) at New York, in which a request was made for Dun and Bradstreet Report on the credentials of M/s. Oval Industries. The reports on credentials were received on the 10th September, 1966, i.e. only three days after the signing of the contract with Oval Industries. These reports gave suspicious details about the firm. In later reports of 19th and 26th September, it was stated that the firm was importing women's boots from several European countries and selling to departmental stores and specially shops in U.S.A. It was renting a room in an office building in midtown Manhattan. It had declined all financial information. Its bankers were at an out-of-town bank. Its President Mr. Jack Muskat had earlier been associated with several European firms working in Italy, France and England in the boot business. Antecedents of Vice-President of the firm, Hy. Muskat were not available.

34. Asked why STC did not wait for receipt of reports on credentials of the firm before signing the contract, Chairman STC stated that the parties with whom they were negotiating were known to them as reliable businessmen. Secondly, STC was under pressure from the Ministries that this matter should be processed as expeditiously as possible. Thirdly, STC thought that the information on credentials would come at about the time of signing of the contract. Fourthly, STC was taking care to provide for the performance bond so that its money and interests would be fairly safeguarded. Asked what kind of pressure came from the Ministries, the Chairman STC replied that there was pressure of the situation in that the Corporation had received copies of letters from the Ministry of Agriculture stating that the offer should be pursued with utmost expedition.

35. Asked what steps were taken to expedite report on credentials of the firms, it was stated that initially the Indian Embassy at Washington was requested to send reports by the 4th September. A reminder was sent on 31st August. No cables were sent between 5th and 7th September, i.e. on the dates on which discussions with the representatives of Oval Industries took place in New Delhi. Asked why a condition was not provided in the contract that it would be subject to enquiry about the credentials, Chairman, STC

replied that "Had this occurred to us it could have been provided" In reply to a query, Chairman, STC stated that *prima facie* they thought that the firm would be able to fulfil the contract. He, however, added that "It is true that before we signed the agreement we had not gone into this aspect of antecedents".

36. In reply to another question, Chairman, STC said that a point might be raised whether the Corporation had not taken greater risk than was justified. But this was done in the circumstances in which they were placed and also because the firm had backing from powerful parties. Therefore the Corporation decided to take certain calculated risk in progressing the matter further in difficult situation, without waiting for the credentials.

37. It is noticed that although STC informed the Oval Industries on the 23rd August, 1966 about the acceptance of their offer it did not call for Dun and Bradstreet Report on the credentials of the firm till the 25th August 1966. There is nothing to indicate that serious efforts were made to expedite receipt of reports before the signing of the contract on 7-9-1966.

(iii) Verification of Sources of Supply

38. STC signed the contract in the belief that the contracting party had made arrangements for the supply of sulphur in accordance with the stipulations of the contract. It has been stated that at that stage the limitation of time and other surrounding circumstances did not permit STC's involvement into the question of verification of the sources of production. In another reply it has been stated that the representatives of Oval Industries who came to negotiate the contract regretted their inability to disclose particulars of the source of supply until the deal was well on its way to implementation. This, they said, could not be helped in view of the extreme sensitiveness of the sulphur market prevailing at that time and the hazards to the implementation of the deal which would arise from premature divulgence of the particulars of the arrangements under which the firm expected to make the supplies contracted for.

39. Asked why the contract was signed in these circumstances, S.T.C. has replied that the firm's contacts in U.S.A. supplemented by the backing they were understood to have from a number of parties of good commercial standing in the U.S.A. would enable

them to get hold of the required supply of sulphur. It was envisaged that some new mines would be worked to produce the sulphur required for later shipments and for the initial supply of some 20,000 to 40,000 tonnes it was considered feasible that the firm would make purchases from floating stocks and make shipments from one or more ports.

40. When S.T.C. noticed delays on the part of the firm to furnish performance guarantee, Shri G. S. Sial, Director of S.T.C. who was at that time in the United States to make arrangements for export of human hair and raw wool under instructions from the headquarters, thought it fit to verify arrangements they had made for supply of sulphur. In response to this Oval Industries named a certain mine and also gave the name of another mine, which could also be worked, and showed copies of certified reports of the latter mines' possibilities. These reports were dated 1953 and May, 1965 addressed to another company indicating that the mines were owned by a private individual. Furthermore, they could not show what the status and the right in those mines were nor whether any investments had been made to work them. It was clear from a perusal of these reports that those mines had not been worked from 1953 to 1965. As the status of the mines was not clear, further investigation was not made to verify whether these mines had produced sulphur at any time or not. The Oval Industries had not furnished information whether they on their own or on behalf of their associates had sold any sulphur in the post.

41. The offer of Oval Industries was for supply of 30,000 tonnes of sulphur monthly over 12 months. Asked whether the firm could supply such large quantities every month, the Director of S.T.C. stated that "We thought it not impossible then. Shipments could come from Europe, from America, from Mexico etc." Delivery rate of 30,000 tonnes a month was not considered unrealistic, especially as a ship of 10,000 tonnes can be loaded in countries like U.S.A. within five to six days.

42. *Most of the contracts entered into by STC have been for one or two shiploads and the largest single contract has been for 60,000 tons. The contract for deliveries of 30,000 tonnes of sulphur every month for a year was six times bigger than the biggest contract that had ever been signed by STC. That such large deliveries were considered "not impossible" and "not unrealistic" indicates that the Corporation had no clear idea of the sulphur trade and relied too much on representation of firms than on its own judgment about the availability of sulphur in the world market and the capacity of the party to fulfil the contract.*

(iv) Furnishing of performance bond

43. During the discussions between the representatives of Oval Industries and S.T.C. on the 6th September, 1966, the former had desired that S.T.C. should open a letter of credit to cover the full quantity (of 360,000 tonnes) stipulated in the contract and that letters of credit for instalments to be shipped from time to time would not be acceptable. It was urged that if letter of credit was for only a part of the contracted quantity, the performance Bond would also be for a correspondingly reduced value. This was not acceptable to S.T.C. as it was considered necessary to have a Performance Bond for the entire contracted quantity. In view of the fact that the problem was somewhat unusual and had financial implications of an appreciable magnitude, the Director of S.T.C. and Financial Adviser spoke about the matter to the Economic Adviser in the Ministry of Industry, who advised that the opening of letter of credit for the entire amount of the contract might be agreed to in order that, in its turn, S.T.C. might insist on having from the sellers a Performance Bond for the full amount of the contract.

44. Accordingly in clause 9 of the contract it was provided that S.T.C. shall open a letter of credit for the full quantity of 360,000 tonnes. To safeguard its interests, S.T.C. provided in the contract the following clauses:

"13 *Default*.—If the seller fails to fulfil any of the terms of the contract provided such failure is not due to *force majeure* as detailed in clause 16 hereunder, Seller shall be liable for all damages upto 5 per cent of the value of this contract. S.T.C. shall upon Sellers default of failure to deliver the first or any subsequent delivery be free to terminate the contract or make purchases at the Seller's cost and risks from any other alternative source for such quantities in respect of which the defaults have been committed by the Seller.

15. *Performance Bond*.—The sellers or their nominees shall furnish to S.T.C. a performance bond in the form of a bank guarantee from a Bank or Insurance Company approved by S.T.C. for due performance of the contract in the amount of 5 per cent of the total amount of this contract. The S.T.C. shall release the bank guarantee after satisfactory completion of the contract. The decision

of S.T.C. in this regard shall be final and binding both on the sellers and his bankers.”

45. According to clause 15 of the contract M/s. Oval Industries were to furnish to S.T.C. the bank guarantee within 12 business days of the signing of the contract. On 15th September, 1966 Oval Industries advised through their Indian agents that performance bond was impossible without a confirmed letter of credit and that unless a letter of credit was opened and confirmed the deal could be off.

46. Although in accordance with the terms of the contract there was no obligation on the part of S.T.C. to open a letter of credit before the performance bond had been furnished by M/s. Oval Industries, in the particular circumstances, S.T.C. was left with two choices:

- (i) either not to open the letter of credit and insist on Oval Industries to furnish the performance bond.
- (ii) to open a letter of credit by taking suitable safeguards to protect the Corporation's interests.

47. After considering the situation, S.T.C. felt that the balance of advantage lay in favour of not pressing for the first alternative and thereby losing prospects of supplies materialising under the contract. S.T.C. therefore decided that a letter of credit might be opened with the stipulation that it would become operative on their furnishing the performance bond. Thus S.T.C. opened a letter of credit for the requisite amount (\$1,98,00,000) through the State Bank of India to be communicated and confirmed to M/s. Oval Industries through Chase Manhattan Bank, New York. The date for furnishing the bond was extended upto the 27th September, 1966. When upto that date the bond had not been furnished, Shri Sial, Director of S.T.C. who was in U.S.A. at that time, opened discussions with the firm. Oval Industries continued to make promises that the performance bond would be forthcoming but the same was not produced till the 29th September. They had been mentioning that one of the reasons why there was delay in producing the performance bond was that the Chase Manhattan Bank had not only not confirmed the letter of credit but also not advised them of the receipt of the letter of credit showing them as the beneficiaries of the letter of credit. Shri Sial had discussions with the Chase Manhattan Bank who agreed that they would be prepared to send at short notice, advice to Oval Industries that the letters of credit had been received. Such an advice was sent by the State Bank of India on 30th September, 1966,

but when approached by Chase Manhattan Bank, Shri Sial advised them to defer action on the cable advice from State Bank of India, since by that time, it was clear that the deal with Oval Industries would prove abortive. On the 1st October, 1966 a letter from S.T.C.'s legal advisers communicating termination of the contract as from the 30th September, 1966 was sent.

48. Asked why the letter of credit was opened by S.T.C. before Oval Industries furnished the performance bond, Chairman, S.T.C. in evidence stated that in the original contract the opening of letter of credit was not made a condition precedent. After the contract was signed Oval Industries represented that the performance bond would not be available unless S.T.C. indicated to the guaranteeing institution that it had opened a letter of credit. Chairman stated that in quite a number of contracts both the things were provided viz., that the selling party would give the performance bond and the buying party would agree to open a letter of credit. In this sulphur contract the provision for opening of a letter of credit was not there. Oval Industries had stated that unless the letter of credit was opened the performance bond could not be produced and the agreement would have to be called off. S.T.C. had to decide whether to call off the deal at that stage or whether it should keep the deal alive. The view taken after careful consideration was that the balance of advantage was in keeping the deal alive. It was, however, stipulated that the letter of credit would not become operative unless it was coupled with the performance bond. In reply to a question, Chairman, S.T.C. agreed that Oval Industries should have raised the question of opening of letter of credit before signing the contract. But they raised the question when the Bankers refused to give the guarantee prior to the opening of letter of credit.

49. The Committee find that when the acceptance of the offer of Oval Industries was communicated to them on the 23rd August, 1966 it was stipulated that a bank guarantee of 5 per cent of the total value of the contract would be furnished by Oval Industries for due performance before the signing of the contract. S.T.C. later found that the firm was not able to fulfil this condition. Further, in the contract signed on the 7th September, 1966 there was no obligation on the part of S.T.C. to open a letter of credit before receipt of performance bond. But S.T.C. waived this condition when it was convinced that the firm was not able to furnish the bond without the opening of a letter of credit.

50. *The Committee feel that the stipulation under which STC agreed that the letter of credit would become operative on Oval Industries furnishing the performance bond was not enough because*

in the event of a default such a performance bond would not have enabled STC to recover the sum indemnified. Since STC had not done any business with the firm earlier, the Committee feel that by opening the letter of credit the Corporation took graver risk than was warranted by the circumstances of the case. In fact, if the contract had not been cancelled in time, the Corporation might have involved itself in avoidable litigation and loss of money. . . .

E. Failure of the Contract

51. The circumstances which led to the failure of the contract are explained in a letter dated 21st October, 1966 from Oval Industries to S.T.C. The main points are:

- (1) M/s. Oval Industries had been introduced to Mr. D. Berner, Chairman of the Board of Directors of North and South Trust Company who had advised that his Company had options on the output of operating sulphur mines in the South West United States and South America. On the 12th August, 1966 the North and South Trust Company submitted a written offer to sell sulphur to M/s. Oval Industries (Appendix IV) Mr. Berner had exhibited to Oval Industries what purported to be binding contracts between the North and South Trust Company and operating mines. Based on these assurances Mr. Hy Muskat had come to India to negotiate contract for the sale of sulphur to S.T.C. After the contract between S.T.C. and Oval Industries had been signed on the 7th September, 1966, the latter entered into an agreement with North and South Trust Company for the necessary supply of sulphur.
- (2) M/s. Oval Industries had asked Mr. Berner to give them a bank guarantee in terms identical to the one which Oval Industries had provided to S.T.C. Oval Industries had approached the Chase Manhattan Bank, New York to act on their behalf in writing a back to back letter of credit from S.T.C. to Oval Industries and from Oval Industries to North and South because it was one of the few banks to become involved in a transaction of this magnitude. The Chase Manhattan Bank had agreed to perform this guarantee to them.
- (3) The contract of Oval Industries with S.T.C. received wide publicity and it became obvious that vested sulphur interests were making efforts to destroy the transaction.

The problem in obtaining the Bank Guarantee, as indicated by North and South to Oval Industries was that bonding companies appeared to have been subjected to extreme pressure from vested interests thus making it difficult to obtain the Bank Guarantee.

52. In this connection it is relevant to reproduce below the following message sent from New York by Shri Sial, Director of S.T.C. to Chairman, S.T.C. on the 30th September, 1966:—

“... This was because almost all the discussions I had had with the legal adviser to S.B.I. here and other leading concerns in the business like Sulexco, Titan Industrial Corporation etc. underlined the fact that there is just no sulphur available right now anywhere and hence I wanted some satisfaction that the arrangements Ovalind had made were pucca and that the arrangements were dependable. In response to this all that Ovalind could show me late evening on Friday the 30th was their contract with a company called the North and South Trust Company reported by Ovalind to be a Swiss Company located at Pfarrgasse, 3, Vaduz, Leichtenstein, Switzerland, the Chief Officer of which was a Mr. Desiderio Berner. This Company has no offices here in America. I wanted to know if they could show me some proof of this Company's financial standing. They could not. I wanted to know which mine they were hoping to get the sulphur from. They named a certain mine and also gave the name of another mine which could also be worked. They also showed copies of survey reports of the latter mine's possibilities. These reports were dated 1953 and May, 1965 addressed to another company indicating that the ownership was that of a private individual. Apart from being uncertified copies there was nothing to show as to what the status right now of that mine was. The fact that if these reports are correct this mine has not been worked from 1953 to 1965 is also disturbing. In any case the reports do not relate at all to the mine from which we are supposed to get the sulphur in the first instance. In view of all these factors and to save ourselves from legal complications.... I had come to the inevitable conclusions that Ovalind has entered into a contract with us just for speculative purposes of their own. I have therefore informed them

that they have failed to perform under the conditions of our contract with them and that there are no further obligations on the part of S.T.C. and that we would be at liberty to seek any and all remedies available to us under the contract..... I would also suggest that under the contract we have with Dunbar Boot Company of which the Muskats are the principals we should immediately ensure that any letter of credit obligations they have are fulfilled at once before we undertake production."

53. In evidence, the Director of S.T.C. stated that on reaching New York he "found that they did not have a firm supply base and was convinced that this party could not be relied upon for making the supplies" and therefore he took the decision to call off the contract.

54. From the above facts it will be noticed that North and South Trust Company was a Swiss Company which had no office in America. The Chairman of that Company had stated that they had options on the output of certain mines in America. But the fact is that at that moment no sulphur was available with the Company nor any firm contracts for the same had been made and the mines from which sulphur was to have come for supply to S.T.C. had not been worked from 1953 to 1965. The ownership and status of the mines itself was not clear. The Committee are doubtful whether in these circumstances this Company would have succeeded in fulfilling the terms of the contract, even if the bank guarantee had been furnished.

55. It has been urged before the Committee that the fact that Oval Industries had sent two representatives from U.S.A. at considerable expense for the negotiation of the contract indicated that they were sincere about the proposed deal. It is also stated that the firm would have got nothing out of H.T.C. if they failed to supply sulphur, but on the other hand incur preliminary expenditure and future liabilities of various kinds in addition to sustaining a set back to their future trading prospects.

56. *The Committee are of the view that Oval Industries had made the offer to S.T.C. on the assurance of North and South Trust Company that it would be able to supply sulphur. The effort of Oval Industries to conclude this deal was in the nature of a speculation in a new line selected because Chairman, S.T.C. had indicated to that firm that India was searching for sulphur supplies. S.T.C. being aware of the background might have made proper investigations and enquiries from other sulphur suppliers and producers.*

F. Payment of compensation

57. In view of Oval Industries having defaulted in the contract with S.T.C., the question as to what action should be taken against them with a view to imposing a penalty and claiming damages was considered. The Law officer of S.T.C. expressed the opinion that any legal action against Oval Industries would be fraught with complication and uncertainty of results. He opined that absence of advice from Chase Manhattan Bank to Oval Industries regarding establishment of the letter of credit might weaken S.T.C.'s case for any claims against Oval Industries and even if S.T.C. succeeded in establishing breach on their part of the terms of contract, they would be liable only for damages, expenses and losses actually suffered by S.T.C. because of the breach. In the circumstances, he suggested that the management might consider the possibility of a negotiated settlement. Accordingly negotiations were held and M/s. Oval Industries agreed to pay a sum of Rs. 75,000 by way of full and final settlement and in case the infructuous expenditure exceeded this amount, they agreed to meet the entire expenditure which the S.T.C. had to bear. The actual expenses incurred by S.T.C. on this deal amounted to Rs. 6614.56 made up of—(a) Rs. 3792.46 payable to the State Bank of India as its costs and charges; and (b) Rs. 2822.10 as hotel charges. The Committee are informed that initially an amount of over Rs. 9 lakhs representing the bank commission was debited by the State Bank of India to S.T.C., but later on it was refunded in full because the letter of credit had not been duly established and communicated to the beneficiaries, i.e. M/s. Oval Industries.

58. The Committee desired to know whether the sum of Rs. 75,000 promised to be paid by Oval Industries to cover the infructuous expenditure on account of this deal had actually been paid. The Chairman, S.T.C. replied that out of this amount one-third was to be in convertible currency and on this account S.T.C. had received 3000 dollars (equivalent to Rs. 22500.00). The firm has been advised to arrange the remittance of the balance of Rs. 2500.00. Out of the balance of Rs. 50,000.00 to be paid in rupee currency Oval Industries had agreed to pay through their associate Shri M. R. Dutt. A sum of Rs. 5000 had recently been paid as part payment, but S.T.C. wanted to examine whether its acceptance did not infringe any foreign exchange regulations of the Government of India. *The Committee suggest that the balance amount due from Oval Industries should be recovered early.*

G. Role of M/s. Amarjyothi

(i) Creation of M/s. Amarjyothi

59. The contract with M/s. Oval Industries was negotiated through their Indian agent M/s. Amarjyothi. The firm of M/s. Amarjyothi was set up on 11th July, 1966. It is located at 32, Okhla Industrial Estate, New Delhi. Its partners are Major Vipin K. Khanna, Shri Vinod K. Khanna and Smt. Satya Dutt. According to a declaration received from M/s. Amarjyothi in August, 1966, the firm had a capital investment or structure of Rs. 2,50,000. The State Bank of India, Okhla, New Delhi, in a report dated 26th August, 1966, stated that Major Vipin K. Khanna and Shri Vinod K. Khanna, the managing partners of M/s. Amarjyothi "were respectable, reliable and experienced in their line of business and that they were dealing with the Bank satisfactorily for the last four years."

60. Amarjyothi do not appear to have done any import business prior to the commencement of its dealings with S.T.C. It is, however, stated that M/s. D.S.S. Industries out of which M/s. Amarjyothi was formed as an export and import wing thereof had been in business for about a decade. The annual turnover of D.S.S. Industries is estimated at Rs. 50 lakhs and the supplies by it to Government in the last four years are stated to have exceeded Rs. 80 lakhs. The firm is reported to have been importing Brass Strips, Bronze Wire, Special Steels, Machinery, Machine Tools, Taper Roller Bearings, Oils etc. and exporting semi-precious stones, silver jewellery and textiles. S.T.C., however, did not have any previous dealing with M/s. Amarjyothi or M/s. D.S.S. Industries. The partners of D.S.S. Industries are: (i) Major Vipin K. Khanna, (ii) Shri Vinod K. Khanna (3) Shri S. L. Khanna (4) Smt. Vidya Khanna, (5) Princess Amrit Kumari and (6) Princess Nagindra Kumari.

61. Thus two of the partners of D.S.S. Industries viz. Major Vipin K. Khanna and Shri Vinod K. Khanna are partners of M/s. Amarjyothi. The third partner of M/s. Amarjyothi, viz. Smt. Satya Dutt is wife of Shri M. R. Dutt who is stated to be an associate of Muskat Brothers of Oval Industries.

62. S.T.C. has no information as to when the firm was appointed as Indian agents of M/s. Oval Industries. It seems that there is no formal agreement signed between M/s. Amarjyothi and M/s. Oval Industries regarding the appointment of the former as the agent of

the latter. In any case Oval Industries were incorporated in January 1966 only.

63. In terms of the contract entered into on the 7th September, 1966, S.T.C. agreed to pay to M/s. Amarjyothi a commission in Indian rupees at the rate of 3/4 per cent of the F.O.B. value of the supplies. The value of the sulphur contracted for was U.S. \$19,800,000 equivalent to Indian Rs. 14.85 crores. Thus at the aforesaid rate, the commission payable to M/s. Amarjyothi would have amounted to Rs. 11.14 lakhs.

64. The Committee desired to know how the firm of M/s. Amarjyothi was introduced to S.T.C. Chairman, S.T.C. stated in evidence that both the firms—D.S.S. Industries and Amarjyothi—belonged to Khanna family. The State Bank of India had given a good and reliable report on them. M/s. Amarjyothi appeared before S.T.C. as an Indian firm to look after the interests of Oval Industries and when they did so the discussions took place mainly with the Divisional Director of S.T.C. About the date on which the firm was set up, Chairman, S.T.C. stated that the firm had given the date as July, 1966. However, from the records available it appeared that the firm had been formed on the 11th July, 1966. When enquired why it was necessary to create a separate firm when D.S.S. Industries was doing similar business, Chairman, S.T.C. stated that this was done probably because they had taken one more partner who was not in D.S.S. Industries and also the composition of business was somewhat different. Asked whether enquiry was made about the financial standing of M/s. Amarjyothi before accepting the offer, the Director of S.T.C. stated that the firm had appeared before them as an agent of their Principals and S.T.C. did not consider it necessary to get full information about the agents in such cases. However, S.T.C. had asked the opinion of the State Bank of India on the firm and a report had been received from the Bank on the 26th August, 1966.

65. Replying to a question as to why S.T.C. did not enter into the sulphur contract directly with Oval Industries instead of through Amarjyothi, especially when the Muskat brothers were known to the Corporation, Chairman, S.T.C. stated that prior to the receipt of offer for supply of sulphur, he knew the Muskat brothers as President and Vice-President of Dunbar Boot Company and not of Oval Industries as such.

66. The Committee desired to know whether M/s. Amarjyothi was still continuing as a firm. Chairman, S.T.C. replied that he did not know and had not checked up. In a written reply furnished

later it has been stated that enquiries made show that the firm continues to exist but at present it has no business activities of consequence which is attributed to the losses and severe set-back received by the firm on account of the falling through of the sulphur deal contracted by their principals.

(ii) *Association of Shri M. R. Dutt and Major V. K. Khanna.*

67. The Committee desired to know how Shri M. R. Dutt was introduced to S.T.C. The Director of S.T.C. stated that so far as he knew Shri Dutt was the person who brought the Acme Boot Company of U.S.A. in contact with the S.T.C. Chairman, S.T.C. stated that he knew Shri Dutt from April, 1966 or thereabout Shri Dutt had helped S.T.C. in developing the business of export of leather goods to U.S.A. and earned a commission of one per cent on the business developed with his assistance. It was added that he brought information as to the particular products which India had and which could be developed for use in U.S.A. Asked whether Shri Dutt was a representative of any particular company, the Director of S.T.C. replied in the negative. When enquired why copies of correspondence between S.T.C. and Oval Industries were sent to Shri Dutt, the Chairman replied that the interests of this firm in India were looked after by M/s. Amarjyothi in which Shrimati Dutt was one of the partners. After the sulphur deal did not materialise, Oval Industries had authorised Shri Dutt and said that he could be depended upon to give the communications on their behalf in place of Amarjyothi as a firm. To a question whether there was any written communication making such authorisation, Chairman S.T.C. replied that they had been told orally during the visit of Vice-President of Oval Industries to India. However, he would find out whether there was any written communication. After the evidence, the Corporation has forwarded to the Committee copy of a letter dated the 17th October, 1967 received from Oval Industries which is reproduced below:

“During the course of discussions with you this afternoon I have once again confirmed that we are in the Indian markets entirely as a result of the intelligent, diligent and consistent work put in by Mr. M. R. Dutt. As a gesture of our confidence in his ability and to maintain a regular line of communication between S.T.C. and ourselves, we have authorised him all along to give to S.T.C. and likewise receive from S.T.C. all and any information, correspondence or any other line of action that may be communicated or instructed to him by us from time to time. You

have desired me to confirm in writing the delegation of this implied authority in favour of Mr. Dutt which he has been enjoying all this time. This confirmation we are doing now through this letter."

68. In another reply STC have stated that after the deal with M/s. Amarjyothi was called off by STC at the beginning of October, 1966, the interest taken by M/s. Amarjyothi in Oval Industries appears to have waned and in subsequent correspondence or exchange of information between Oval Industries and STC, Shri M. R. Dutt acted as the main channel of communication.

69. As regards Major Vipin K. Khanna, one of the partners of Amarjyothi, it is seen that he has been known to STC from the time the negotiations with Oval Industries in regard to the sulphur deal started in August, 1966. Major Khanna was present at the time of negotiations held between the representatives of Oval Industries and STC from the 5th to 7th September, 1966.

70. As regards the antecedents of Major Khanna it is learnt that he was commissioned on the 4th June, 1950 as a direct entrant through N.D.A. He retired prematurely from the Army with effect from the 17th July, 1965, at his own request. The main grounds on which he sought premature retirement were that he had no future prospects in the Army and he had some domestic worries.

(iii) *Findings of the Committee*

71. A reconstruction of the dealings between STC and M/s. Amarjyothi/Shri M. R. Dutt reveals certain important points as discussed below:

(1) Shri M. R. Dutt is stated to be an associate of Muskat brothers and was introduced to STC in April, 1966 or thereabout. In this month, Chairman, STC had paid a visit to USA and had discussions with the Muskat brothers in connection with export of leather footwear and components to U.S.A., sulphur requirements of STC, and other matters. The first contract between STC and Dunbar Boot Company (of which Muskat brothers were President and Vice-President) for supply of 500,000 pairs of boot uppers was also signed in April, 1966. Shri Dutt had brought the parties together and earned a commission of one per cent on the business developed by him.

(2) In April, 1966 Chairman had "mentioned to Muskat brothers" about India's requirements of sulphur and STC's interests in importing sulphur. It seems that Shri Dutt knew about it. When Muskat brothers were negotiating with North and South Trust Co.

for supply of sulphur and when the latter made the offer, Shri Dutt possibly found a business opportunity in workings as an intermediary between **STC** and **Oval Industries**.

(3) Shri Dutt was known to the firm **DSS Industries** but was not its partner. In order to see through the sulphur deal and possibly with the intention of developing further business, a new firm was created and named **Amarjyothi** with three partners—two from **DSS Industries** and the third was Mrs. Satya Dutt, wife of Shri M. R. Dutt. If it were not so, there was in fact no necessity of creating a separate firm.

(4) The date when the firm was created is stated to be 11th July, 1966. It is a partnership firm but it is not clear whether there is a formal deed and if so of which date. Even between this date i.e. 11th July, 1966, and 17th August, 1966, i.e. the date when **Major Khanna** met the Director of **STC** with the offer for supply of sulphur, there is a time lag of only one month and a few days. Shri Dutt had been meeting **STC** officials since April, 1966 in connection with the leather footwear business of **STC** and during the subsequent months the decision to set up a separate firm, named **Amarjyothi** to transact the sulphur deal or similar other offers in future was taken.

(5) There was no formal agreement signed between **M/s Amarjyothi** and **M/s Oval Industries** regarding the appointment of the former as the agent of the latter. The firm of **M/s Amarjyothi** had not done any business and it appears that **Oval Industries**, on their own, would not have appointed **Amarjyothi** as their Indian agents. In fact Chairman of **STC** had in April, 1966 mentioned **STC's** interests in importing sulphur directly to **Muskat brothers** and if the latter had succeeded in receiving an offer from any sulphur producer, the reference to **STC** would have come directly from them.

(6) **STC** did not previously have any dealings with **M/s. DSS Industries**. From the available records it appears that between the date of creation of **M/s. Amarjyothi** and the date when it made its offer for supply of sulphur, i.e. 20th August, 1966, the firm had done no other import business. In other words, sulphur deal was the first transaction negotiated by the firm.

(7) Enquiries made show that the firm continues to exist but at present it has no business activities of consequent which is attributed to the losses and severe set back received by the firm on account of the falling through of the sulphur deal contracted by their principals. In evidence it was stated that after the contract with **Oval Industries** was called off, the interest taken by **M/s Amarjyothi** in

Oval Industries appeared to have dwindled and subsequent correspondence or exchange of information between Oval Industries and STC, Shri Dutt acted as the main channel of communication.

72. Considering all aspects of the matter, the Committee are of the view that the entire deal was finalised with the good offices of Shri M. R. Dutt and Major Vipin K. Khanna and that the firm of M/s Amarjyothi was set up as there was the possibility of earning a commission of over Rs. 11 lakhs on the sulphur contract. This view is strengthened by the following facts:

- (i) Shri Dutt had been meeting STC officials in connection with the sulphur offer although he himself had no standing in the firm of M/s Amarjyothi.
- (ii) The firm was created with Shrimati Dutt as one of the partners, as otherwise there was no necessity of creating a separate firm. M/s DSS Industries which was known to Shri Dutt had already been doing export-import business and the functions of M/s Amarjyothi were not intended to be different.
- (iii) The Chairman, STC had met Muskat brothers in USA in April, 1966 and had mentioned India's sulphur requirements. The offer of Oval Industries would have normally been made to STC direct. Shri Dutt was acting as a channel between Muskat brothers and STC in connection with leather business and through his efforts the creation of M/s Amarjyothi and its appointment as Indian agents later was made possible.
- (iv) The sulphur deal with STC was the first transaction negotiated by M/s Amarjyothi and from the information supplied it can be presumed that this firm has not done any business of consequence ever since.

73. As regards the responsibility of STC Government in this transaction, the Committee have already pointed out that the offer of Oval Industries was not scrutinised properly, that the credentials of the firm had not been obtained before signing the contract and that the source of supply of sulphur was not verified. On the question of STC's dealings with M/s Amarjyothi, the Committee's views are as follows:—

STC's officials had not proceeded in a cautious manner in dealing with this offer. Shri M. R. Dutt had been known to STC since April, 1966. He did not represent

any firm in India or abroad in any official capacity. Reference to him as an 'associate' of Muskat brothers without any record to that effect is too vague to be relied upon for doing business with him by an institution owned by Government. STC's dealings with him have been only in his individual capacity. The Committee consider that the propriety of STC addressing communications to Shri M. R. Dutt who had no locus standi the transaction at that stage needs to be examined. The letter dated 17th October, 1967 received from M/s Oval Industries has obviously been procured by STC because during evidence before the Committee STC failed to establish his locus standi.

II

POLICY REGARDING IMPORT OF SULPHUR

A. Introductory

74. Sulphur is among the most common minerals. It can be mined through several methods, processed from other materials such as pyrites or refined from petroleum and 'sour' natural gas. The minable deposits of 'Fresh' sulphur exist in Texas, the U.S. Gulf Coast and Mexico where the mineral is mined from salt domes. The sulphur is melted underground by hot water and piped to the surface through pumping machinery much like oil. Most of the current production from this source comes from domes on land or just off-shore in Texas and Louisiana coastal areas. Major deposits of pyrites occur in Spain, Portugal, Norway, Japan, Germany, France and Cyprus. In Canada and France sulphur is recovered in large quantities from gas fields.

75. The following figures show world production of elemental sulphur during the years 1960 to 1964:—

(In million long tons)

	1960	1961	1962	1963	1964
I. Native sulphur					
(i) Frasch	6.21	6.54	6.34	6.36	6.85
(ii) From Sulphur Ores.	1.49	1.69	1.76	1.74	1.80
Total Native Sulphur	7.70	8.26	8.10	8.10	8.65
II. Other elemental recovered	2.70	3.24	3.90	4.50	5.15
World Total	10.40	11.50	12.00	12.60	13.80

NOTE: Figures for 1964 are estimates. Figures given above rounded off wherever considered necessary.

76. A break-up of the production—country-wise is given at Appendix V. It will be seen that out of the world total of 8.65 million tons of native sulphur produced in 1964, the United States produced 5.23 million tons, Mexico 1.64 million tons, U.S.S.R. 0.95 million

tons, Poland 0.29 million tons and Japan 0.24 million tons. Out of the 5.14 million tons of elemental sulphur recovered in that year from refinery and natural gases and oil etc., France produced 1.49 million tons, Canada 1.44 million tons and United States 1.02 million tons.

77. The world production of elemental sulphur from pyrites was as follows:

(In million long tons)	
1960	8.9
1961	8.7
1962	9.0
1963	9.0
1964	9.0

NOTE: Figures for 1964 is based on Estimates.

78. The major countries producing sulphur from pyrites and production figures for the year 1964 are indicated below:—

(Sulphur content in thousand long tons)	
U.S.S.R.	1970
Japan	1575
Spain	1098
Italy	619
U.S.A.	354
Cyprus	323
Norway	314
Finland	258
Canada	157
France	107

79. The world's biggest producers of elemental sulphur are United States, Mexico and Canada. Estimated production in 1966 was—United States 9.8 million tons, and Mexico 1.6 million tons. A bulk of this production was Frasch sulphur. In Canada sulphur recovered from gas fields was about 2 million tons. Freeport Sulphur Company is the world's biggest producer (4 million tons a year); second ranks Texas Gulf Sulphur Co. (3 million tons a year). A large 'sour' gas field in France produces 1.5 million tons of sulphur in a year.

80. In the world sulphur market, the years 1950 to 1959 have been characterised as one of sulphur shortage, over-supply existed in 1962 and near balance in 1963. Since 1964 though world production of sulphur has registered an increase, it has fallen short of the estimated demand. The shortage mainly is due to a rapid growth

in the demand, mainly for the sulphuric acid and fertiliser industry. Reports indicate that the use of sulphur as a fertiliser has doubled since 1961 and agricultural needs command nearly half of the total production. The 'Chemical Week' in its issue of 21st May, 1966 reported that the sulphur inventories were being depleted and sulphuric acid users were not sure they could get enough sulphur to supply the customers they then had under contract. They were also considering whether they should go ahead with planned expansion. At the end of 1963, Frasch producers' stocks in the U.S. totalled nearly 4.7 million tons. In May, 1966 it was three million tons. Much of the stockpile was stated to be sold as sulphur in transit. This journal also reported that probably the most critical period would be mid-1967 to mid-1968 (unless the Mexican situation improved). The Wall Street Journal in its issue of 31st January, 1967 reported that whereas in 1966 world supply and demand promised to be virtually in balance, prospects for 1967 and 1968 were less favourable. The report indicates that world deficits ran from one million to two million tons a year with producers drawing an inventories to keep customers supplied. According to a report published by the U.S. Department of the Interior, Bureau of Mines, in 1966, there was a drawdown of Frasch stocks for the fourth consecutive year.

81. In India sulphur is used mostly in the manufacture of sulphuric acid which in turn is utilised in industries, like fertiliser, chemicals, steel, rayon and petroleum. Elemental sulphur is used in the manufacture of explosives, matches, insecticides, fungicides etc. In the form of sulphur dioxide it is used in sugar refining and paper and rayon pulp manufacturing units. It is estimated that in India almost 60 per cent of the sulphur goes into the production of sulphuric acid. At present sulphur is not produced in India and hence the country's total requirements are met by imports, mainly from U.S.A., Canada and Mexico.

82. *Some sugar mills in the country are using sulphur for refining purposes while others employ the carbonisation process which does not require sulphur. The Committee understand that the carbonisation process is slightly costly but the recovery of sugar is larger. Since there is world shortage of sulphur and it involves foreign exchange the Committee suggest that Government should induce the sugar mills that are using sulphur to switch over to the carbonisation process. Similar efforts should be made in other fields where substitution of sulphur is possible.*

B. Contracts with M/s. Oval Industries and policy regarding imports

83. The contract signed with M/s Oval Industries has to be viewed in the context of the policy adopted by Government for import of

sulphur during the years 1965 and—Although **STC** entered into the sulphur trade in the year 1963-64, the imports made by it during that year and in the subsequent year amounted to 30834 tonnes and 1928 tonnes respectively.

84. From the beginning of 1965, there was a world shortage of sulphur and Government felt that the imports by the established importers were not adequate to meet the country's requirements. **STC** was, therefore, asked to negotiate with foreign firms for supply of sulphur. The decision to enter into a contract with **M/s. Oval Industries** was taken on the 23rd August, 1966. On the 27th August, 1966 an order was issued canalising all imports of sulphur through **STC**. However, by another order dated the 7th January, 1967 the canalisation was removed. In order to examine the background in which the contract with **Oval Industries** was entered into, it is necessary to consider briefly the Government's policy regarding import of sulphur and the role of **STC** in the sulphur trade.

C. Import of sulphur till 1964

85. Prior to 1961 actual users and established importers were getting licences for import of sulphur against free foreign exchange. From early 1961, on account of foreign exchange difficulties, licences for import of sulphur were issued against **DLF/AID** loans. Actual users were finding it difficult to import sulphur under these loans in small lots. It was, therefore, decided in the last quarter of 1961 to bulk the requirements of the actual users by issue of licences to two firms—**M/s Dharamsi Morarji & Co.** and **M/s. E.I.D. Parry Ltd.** who were the agents of the U.S.A. suppliers.

86. Sulphur imported by these established importers was supplied mostly to small consumers and in rare cases to the large consumers. The actual users of sulphur were not approaching the Directorate General of Technical Development for allocation of sulphur imported through **M/s. Dharamsi Morarji & Co.** and **M/s. E.I.D. Parry**. This Directorate allotted sulphur imported by these two firms to cover their requirements on the basis of their capacity and after taking into account the expected arrival of stocks. There was, however, no real shortage of sulphur until the end of 1964. All actual users were able to procure their full requirements of sulphur either by allocation by the **DGTD** or by procurement from the established importers.

D. Imports during 1965 and 1966

87. The quantity of sulphur imported during the year 1964-65 was 277,781 tonnes as against the estimated requirement of 275,000 tonnes.

But in the year 1965-66 the imports dwindled steeply and stood at 97,998 tonnes as against the requirement of 325,000 tonnes. This resulted in a set back in the production programmes of major industries like the fertiliser industry. Government, therefor, considered what measures should be taken to meet the situation.

88. From the beginning of 1965, a world shortage of sulphur occurred and sufficient sulphur was not available for distribution to actual users against the imports made by established importers i.e. M/s. Dharamsi Morarji & Co., and M/s. E.I.D. Parry Ltd. and the S.T.C. Since imports were not adequate to meet the full requirements of the consuming industries it was necessary to distribute sulphur to the consumers on a rational basis, taking also into consideration the importance of different industries. After estimating the total requirements of sulphur by various consuming industries the available material was distributed industry-wise on a *pro rata* basis but some additional weightage was given to the fertiliser industry. The defence requirements were met in full.

89. Since the beginning of 1966 Government had also tried to work out arrangements under which offers of sulphur in small or large lots at varying prices could be considered quickly by the Ministry of Industry in consultation with the Department of Economic Affairs. The arrangement was deemed necessary because quite often offers were made for stray lots of sulphur and these offers were open only for short periods. The arrangement for taking quick decisions on such offers had worked fairly satisfactorily, but the Government's view is that against the permissions granted to different parties, no substantial quantities of sulphur had been imported mainly because in the context of world shortage and rising prices, the suppliers abroad backed out. In the result, the existing procedure had not succeeded in augmenting supplies.

90. Prior to 1965, India used to obtain from the United States about 200,000 tons of sulphur and this was financed from US Aid funds. In 1965, because of certain differences between exporters of sulphur—SULEXCO—and the US Government and resulting litigation, on the ground of monopolistic practices alleged against the former, India was required to finance its purchase of sulphur against free foreign exchange. In 1966, the SULEXCO indicated that India could not expect more than the traditional level of supplies i.e. approximately 200,000 tonnes from the member firms of SULEXCO.

91. The total availability of supplies of sulphur during the calendar year 1966 was estimated to be as follows:—

	Tonnes.
1. Supplies from SULEXCO members (i.e.) Texas Gulf and Free Port Sulphur Co. (inclusive of 40,000 tonnes offered by M/s. Texas Gulf from their Canadian mines and to be financed under Colombo Plan.)	200,000
2. GSA programme against US aid Funds.	15,000
3. Sulphur which may be purchased against NDR scheme licences.	20,000 to 30,000
	235,000 to 245,000

92. As against the total availability of 235 to 245,000 tonnes (plus some supplies from Canada and/or under the STC deal), the estimated requirements for the year 1966 were 465,000 tonnes and in 1967 they are expected to increase further to 600,000 tonnes.

93. The matter was first considered at a meeting held on the 17th February, 1966 (see Appendix VI) in which the Secretary, Ministry of Industry, Economic Adviser to the Government of India, representatives of the Ministries of Finance, Commerce, Petroleum and Chemicals, DGTD, STC, and representatives from the fertiliser industry were present. It was explained that Canadian supplies under the Colombo Plan arrangement were being negotiated but the quantity that could be procured under this arrangement could not be indicated. French suppliers were also being persuaded to allot some sulphur to India in 1967 or later if not in 1966. The possibility of procuring some stray floating supplies from the United States/Mexico by making purchases at prices to be negotiated on the spot, subject to a ceiling to be determined in consultation with the Finance/Economic Adviser was also mentioned, STC was asked to formulate proposals in this regard.

94. On the 21st July, 1966 the Economic Adviser to the Ministry of Industry recorded a note, relevant extracts from which are re-procured below:—

“It seems to me that the present arrangements under which supplies of sulphur are arranged only with the prior approval of Government (except for NDR licences) is likely to place Government in a increasingly embarrassing

position. I have serious doubts whether in spite of our best efforts we would be able to obtain the requisite quantities of sulphur in the current year and also next year. Now that the fertiliser industry is a priority industry whose requirements to be met from IDA funds, I see some advantage in announcing that all manufacturers of fertilisers can obtain their supplies at prices they consider reasonable, subject only to the licensing conditions under IDA being observed. Government will, of course, make arrangements for distribution on the basis of accepted priorities of such sulphur as it is able to obtain from U.S. or Canada or from any other source; but apart from these quantities, the fertiliser producers will be permitted to make their own arrangements including arrangements for long term purchases. This seems to be the only way in which some additional quantities could be obtained. It would also place the responsibility for obtaining the raw materials on the industry and to that extent, the onus of providing adequate quantities of sulphur will at least be shared by Industry. In so far as we are committed to make full provisioning of sulphur, permission to any Actual User to import sulphur at prices which the industry considers reasonable will not involve any extra cost.

The problem of sulphur will continue to remain as far as non-priority industries are concerned and may also be there for priority industries other than IDA industries. I would even consider extending the same facility to other priority industries.

As far as non-priority industries are concerned, perhaps one could consider permitting imports through the S.T.C. on the understanding that such imports are then sold in the open market at the ruling market prices."

E. Discussion in the meeting of the Committee of Secretaries

95. The question was discussed at a meeting held on the 5th August, 1966 in which the Secretaries of the Ministry of Finance (Department of Economic Affairs), Agriculture, Industry, and Chemicals, Economic Adviser to the Government of India and the Chairman of STC participated. (See Appendix VII).

96. The Economic Adviser (Shri S. S. Marathe) had proposed that for fertilisers which was a priority industry, the manufacturers should be permitted to make their own arrangements for purchase

of sulphur and for non-priority industries the question of permitting imports through S.T.C. might be considered. Shri Marathe said that the main object of his proposal was to prevent complaints arising about Government not providing enough of sulphur for fertiliser production thus giving an *alibi* to the fertiliser producers. The manufacturing units might not succeed any better than Government but it would be their judgment if they were to buy a certain quantity at a certain price.

97. Chairman, STC (Shri B. P. Patel) stated that if in a seller's market, a number of individual, actual users, were allowed to compete for securing their supplies, it would only raise the prices and would prove to be uneconomical. He felt that if a single agency was allowed to procure sulphur from the world market, it would be possible not only to secure substantial quantities of sulphur but also to ensure that the prices paid were not out of line with the market prices. If S.T.C. was allowed to proceed on this basis to get another 200,000 tonnes it would be a much cheaper arrangement to India and would also enable to full demand to be met. He was of the view that it would be a mistake at this stage for Government to withdraw from the responsibility of making sulphur available to the actual users.

98. The Agriculture Secretary, (Shri B. Sivaraman) raised the question that if all purchases were to be canalised through STC it might give rise to problems with some of the fertiliser producers. For instance, some of the bigger fertiliser producers having foreign collaboration might be able to secure offers through their collaborators for sulphur at prices which they considered reasonable. If they were to be stopped from importing sulphur at that price, because S.T.C. hoped to secure better prices or because STC had earlier brought sulphur at lower prices, STC might have to guarantee the prices to them; otherwise if STC ultimately bought at higher prices than were available to these fertiliser concerns, they could point out that Government was making them pay higher prices.

99. After detailed discussion it was felt that if any private sector unit desired to enter into bulk contract for not less than its six months' requirements, subject to a minimum of 10000 tonnes, at reasonable prices, licence for the purpose should be given to that party.

100. The meeting proposed that the general scheme should be as below:—

- (i) The STC should be the centralised authority for procuring sulphur, and will be allowed to buy sulphur at reasonable prices depending upon the international sulphur market situation.

- (ii) So far as the purchase from SULEXCO is concerned, it can be arranged through their sole agents or if possible arranged by STC.
- (iii) The STC would charge an average price to the fertiliser industry.
- (iv) Any private sector fertiliser unit desiring to make a bulk contract for sulphur for not less than six months' requirements of the unit, subject to a minimum of 10,000 tonnes at reasonable prices, may be permitted to enter into such a contract and be given an import licence for the purpose.

102. The meeting decided that these proposals should be submitted for approval by the Industries Sub-Committee of the Cabinet.

F. Canalising Imports through S.T.C.

103. After the aforesaid proposals were approved at the meeting held on the 5th August, 1966 and before the matter could be considered by the Cabinet Sub-Committee, an unusual development took place. On the 27th August, 1966 the following Public Notice regarding canalisation of sulphur and certain other items by STC was issued by the Chief Controller of Imports and Exports: (See Appendix VIII):—

“Attention is invited to the list of items given in Part ‘C’ of Section II of the Import Trade Control Policy (Red Book) for the period April, 1966—March, 1967 the import of which is canalised through an agency approved by Government.

It has now been decided that the import of the following items also will be canalised through an agency approved by Government:—

- (1) Sulphur
- (2) Potassium Chloride
- (3) Newsprint
- (4) Asbestos Raw

It has also been decided that the State Trading Corporation of India will be the approved agency for the import of the above-mentioned items”.

104. On the 29th October, 1966, the Secretary, Ministry of Industry put up a note (See Appendix IX) for the Industry Committee of the Cabinet explaining the background of the sulphur problem and

the measures proposed to meet the situation. The note was seen by the Ministries of Finance, Commerce, Petroleum and Chemicals and Agriculture. The relevant extracts from this note are reproduced below:—

“10. It was, however, felt that in view of the importance of sulphur as an essential raw material for fertiliser production, it would not be desirable to rule out completely purchases to be made by large users such as private fertiliser units. It is even possible for some of the bigger fertiliser producers through their international connections to obtain some quantities which may not be offered to other parties. There is also the consideration that, if fertiliser factories are not allowed to import sulphur on their own, and for whatever reasons our efforts to procure sulphur through traditional sources and through STC's efforts do not succeed to the extent of meeting bulk of the requirements, we would be taking the risk of being accused of overlooking certain possibilities of supplies. The criticism would be particularly strong if, as a result production in essential industries such as fertiliser or steel gets adversely affected. At the same time, it is necessary to ensure that permitting imports on private accounts does not either reduce the quantum of supplies from USA/Canada through traditional channel or result in extraordinarily high prices being paid. For this purpose, i.e., to ensure that the purchase is genuinely by major consumer of sulphur and that Government is in a position to keep aware of such purchase it was suggested that any fertiliser producer may be permitted to contract for sulphur provided that the purchase be in quantity of not less than thousand tons per order. It was also regarded as necessary that STC confirms that the price at which the purchase is being made is comparable with STC's last purchase. In cases where the price is deemed to be higher than the STC's purchase price but there are other considerations such as quantity, deliveries, or any other special factor, the proposal may be considered by Government in the Ministry of Industry, and, after consultation with the Department concerned, a view may be taken as to whether or not imports may be permitted.

11. As the issues involved were of considerable complexity and importance, it was felt that the following recommen-

datations may be submitted to the Industry Committee of the Cabinet for favour of their approval:—

- (a) That STC should be made, subject to (c) below, the sole agency for imports of sulphur;
- (b) That the STC be given the flexibility in deciding upon quantities to be procured and the prices at which purchases are to be made as proposed in para 8;
- (c) that in view of considerations in para 10 above, **direct purchases by fertiliser producers** (or any other large users) be permitted, under the conditions specified in "that paragraph."

105. The Ministry of Food and Agriculture referred to para 10 of the note reproduced above (See Appendix X) and pointed out that the number of Actual Users who could take advantage of the concession and place orders for 10,000 tonnes or more would be very few. That Ministry suggested that the quantity to be permitted for each contract by the Actual Users should be fixed at one year's requirement of sulphur or 10,000 tonnes whichever is less.

106. Thereafter at the meeting of the Cabinet Committee on Industries held on 15th November, 1966, the following decisions were taken:—

- (a) **STC should be made, subject to (c) below the sole agency for import of sulphur; but it may, to the extent necessary use the present trade channels so as to avoid any diminution in supplies from traditional sources.**
- (b) **The STC should be given the facility in deciding upon the quantities to be procured and the prices at which purchases are to be made. It may contract for small or large lots of sulphur at negotiated prices to suit the market conditions on commercial basis; and may make commitments for deliveries of sulphur upto June, 1968.**
- (c) **In addition, direct purchases by fertiliser producers (or any other large users) be permitted, provided the purchase was in quantity of not less than 5,000 tons per order; and provided also that the price at which the purchase was being made was comparable with prices paid by the STC in respect of its most recent purchases.**

107. Consequently in a Public Notice dated the 7th January, 1967 (See Appendix XI) the following arrangements for import of sulphur were announced:—

- “(i) Applications for import of sulphur under the Letter of Authority procedure in quantities of 5,000 tonnes and above but less than 50,000 tonnes will be considered from all categories of importers *viz.* actual users, established importers and others.
- (ii) Applications for direct import of sulphur in bulk *i.e.* in quantities of 50,000 tonnes and above will also be considered on an *ad hoc* basis.
- (iii) All such applications should be made in the prescribed form and manner and should be accompanied by firm offers from overseas suppliers indicating the quantities, prices, delivery schedule etc.....”

108. It will be noticed that at the meeting of the Committee of Secretaries held on the 5th August, 1966 it was proposed that STC should be the centralised authority for procuring sulphur but private sector fertiliser units desiring to import sulphur subject to a minimum of 10,000 tonnes might be permitted to do so. It was proposed to place the matter before the Industry Committee of the Cabinet. But before this was done the Gazette Notification dated the 27th August, 1966 was issued whereby all imports of sulphur were canalised through STC. Asked about the reasons, the representative of the Ministry stated that the principle of using STC as the agency for canalisation of sulphur had been accepted by the Secretaries Committee at the meeting held on the 5th August, 1966. The Minister of Commerce subsequently received information from various sources that the supply position was going to be difficult and he issued an order that in order to meet the acute shortage that was developing, STC should be made the sole agency for all imports of sulphur. Accordingly the canalisation order was issued on the 27th August, 1966. The Commerce Secretary explained in evidence that the Minister of Commerce had dissented from that portion of the recommendations made by the Secretaries Committee which related to permitting private sector units to import packages of 10,000 tonnes of sulphur. The information received was that private parties would use the opportunity to wreck the market, push up sale prices and make it more difficult for STC to discharge its responsibility. The world sulphur situation was difficult. If STC were to accept responsibility for trying to solve the problem, it should be placed in the position of a sole importer to negotiate from a position of strength.

109. The Committee find from the information supplied after the evidence that the order of the Minister of Commerce where-in the decision to canalise import of sulphur through STC

had been taken, was communicated in the following form:

“C.M. had asked me this morning to issue canalisation order for the eight items given in Flag ‘A’ (reproduced below). Accordingly a draft notification for publication in the Gazette of India is put up for approval. C.M. mentioned that he has already discussed this matter with Secretary.

Sd/- S. RAMACHANDRAN
26-8-1966

Secretary

Sd/- K. B. LALL

(1) Rock Phosphate (2) Potassium Chloride (3) Potassium Sulphate (4) Sodium Nitrate (5) Mercury (6) Sulphur (7) News-Print and (8) Asbestos.”

110. Asked what information had been received by the Minister of Commerce and the Ministry of Commerce on the basis of which the decision regarding canalisation was taken, the Ministry of Commerce have now stated as follows:—

“No written representation seems to have been received by the Minister of Commerce. He seems to have received oral representations about the acute scarcity of sulphur on the basis of which he decided to canalise imports. No written representation was received in the Ministry also. On the basis of the information received the Minister directed the concerned officers for issue of canalisation orders.”

111. *The Committee are surprised how a matter which was considered at length by the Committee of Secretaries and their recommendations were to be placed before the Cabinet Sub-Committee could be by-passed by the Ministry of Commerce. There was a gap of about three weeks from the date of meeting of the Committee of Secretaries and the date of issue of the canalisation order. The Committee cannot believe that new developments could have taken place to such an extent as would justify issue of canalisation order immediately. In fact there is no evidence to support such a view. Even if any such urgency was felt, there was no difficulty in calling a meeting of the Cabinet Sub-Committee. The Committee feel that the proper course for the Minister was to have placed the matter before the Cabinet Sub-Committee at the earliest possible opportunity instead of taking an ad hoc decision overruling the recommendations of the Committee of Secretaries.*

The Committee also find that the decision regarding canalisation was taken on the basis of oral representations received by the Minister of Commerce about the acute scarcity of sulphur. The order of the Minister communicated through the note dated 26th August, 1966 of Shri S. Ramachandran (Joint Secretary, Ministry of Commerce) does not indicate the intention behind the issue of the order or the basis for the issue of such an order. The Committee regret to point out that the decision of the Minister which was based on "oral" representations received by him was ill-advised and not justified in the circumstances, especially in view of the fact that the policy regarding import of sulphur was discussed by the Committee of Secretaries only three weeks earlier and the matter was pending before the Cabinet Sub-Committee for decision. It should be considered whether as a safeguard it would not be proper to evolve a procedure that in such matters in future no final orders should be notified without the concurrence of the Cabinet. In other words, if any matter is pending before the Cabinet or a Cabinet Sub-Committee, any independent decision changing the existing policy should not be taken by a Minister till a decision has been given by the Sub-Committee or Cabinet.

112. It is also seen that the offer of M/s. Oval Industries for supply of 360,000 tonnes of sulphur was accepted on the 23rd August, 1966 and the decision of the Minister of Commerce for canalisation of sulphur was communicated on the 26th August, 1966. STC for some time past had been in favour of canalisation as is seen from the minutes of the meeting held on the 5th August, 1966. (see Appendix VII). The Committee, therefore, have a feeling that the prospects of large supplies materialising out of this offer influenced STC and in turn the Minister of Commerce, which led to the decision to canalise imports.

113. The Committee find that the circumstances which led to the decision of the Minister of Commerce ordering canalisation are not known. They feel that Government should lay down a procedure making it incumbent on a Minister to record reasons where he orders reversal of policy without there being anything in writing before him, so that at any later date the intention behind the passing of such orders does not remain obscure.

114. Upto the time of passing of the aforesaid order STC had entered into sulphur contracts under a barter deal or Colombo Plan or USA Aid. In pursuance of Minister of Commerce's order, the Chief Controller of Imports and Exports canalised all imports of sulphur through STC. No other written instructions were issued to STC to exclusively undertake this work. The Committee feel that the proper course for the Ministry would have been to issue a written direction to STC to undertake all future imports of sulphur and other

commodities mentioned in the Notification issued by the Government in as much as this course of action was being imposed on STC. The Committee suggest that whenever Government desire a public undertaking to accept any responsibility or pursue any course of action which is beyond its normal course of business, they should issue written directions. This would enable a clear appreciation of the functions of an undertaking carried out in its own commercial judgment and those undertaken in accordance with the specific policy or direction of Government.

G. Decisions taken by Cabinet Sub-Committee

115. The Committee desired to know why the decision taken by the Commerce Minister on the 26th August, 1966 regarding canalisation of sulphur through STC was not brought out in the note for the Industry Committee of the Cabinet which was put up on the 29th October, 1966 by the Secretary, Ministry of Industry after obtaining the concurrence of other concerned Ministries. Also, why this decision was again not brought to the notice of the Cabinet Sub-Committee when it met on the 15th November, 1966 to consider the matter. The Commerce Secretary stated in evidence that unfortunately the Minister was not in town and did not attend the Sub-Committee meeting. The decision taken by the Minister was not brought to the notice of the Sub-Committee. In the absence of the information available to the Minister, not available to the Sub-Committee, the Sub-Committee approved of the decision taken by the Economic Secretaries at the meeting held on the 5th August, 1966. In a written note furnished to the Committee after the evidence, the Ministry of Commerce have stated as follows:—

“The decision of the Commerce Minister to canalise import was not placed before the Sub-Committee of the Cabinet at its meeting held on 15th November, 1966. The note prepared by the then Ministry of Industry for consideration of the Cabinet Sub-Committee was sent to this Ministry for concurrence on the 21st September, 1966. It is seen that the concurrence of the Ministry was conveyed after perusal of the note in Dak stage itself. In communicating the concurrence the fact that the Minister had ordered canalisation was overlooked inadvertently and the note prepared by the Ministry of Industry was, therefore, not amended. If the Commerce Minister had been present at the meeting of the Cabinet Sub-Committee, he would have informed it of the decision taken by him. However, at the meeting held on the 15th November, 1966, the Commerce Minister was not present.”

116. *The Committee find that the note prepared by the Ministry of Industry was sent to the Ministry of Commerce on the 21st Sep-*

tember, 1966. The note put up to the Cabinet Sub-Committee was actually signed by the Secretary, Ministry of Industry on the 29th October, 1966. The Committee consider it highly regrettable that the Ministry of Commerce gave its concurrence without mentioning the fact that the Minister had in the meantime ordered canalisation of sulphur through STC. They fail to understand why this fact could not be brought to the notice of the Ministry of Industry at any time after 21st September, 1966 and before the meeting of the Cabinet Sub-Committee. It is no less surprising that other Ministries and especially the Ministries of Industry and Finance who had been processing the offers for supply of sulphur and knew the procurement policy for import of sulphur, also overlooked to mention such a basic change of policy.

117. It seems that after the canalisation order was issued there was opposition from actual users and established importers and the general view of the Ministries was that in the prevailing position regarding supply of sulphur, the canalisation order was inopportune. From what has been stated above, the Committee feel that the decisions taken by the Economic Secretaries at the meeting held on the 5th August, 1966 were incorporated in the note dated the 29th October, 1966 while the information regarding issue of canalisation order on the 27th August, 1966 was withheld. The Committee suggest that an enquiry should be made to find out how the concurrence of the Ministry of Commerce was given without mentioning about canalisation of sulphur and responsibility fixed in the matter. The Committee are also not convinced that the information regarding canalisation was not deliberately withheld from the Sub-Committee. The proposed enquiry should, therefore, cover this aspect also.*

*At the time of factual verification the following information was given by the Ministry of Commerce:

"(a) A draft note for submission to the Industry Committee of the Cabinet was prepared by the Economic Adviser of the Ministry of Industrial Development on the 7th September, 1966 and seen by the Secretary in that Ministry on 14th September 1966. This note was circulated to the Ministries of Finance, Commerce and Petroleum and Chemicals. These Ministries concurred in the note.

(b) In the Commerce Ministry the note received from the Ministry of Industrial Development had been seen by the Chief Controller of Imports, the Joint Secretary concerned with the STC, the Commerce Secretary and the Commerce Minister.

All those who have been mentioned in the preceding paragraphs were aware of the notification dated 27th August canalising the import of sulphur through the STC, and yet none of them brought this fact to the notice of the Ministry of Industrial Development.

It is believed that the Officer who drafted the note in the Ministry of Industrial Development was also in the know of the contents of the Notification referred to above."

H. Removal of canalisation

118. It will be noticed that the canalisation was removed on the 7th January, 1967, i.e. a little over four months after the issue of canalisation orders. The circumstances which led to this may be stated.

After the orders regarding canalisation of sulphur were issued on the 27th August, 1966, M/s. Dharamsi Morarji & Co., one of the two principal importers of sulphur, represented to the Government that canalisation had greatly upset the old and reliable suppliers of sulphur in U.S.A. Their claim is that whatever substantial quantities of sulphur had come in and which had saved industrial enterprise in India in 1966, despite a world shortage, had been from sources which they had developed over many years along with EID/Parry. They have stated that their principals, Sulphur Export Corporation (Sullexco), can fulfil a larger part of the Indian demand and so S.T.C. should not interfere in supplies from these sources through their agents. Besides, their principals were not prepared to deal with S.T.C. and had informed them that if S.T.C. were to be given monopoly for all licensing of sulphur, they might drop India altogether.

119. On the 2nd September, 1966, the Fertiliser Association of India sent a representation to the Minister of Petroleum and Chemicals wherein it was stated that the Notification dated the 27th August, 1966 came to them as a surprise—especially the inclusion of sulphur in the list of “canalised” items. Their case is that if the S.T.C. proves to be the most efficient and economical agency for the procurement of raw materials, the manufacturer would no doubt make use of it. In, on the other hand, he finds that some other established importer can give him better service, he should not be prevented from making use of that established importer.

120. The Committee have also perused the correspondence of the Sulphur Export Corporation (Sullexco) with S.T.C., M/s. Dharamsi Morarji and other importers in India. In a communication dated the 1st October, 1966 Sullexco stated that they could not continue to do business in India without their distributors—M/s. Dharamsi Morarji and EID/Parry—who were looking after their interests in India. It was stated that “to suggest otherwise, might make an unattractive market and sulphur could resultingly be diverted to eager buyers elsewhere”.

121. In the course of discussion which Chairman, S.T.C. had with Mr. Graupner of M/s. Sullexco on the 29th November, 1966, (See Appendix XII) the latter mentioned that the decision to canalise

import of sulphur through S.T.C. appeared to him to be unnecessary and that it would be desirable for India to revert to the same system as before the issue of canalisation order. In a letter dated the 22nd December, 1966, (See Appendix XIII) M/s. Texas Gulf Sulphur Co., a premier producer and exporter of sulphur in U.S.A., stated that M/s. Dharamsi Morarji were the duly authorised distributors in India under contract of Sulexco since its inception in 1958, and that for long years prior to that they already represented the interests of Texas Gulf Sulphur Company in India and continued to do so.

122. S.T.C.'s case is that even under the system of canalisation it is quite possible to provide for the fullest scope for maximum imports from traditional sources through established channels. All that would be necessary is that while the import licences are issued in the name of S.T.C., the established channels referred to are enabled to effect the actual importation by means of letters of authority issued in their favour under the relative import licences. In this way, the existing channels can play their fullest part in actually importing the maximum quantities of sulphur available from traditional sources just as freely as if the import licences themselves were issued in the name of the said established channels. However, the posture adopted by some established sulphur suppliers amounted to this: Foreign supplier will supply materials to India only if Indian authorities place the import licence and foreign exchange directly in the name of his agent in India, and will withhold supplies if the authorities decide to issue licence in the name of any other agency with a letter of authority to import in favour of his agent. It implies that foreign supplier's agent in India is to be accepted as the agent of India for imports and he alone will negotiate the price and other terms and conditions of purchase with him without permitting any agency to be named by India to participate or oversee the negotiations.

123. In view of the conflicting views of STC on the one hand and the foreign suppliers, their Indian agents and actual users in India on the other hand, on the policy of canalisation, the Committee desired to know the views of the Ministry on this subject. The Commerce Secretary stated in evidence that after canalisation the Ministry received several representations from sulphur using industries, particularly fertiliser units, saying that there was immediate threat of fertiliser units being closed down. The Prime Minister also received a representation from the Fertiliser Association of India about the acute supply position that was developing. The Prime Minister directed that her Secretary (Shri L. K. Jha) and the Commerce Secretary should meet a delegation of the Fertilizer Association and

look into the matter urgently. Accordingly a delegation of the Fertiliser Association of India met Prime Minister's Secretary and the Commerce Secretary jointly on the 6th January, 1967. The delegation consisted of Shri M. K. K. Nair, Chairman, Fertiliser Association of India, Shri A. D. Mango, Vice-Chairman, Shri D. R. Morarji and Shri C. R. Ranganathan, Executive Director. The Commerce Secretary stated in evidence that he tried to tell them in as polite a language as possible and impressed that this kind of combination between Indian importers and foreign exporters to defeat activities of STC and thus defeat implementation of the policy of the Government was most undesirable. However, the representatives present in the meeting threw hints that STC had not managed things well and stated that they on their part were prepared to offer the full traditional quantity at usual price which was 50 dollars. They were prepared to give in writing that they would effect deliveries. The Prime Minister's Secretary and he therefore agreed that in that case the policy of the Government would be changed. The Commerce Secretary told the delegation that he would announce necessary decisions for permitting the import of sulphur by established trade channels and other categories of importers. He then informed the Minister of Commerce over the telephone (the latter was out of station) and Shri Asoka Mehta who was a member of the Cabinet Sub-Committee, about the considered judgment of his own and that of the Prime Minister's Secretary that the only way in which the fertiliser units could be kept going was to change the policy. Shri Asoka Mehta agreed and did not insist on a note being circulated to all the members of the Cabinet Sub-Committee. Next day, i.e. on the 7th January, 1967, a Public Notice which had the effect of removing canalisation of sulphur through STC was issued. Later the matter was placed before the Sub-Committee of the Cabinet which approved the decision.

124. A statement showing details of the contracts entered into by S.T.C. from November, 1963 when it entered the sulphur trade till July, 1967 is given below:—

List of Parties with whom STC entered into contracts from 1963-64 onwards

Sl. No.	Date	Name of party	Quantity contracted
(1)	(2)	(3)	(4)
1	1-11-63	International Ore & Fertiliser Corporation, New York	30,000 M/T.
2	9-9-64	International Ore & Fertiliser Corporation, New York	1,970 M/T.

(1)	(2)	(3)	(4)
3	30-3-65	Cansulex Ltd., Ontario, Canada (Under Colombo Plan)	15,000 M/T.
4	30-8-65	Shell Canada Ltd., Ontario, Canada	20,000 L/T.
5	30-8-65	Cansulex Ltd., Vancouver, Canada	10,000 L/T.
6	2-9-65	International Ore and Fertiliser Corporation, New York	2,900 L/T.
7	10-9-65	Brimstone Export Ltd., Calgary-Alta (Under Colombo Aid)	5,000 L/T.
8	2-12-65	Free Port Sulphur Co. New York	15,000 L/T.
9	15-2-66	M/s. Ciech Warszawa	5,000 M/T.
10	7-9-66	M/s. Oval Industries New York	360,000 M/T.
11	20-10-66	M/s. Pan American Sulphur Co.	20,610 M/T.
12	18-11-66	Services Internationales de Mexico	350,000 M/T.
13	16-12-66	M/s. International Sulphur Corporation Luxembourg	10,000 L/T.
14	24-4-67	M/s. Phibro Asia Ltd., New York	3,000 M/T.
15	8-2-67	M/s. International Commodities Export Corporation, U.S.A.	5,080 M/T.
16	9-2-67	M/s. International Mineral & Chemical Corporation	15,000 M/T.
17	10-2-67	M/s. International Commodities Export Corporation	3,048 M/T.
18	14-2-67	M/s. International Sulphur Ltd., Canada	10,000 M/T.
19	15-2-67	M/s. Titan Industrial Corporation New York	10,000 M/T.
20	6-3-67	M/s. International Export Commodities Corporation, U.S.A.	5,000 M/T.
21	16-3-67	International Commodities Export Corporation, U.S.A.	5,000 M/T.
22	16-3-67	M/s. Pan American Sulphur Co.	12,000 M/T.
23	18-3-67	M/s. Titan Industrial Corporation, U.S.A.	10,000 M/T.
24	21-3-67	M/s. International Commodities Export Corporation, U.S.A.	3,048 M/T.
25	24-3-67	M/s. Ciech Warszawa, Poland	50,000 L/T.
26	27-3-67	M/s. Jefferson Lake Sulphur Co., New Orleans, Louisiana	60,000 M/T.
27	12-4-67	M/s. International Mineral & Chemical Corporation, U.S.A.	5,000 M/T.
28	24-4-67	M/s. Phibro Asia Ltd., New York	20,000 M/T.

(1)	(2)	(3)	(4)
29	5-5-67	M/s. International Mineral & Chemical Corporation U.S.A.	20,000 M/T.
30	5-5-67	M/s. Titan Industrial Corporation, New York	24,000 M/T.
31	19-5-67	M/s. Rai Bahadur G.S. Swaika, Calcutta.	10,000 M/T.
32	29-5-67	M/s. Titan Industrial Corporation, New York.	1,500 M/T.
33	19-7-67	M/s. Wood Ward & Dikerson Inc. Philadelphia	11,500 M/T.

125. *Contracts signed during 1963-64*—From the above statement it is seen that only one contract was signed by STC during the year 1963-64. This was with M/s International Ore and Fertilisers Corporation, New York for supply of 30,000 tonnes of sulphur. The foreign exchange for import was generated through a sugar barter deal.

126. *Contracts signed during 1964-65*.—Only one contract was signed during the year 1964-65. The supplier was M/s International Ore and Fertiliser Corporation and the quantity contracted for was 1970 tonnes. The import was made for Hindustan Steel Ltd. against free foreign exchange allocation obtained by them.

127. *Contracts signed during 1965-66*.—During 1965-66, seven contracts were signed. These included 2900 tons of sulphur for Hindustan Steel Ltd., 50,000 tons from Canada under the Colombo Plan and 5000 tons from Poland against STC's own Export Promotion licences etc. Arrangements for procurement of supplies from Canada were made by the Canadian Government authorities.

128. *Contracts signed during 1966-67*.—Between 1st April, 1966 and 27th August, 1966, i.e. the date on which canalisation order was issued, only one contract had been signed and that was on the 7th September, 1966 with M/s Oval Industries. Between 27th August, 1966 and 7th January, 1967, i.e. the period during which canalisation order was in force, only two contracts were signed, one with M/s Pan American Sulphur Co. for 20,610 tonnes and the other with M/s International Sulphur Corporation, Luxembourg for 10,000 tons of sulphur. Another contract signed with M/s Services Internationales de Mexico for 350,000 tonnes of sulphur proved abortive. However, after 7th January, 1967 when canalisation was removed, a number of contracts were signed.

129. It is seen that for import of sulphur the country was depending upon monopoly suppliers in America acting through their two Indian agents i.e. M/s Dharamsi Morarji & Co. and M/s EID/Party Ltd. who were working closely through their monopoly suppliers. When import of sulphur was canalised through STC in August 1966, S.T.C. took initiative in contacting various foreign parties for supply of sulphur. The Corporation, however, found it impossible to break the ring of monopoly suppliers in USA/Canada who wanted to deal with their Indian agents directly and not through a State trading organisation in India. Thus, the advantage that was thought to accrue as a result of canalisation did not materialise and the expectations of supply of sulphur during the year 1967 became so uncertain that the policy of canalisation had to be reversed in January, 1967. This change of policy brought about under the pressure of foreign monopolists and their Indian agents did no credit to Government. This should be a lesson for the future. While adopting any such policy, proper steps and sufficient precautions should be taken to meet the challenge of Indian and foreign monopolists who might try to frustrate the efforts of a public undertaking.

I. Purchase cost and selling price of sulphur

130. According to the information gathered by STC from time to time the prevailing international prices of sulphur during the years 1963-64 to 1966-67 were as follows:

1963-64	U.S.A.	US \$25 per ton FAS.
	Canada	US \$18.50 to \$20.50 per short ton FOB.
	Europe	US \$24 to \$27 per ton (European Port)
1964-65	U.S.A.	US \$43.50 per ton CIF (Indian Port)
	Canada	US \$23 per ton FOB
1965-66	U.S.A.	US \$35 to \$36 per ton FMB
	Canada	US \$34-35.50 approx. per ton FMB (under Colombo Plan)
1965-67	(a) <i>Traditional suppliers</i>	
	U.S.A. (Sulexco & Members)	US \$38 to 48 per ton FOB.
	Mexico	US \$52 per ton FOB.
	(b) <i>Commercial imports from non-traditional suppliers.</i>	
		Up to US \$70 per ton FOB.
		US \$82 to 87.50 per ton C&F/CIF (Indian Ports)

131. Prior to the conclusion of the contract between **STC** and **M/s. Oval Industries** in September, 1966, import of sulphur into India was taking place under the following categories:

- (1) Supplies from traditional suppliers such as **Sulexco's** members at manufacturer's prices.
- (2) Supplies under special arrangements made by Government under U.S.A. Aid from USA or under the Colombo Plan from Canada.
- (3) Commercial imports from non-traditional and non-tied sources against NDR Scheme licences, Export Promotion licences or licences issued against free foreign exchange.

Category (1).—Imports of sulphur from U.S.A. by Indian agents of **Sulexco** members, in the latter half of 1965, were at \$35 per ton FOB. In the year 1966-67, the price paid by the Indian agents of **Sulexco** members for supplies made by their principals is stated to have risen to US \$48 per ton.

Category (2).—The price at which imports were made by **STC** from Canada under the Colombo Plan, prior to the conclusion of the deal with **M/s. Oval Industries** were at about US \$35 per ton FOB. **M/s. Dharamsi Morarji & Co.**, the Indian agents of **M/s. Texas Gulf sulphur Co. of U.S.A.** (a member of **Sulexco**) is stated to have imported, under the Colombo Plan, sulphur from the Canadian mines of **Texas Gulf** at US \$36 per ton FOB.

Category (3).—With regard to this category, according to the Indian Journal "Chemical Weekly" (published from Bombay) dated 31st March, 1966, the prices at about that time had ranged between \$55 to \$60 per tonne FOB.

132. At about the time the contract with **M/s Oval Industries** was being negotiated in August, 1966, the contracts with **M/s. Sulexco** of U.S.A. had been at \$39.5 per ton FOB U.S. East Coast. The contract with **M/s. Oval Industries** was for supply at US \$55 per ton FOB.

133. Asked why the price paid by **STC** was higher, it has been stated that since the imports from all the three categories referred to above were expected to bring in during 1966 about 265,000 tonnes as against the total requirements of the country estimated at 465,000 tonnes for that year, it had become necessary to procure sulphur from other sources, i.e. from non-traditional suppliers and floating stocks held by middlemen at the best obtainable prices and terms. **STC** did not find it possible to obtain supplies at the manufacturer's prices

charged by the traditional suppliers (such as Sulexco members) for the limited supplies which they chose to make to their preferred buyers in India, and had therefore, to locate supplies at prices comparable with those prevailing in the free international market.

134. The Wall Street Journal in its issue of 31st January, 1967 reported that towards the end of 1966 U.S. producers were sending sulphur overseas at contract prices of around \$38 a ton. Prices on "spot" sales both in U.S. and abroad ranged as high as \$65 a ton. Since 1st January, 1967, Pan American Sulphur Company had increased prices by \$10 a ton as contracts came up for renewal and ranged between \$43.50 and \$46.25 a ton. Taxes Gulf, Sulphur Company quoted prices averaging between \$38 and \$40.

135. During the period December, 1966 to July, 1967 a number of contracts were concluded by STC with different parties at negotiated prices and it was considered that generally a price of 65 dollars per tonne FOB or a price of 80 dollars per tonne CIF was reasonable to adopt as an upper limit for negotiating purchases.

136. The landed cost of sulphur imported by STC sold to buyers is indicated below:

	Landed cost	Selling price
	(Rs. per M/T.)	(Rs. per M/T.)
1963-64	192·10	223·00 (ex-jetty)
1964-65	190·33	194·21 (CIF)
1965-66	280·00	281·05 (CIF) 299·83 (ex-jetty)
1966-67 (upto July, 1966)	323·64 *	338·26 (ex-jetty upto July, 1966)
(February, 1967)	537·18	548·00 (ex-jetty February, 1967).

137. The abnormal rise in purchase price of sulphur between July, 1966 and February, 1967 is stated to be due mainly to the devaluation of the Indian rupee in June, 1966. As regards selling price, with effect from April, 1967 STC had fixed a uniform rate of Rs. 636/- per tonne ex-jetty for all Indian due to arrive under the various ports. According to an announcement made in the Press on the 28th October, 1967 the STC has now decided to reduce its selling price from Rs. 636/- to Rs. 600/- per tonne for ex-jetty delivery (naked) at all Indian ports.

138. As regards imports by firms other than STC, the average price for the three categories of importers on the basis of licences issued till 1.8.67 works out as follows:—

1. For actual users.	. . . . .	Rs. 578·36 per tonne CIF Indian port.	
2. For others	. . . . .	Rs. 623·56	Do.
3. For traditional importers.	. . . . .	Rs. 492·75	Do.

139. *From the foregoing paragraphs it will appear that there has been a general rise in export price of sulphur from the year 1965 onwards. The devaluation of the Indian rupee in June, 1966 has adversely affected the import costs. Thus the STC's landed cost of sulphur had steeply increased from an average of Rs. 280 per tonne in 1965-66 to Rs. 537.18 in February, 1967, a rise of 90 per cent. It is also seen that commercial imports from non-traditional suppliers of sulphur cost much more than imports from traditional suppliers. The Committee feel that the country's dependence on "spot" purchases, which cost more, should be reduced to the minimum. They, therefore, suggest that Government should examine entering into long term contracts with foreign suppliers to ensure a regular flow of imports at economical prices until such time as the indigenous sources of supply of sulphur as also use of alternative raw materials for fertiliser and other sulphur using industries are adequately developed. In choosing suppliers, dependence on one supplier or one group of suppliers should be avoided.*

J. Indigenous production of sulphur

140. At present sulphur is not produced in India. Hence all its requirements are met by imports. The country's requirements in 1967-68 are estimated at 620,000 tonnes and are estimated to grow at an annual rate of about 1.5 lakh tonnes during the Fourth Plan period to a figure of 12 to 13 lakh tonnes by 1970-71. The production of sulphuric acid based on Amjhore pyrites will ease the pressure on imported sulphur to some extent. The plant is being set up by Pyrites and Chemicals Development Co. Ltd. and is likely to go into production by the end of 1968. It is learn that pyrites deposits around Udaipur in Rajasthan are being investigated. Efforts are also being made to produce sulphuric acid by using raw materials other than elemental sulphur, such as sulphurous gases from nonferrous metal plants.

141. *The need for development of indigenous sources for production of sulphur and development of alternative sources of raw materials, with a view to achieve self-sufficiency and save scarce foreign exchange, cannot be over-emphasised. Hitherto in the schemes start-*

ed for India's industrial development, the production of sulphur had not received special attention, probably because of limited requirements of the country and also easy availability of imports. Now while the demand has been increasing, the imports, besides rise in price, have become uncertain. Government might direct its special attention to indigenous production of sulphur.

K. Future policy regarding import of sulphur

142. STC entered into the sulphur trade in 1963-64. The following statement shows the country's estimated requirements of sulphur, quantities imported by STC and by others:

Year	Country's estimated require- ment	Import by STC	Import by other parties	Total of columns (3) & (4)
1961-62	200,000	Nil.	212,308	212,308
1962-63	225,000	Nil.	254,154	254,154
1963-64	250,000	30,834	204,165	204,165
1964-65	275,000	1,928	275,853	277,781
1965-66	325,000	39,993	58,005	97,998
1966-67	400,000	53,835	230,238	284,073

143. According to an assessment made by the DGTD, the requirements of sulphur for the year 1967-68 would be on the order of 620,000 tonnes. As against this, arrivals up to the end of September, 1967 were approximately 223,000 tonnes (140,000 tonnes by STC and 83,000 tonnes by others). It is anticipated that during 1967-68 approximately 7.2 lakh tonnes of sulphur will be imported. (2.30 lakh tonnes by STC, 2.00 lakh tonnes by Actual Users, 2.00 lakh tonnes by traditional importers and 0.90 lakh tonnes by others).

144. Regarding the Government's policy for imports of sulphur, Chairman, STC stated that his view was that on this subject a co-ordinated approach of a single authority was necessary at the level of operation of actual purchases. The sulphur position for the next few years was going to be very difficult. Only a co-ordinated agency should be allowed to enter this field—a public sector agency or STC or some other Government body. The foreign suppliers and their agents should be allowed to operate under the aegis or as a part of some co-ordinating agency to be set up by Government and not independently because the sphere of negotiation between the supplier and the purchaser needed to be constantly watched. In the case of an

actual user, if he was able to persuade collaborators to find some credit or funds in the form of tied credit and if he wanted to import sulphur that should be permitted. But if free foreign exchange and import licences were to be given to 200 or more actual users that would not be in the interest of the industry as a whole. Chairman, STC was of the view that there should be only one central agency who should get or co-ordinate supplies and whatever was available according to a system of allocation by the DGTD should be distributed.

145. Asked whether the supply position had improved after removal of canalisation with effect from the 7th January, 1967, STC has stated that a satisfactory position would have been reached if the canalisation order had remained as before and, if the arrangements originally announced by Government had received the co-operation of established interests to negotiate contracts with various suppliers with unified and co-ordinated strength to cover the full requirements of the country in the place of opposition from them leading to the revision of the order on the 7th January, 1967. Under the revised system, STC has to face unhealthy competition and the sellers in a short market are at an advantage as against numerous needy buyers. STC's view is that in spite of this the imports made by it have made such an impact on the supply position of sulphur that no consumer in the country is now faced with any shortage. To support this conclusion it has been stated that as on 1.10.1967 STC had imported during the year 1967 about 168,000 tonnes (including 20,000 tonnes on the high seas). Further imports by STC are scheduled to be of the order of about 80,000 tonnes.

146. The Committee also desired to have the views of the Ministry on the subject. The Commerce Secretary stated in evidence that Government had not taken any decision but he himself would hesitate to take a decision which would upset the minds of those who had the power to maintain the traditional supplies up to about 300,000 tonnes. At present foreign suppliers did not like to give up their friendship with Indian importers. But it was certain that in course of time these traditional suppliers would become reasonable and Government would be able to offer them long-term contracts.

147. *From the foregoing paragraphs it is seen that the position regarding supply of sulphur for the year 1967-68 is not unsatisfactory.*

As regards future policy regarding import of sulphur, the Committee feel that in the interests of the country canalisation through a Government agency will be a desirable objective as it can result in purchases being made at economic prices. It would also avoid unhealthy competition among Indian buyers which is likely to arise in times of shortage and in a market where there are few sellers and

too many buyers. However, the Committee are of the view that canalisation by STC should be resorted to only when it proves its capacity of importing sulphur regularly and in sufficient quantities at reasonable prices and wins the confidence of importers and actual users in India as also of foreign suppliers.

NEW DELHI;
December 13, 1967.

Agrahayana 22, 1889 (Saka).

SURENDRA NATH DWIVEDY,
Chairman,
Committee on Public Undertakings.

APPENDIX I

(See para 3)

Contract between, STC and M/s. Oval Industries signed on the 7th September, 1966.

CONTRACT NO. STC/Chem-19 (30)/66 dated 7-9-66 between M/s. Oval Industries Incorporated, 1328, Broadway, New York, MY 10001, U.S.A. represented by H. Muskat, Executive Vice President hereinafter called the "Seller" (which expression shall unless repugnant to the context mean and include his successors and assigns) and The State Trading Corporation of India Ltd., 9 and 10 Bahadur Shah Zafar Marg, Express Building, New Delhi, represented by B. P. Patel, Chairman hereinafter called the STC (which expression shall unless repugnant to the context mean and include its successors and assigns).

The following is agreed:—

The Sellers agree to sell and the STC agrees to buy Sulphur hereinafter called the "goods" on the following terms and conditions:—

1. *Commodity:* Bright Yellow Lump Sulphur.
2. *Quantity:* 3,60,000 metric tonnes plus an additional quantity of 20,000 tonnes at STC's option, this option to be exercised by STC by 30th June, 1967.
3. *Quality and Specifications:* The good shall conform to the following specifications:—

Sulphur (dry basis) 99.5% minimum.

Moisture 0.5% Maximum (any excess moisture to be deducted from B/L weight).

Ash 0.12%.

Carbon 0.05% Maximum.

Commercially free from Arsenic Selenium, Tellurium, Beryllium, Bitumen.

Origin: U.S.A., except that in the case of first 50,000 tonnes the supply may be from any source in Western Hemisphere.

The Seller shall give usual warranty with regard to quality, specifications, grade, consistency etc., of the goods supplied against each consignment thereof and shall guarantee that the goods shall be free from all defects and faults on account of manufacture. Each consignment shall be accompanied by manufacturers/producers certificate of analysis (which shall mention the date of manufacture/production also).

4. *Packing*: Loose in bulk.

5. *Price*: The price will be US \$ 55 (fifty-five) per metric tonne net FOB (Stowed and trimmed) Long Beach or Stockton California or any other port with prior approval of STC.

6. *Delivery Schedule*: The shipment for the entire quantity of goods covered under this contract shall be completed by the Sellers before August 31, 1967. The shipment of the first 20,000 to 40,000 tonnes will be effected within 45 days from the date of receipt by the Sellers bank of cable advice from STC's bankers that a Letter of Credit has been opened. Subsequent shipments shall be made until the total tonnage of three hundred sixty thousand (360,000) tonnes have been delivered provided that the minimum quantity to be delivered in any one month shall not be less than 30,000 M/Tons. The delivery of the last sixty thousand tonnes plus the 20,000 tonnes to be purchased at STC's, option may be completed within an extra sion of the delivery period by a maximum of 3 months in case of unforeseen difficulties experienced by the Sellers.

7. *Shipment*: The detailed shipping instructions will be as per annexure attached. The quantity loaded into ship may be 10% more or less, at the ships option, then the quantity intimated by STC to the Sellers at the time of nominating the ship on the basis of charter party. In no event shall there be offered any less than one shipload by the STC.

8. *Insurance*: Insurance will be arranged by the STC.

9. *Payment*: (a) Payment for the goods under this contract shall be made by STC by an irrevocable (i.e. non-cancellable), transferable in whole or in part, without recourse to drawer letter of credit in US Dollars established by STC in favour of the Sellers for the total quantity of the goods covered by this contract in

either of the following ways against presentation of the documents mentioned below:

- (1) a revolving letter of credit permitting negotiation of documents covering a quantity upto 60,000 M/Tons in any one month provided the total quantity for which the letter of credit revolves will not exceed 360,000 M/Tons.
- (2) a letter of credit for the full quantity of 360,000 M/Tons.

DOCUMENTS

(i) Signed invoices in seven copies (four in original and three duplicate).

(ii) Complete set of clean on board bill of lading with three negotiable copies made to order and blank endorsed market freight payable at destination evidencing that the goods have been shipped and four duplicate copies.

(iii) Certificate of origin (in duplicate).

(iv) Certificate of quality issued by the manufacturers (5 signed copies).

(v) Certificate of weight from an independent Inspection Authority appointed with the prior approval of the STC, showing the weight loaded on board the vessel for shipment to India (in duplicate).

(vi) Certificate (in duplicate) of Inspection & Analysis from an Independent Inspection Authority appointed with prior approval of the STC (in duplicate) to show the quality of the goods supplied *vis-a-vis* the contract specifications.

(vii) Copy of cable sent by the Sellers to STC notifying the contract number, the name of the carrying vessel, ports of loading and unloading, date of departure of the vessel and E.T.A.

(viii) Seller's certificate showing that advance copies of the documents including three non-negotiable copies of the Bill of Lading have been air-mailed to STC within five days of the shipment.

(ix) Signed copy of a letter addressed by the Seller to M/s. Life Insurance Corporation of India, Yogakshema, Foreshore Road, Bombay-1 specifying quantity, value of the goods and name of the carrying vessel.

(b) The charges for establishing letters of credit and other bank charges in India would be to STC's account, whereas all bank

charges in the Seller's country would be to the account of the Sellers. The L/C extension and amendment charges will be to the account of the party which is responsible for occasioning the extension/amendment.

10. *Weight*: The contract weight agreed upon shall be deemed to be the loaded weight as shown on the relevant Bill of Lading less 1% (one per cent) and the Seller's Invoices, in as far as the weight is concerned, shall be established accordingly. Such Bill of Lading weight will however be reduced by moisture in excess of 0.5% as provided in clause 3 above.

11. *Inspection & Testing*: The Seller shall ensure that the goods shipped conform to the agreed quality and specifications and shall not ship goods which do not conform to the agreed quality and specifications. The Seller shall furnish to STC at their own cost certificates of (a) weight and (b) inspection and analysis from an independent inspection agency appointed with the prior approval of STC. Notwithstanding this, STC may, at their option, have samples drawn from each consignment upon arrival at the port of disembarkation in India by a firm of accredited samplers appointed by STC with the consent of the Sellers. The Sellers shall have the option of deputing at their own expense a representative to be present at the time of sampling. The samples thus drawn will be analysed by the National Test House, Alipore, Calcutta whose analysis report shall be final.

12. *Claims*: The Sellers shall compensate the STC, if on analysis in India as provided in Clause 11 it is found that the goods do not conform to the specification given in Clause 3 above. STC shall make its claim within 90 days from the date of complete discharge of the goods at the port of destination. The claim shall be supported by the certificate of analysis issued by the National Test House, Alipore, Calcutta. The amount of compensation claimed by the STC shall be based on normal trade practices or on formula mutually agreed upon between the STC and the Sellers.

13. *Default*: If the Seller fails to fulfil any of the terms of the contract provided such failure is not due to force majeure as detailed

2396 (Aii) LS—5.

in clause 16 hereunder, Seller shall be liable for all damages upto five per cent of the value of this contract. STC shall upon Seller's default or failure to deliver the first or any subsequent delivery be free to terminate the contract or make purchases at the Sellers' cost and risks from any other alternative source for such quantities in respect of which the defaults have been committed by the Seller.

14. *Wharfage & Demurrage*: Any wharfage or demurrage at the port of loading due to the negligence or defaults of the Seller shall be to the account of the Seller. Further, if any wharfage or demurrage results at the port of discharge due to the negligence of the Seller or his nominees including negligence in sending correct documents in time connected with the shipment of goods under this contract and if in consequence thereof, clearance of consignment by the STC or delivery of goods to it is delayed resulting in wharfage or demurrage, such wharfage or demurrage shall be to the account of the Seller. Similarly, any wharfage or demurrage resulting directly or indirectly from a negligence or default on the part of STC shall be to its account. If the ship does not arrive within 15 days from the E.T.A. given by the master of the ship as contemplated in instruction 1(v) of Annexure attached hereto STC whether or not there is any negligence or default on its part shall be responsible for storage charges and other losses that the Seller may incur as a result of the delay in the arrival of the ship or resulting from sale by Seller at prevailing prices at the port provided the STC has first been given seven days cable notice of the sale.

15. *Performance Bond*: The Sellers or their nominees shall furnish to STC a performance bond in the form of a bank guarantee from a Bank or Insurance Company approved by STC for due performance of the contract in the amount of 5% of the total amount of this contract. The STC shall release the Bank guarantee after satisfactory completion of the contract. The decision of STC in this regard shall be final and binding both on the Sellers and his bankers.

The bank guarantee shall be furnished within 12 days of the signing of this contract in the form approved by the STC and shall remain valid for a period of 3 months after the expiry of this contract.

16. Force Majeure:

If at any time during the continuance of this contract either party is unable to perform in whole or in part any obligations under this contract because of war, hostility, military operations of any character, civil commotion, sabotage, quarantine restrictions, acts of God and acts of Government (including but not restricted to prohibition of exports or imports), fires, floods, explosives or other accidents, epidemics, strikes or other labour troubles embargoes and delays incurred by Seller's subcontractors or suppliers due to such causes, then the date of fulfilment of any engagement shall be postponed during the time when such circumstances are operative.

Any waiver/extension of time in respect of the delivery of any instalment or part of the goods shall not be a waiver/extension of time in respect of the remaining deliveries.

If operation of such circumstances exceeds three months, each party shall have the right to refuse further performance of the contract in which case neither party shall have the right to claim eventual damages.

The party which is unable to fulfil its engagement under the present contract must immediately inform the other party of the existence or termination of the circumstances preventing the performance of the contract. Certificate issued by a Chamber of Commerce in the country of the Seller or Buyer shall be sufficient proof of the existence of the above circumstances and their duration.

17. Arbitration:

In the event of any dispute or difference arising at any time between the STC and the Seller in respect of this contract of the several matters specified herein or with reference to anything arising out of or incidental to it, or the rights or obligations under it, such a dispute or difference shall be submitted to arbitration of two arbitrators, one to be nominated by each party in writing. The arbitrators shall appoint in writing an umpire before entering on the reference. The award of the arbitrators or in case of their not agreeing, the award of the umpire shall be conclusive and binding on both parties. The provisions of the Law of the Defendant's country shall apply to such arbitration. The place of arbitration will be in Defendant's country.

18. Other Conditions:

(i) The Seller shall be prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever any

portion of this contract without the written permission of the STC. Subletting other than that which may be customary to the trade concerned shall be prohibited.

(ii) STC shall arrange to obtain the relative import licences and get them revalidated wherever necessary. Similarly, the Seller shall arrange to obtain export licences if needed for the export of the goods from his country. The goods will not be shipped till the import licence numbers and dates are communicated in writing to the Seller and all shipping documents will bear the import licence number and date.

(iii) All levies, taxes, duties etc. in the Seller's and the Buyer's country shall be to their respective accounts.

19. Previous Negotiations:

After signing of this contract all previous correspondence and negotiations connected with this contract shall be considered as null and void.

20. Amendment of the contract:

Any amendment or modification of this contract shall be made in writing and is subject to confirmation by the contracting parties.

21. Total F.O.B. Value:

U.S. \$ 1,98,00,000 for 3,60,000 metric tonnes.

22. Indian Agents Commission:

STC will pay to M/s. Amarjoythi, 32, Okhla Industrial Estate, New Delhi-22, the Indian Agents of the suppliers, a commission of $\frac{3}{4}$ of one per cent (three quarters of per cent) calculated on the FOB value of the goods supplied by the Sellers in each shipment. This commission shall be paid within a period of three months from the date of lading of the goods in India. Subject to the approval of Government one-third of the amount of the commission shall be payable in US dollars (to enable the Indian agents to arrange for follow-up work abroad) and the balance shall be payable in Indian rupee. If Government's approval to above is not forthcoming the entire amount of commission shall be payable in India in Indian rupees.

Legal Address:

Buyer: The State Trading Corporation of India Ltd., 9 & 10 Bahadur Shah Zafar Marg, Express Building, New Delhi-1 (Cable Address: ESTICI, New Delhi).

Seller: Oval Industries Incorporated, 1328, Broadway, New York,
Ny 10001, U.S.A. (Cable Address: Ovalind, New York).

For and on behalf of M/s. Oval
Industries Incorporated,

New York.

Sd/-

(M. MUSKAT).

Executive Vice-President.

Witness:

Sd/-

(B. TAUBER).

For and on behalf of the State
Trading Corporation of
India Ltd.,

New Delhi.

Sd/-

(B. P. PATEL).

Chairman.

Witness:

Sd/-

(G. S. SIAL).

APPENDIX II

(See para 7)

AMARJOYTHI

FOREIGN TRADE SPECIALISTS

PHONE: 72022

CABLES AMARJYOTHI

32, Okhla Industrial Estates,
New Delhi-20 (INDIA).

20th August, 1966.

The State Trading Corporation of India Ltd.,
Express Building,
Mathura Road,
New Delhi.

"Kind attention Mr. G. S. Sial".

Sir,

SUBJECT:—Supply of Sulphur.

Reference the undersigned's personal meetings with the Chairman and the Director Mr. G. S. Sial, we are pleased to inform you that we are in receipt of the following firm offer from our principals M/s. OVAL Industries Inc., New York, for the supply of Sulphur:—

- (a) Quantity 30,000 tons monthly, *Minimum 12 months contract* with option to you for 5 years.
- (b) Price 55 \$ per ton FOB California.
- (c) First Shipment is available at once; second within 90 to 180 days. However, this can be expedited. Thereafter, shipment shall be monthly.
- (d) Performance bond shall be supplied by our principles.

It is submitted for your kind information that the price has been reduced to 55 \$ by hard bargaining and by foregoing our commission in U.S.A. as advised by Mr. G. S. Sial and his assurance that that we will be given reasonable commission on the total value of purchase in India.

Our principals have also confirmed that the Sulphur being offered is not being diverted from Sulphur Export Corporation. A copy of their latest cable is attached herewith for your information. However, we request you to kindly note that as submitted personally, the offer is open through August 22, 1966 only.

Thanking you,

Yours faithfully,

Sd/-

Sd/- (Major VIPIN K. KHANNA)

Partner.

Encl: as above.

APPENDIX III

(See para 17)

DEPARTMENT OF ECONOMIC AFFAIRS

F.M. will recall that sometime ago we submitted a proposal, approved of by all the concerned departmental Secretaries, for 18 months to 24 months import of sulphur through an Indian firm at \$50 per ton. This offer, which might have brought us between 400 to 500 thousand tonnes, fell through because the party was not able to locate the stocks.

2. The situation regarding sulphur continues to be grim. The only sure quantities are under the programme of import (against free foreign exchange) with M/s. Sulexco of the USA as well as some under Colombo Plan with Canada. These two taken together would still leave us substantially short, nearly 200,000 tonnes short for this year, of our requirements which at the present moment are expected to be of the order of 465,000 tonnes for the current year and about 600,000 tonnes next year. Further, the inventories with almost all the sulphur-consuming industries have been depleted and, against the very precarious sulphur supply position in the world some re-building of inventories is absolutely necessary.

3. Recently we had occasion to review the procurement procedure relating to sulphur. Certain proposals are under examination and recommendations will be submitted to Government within a couple of weeks. Pending that, the search for sulphur is being continued.

4. The State Trading Corporation, which has been diligently looking for sources of additional supply of sulphur, has reported an availability of 360,000 tonnes to be delivered over 12 months, deliveries commencing immediately after the contract at a price of \$55 per tonne f.o.b. US West Coast, plus a commission of not more than 1 per cent to their local agents which is payable in Indian rupees which will not be convertible. The firm concerned is said to be M/s. Oval Industries Incorporated of USA with whom the STC has had export contracts for foot-wear and other leather

manufactures of the order of over Rs. 3 crores. The firm is apparently in the nature of a commission agent. The STC has *prima facie* reason to believe that the offer is genuine and workable. The firm has offered a 5 per cent performance bond and has also expressed its willingness to satisfy the STC on the source and availability of the sulphur.

5. The main factor is the price. The contracts with M/s. Sulexco of USA have been at \$39.75 f.o.b. US East Coast. This, however, is not a proper standard for comparison of prices. Sulexco have had relations with us for a long while despite which, at this price they have set a ceiling on the amount of sulphur that they could supply (200,000 tonnes for 1966). They are able also to quote manufacturer's price to us since in fact they are a consortium of the manufacturers. Leaving aside this price, we should compare the commercial prices quoted from time to time. These have been constantly rising for the last 18 months or so. We have had offers from Poland at as much as \$87 per tonne f.o.b. (according to STC). Other offers that have been made to STC, which involve the utilisation of export incentive or NDR licences, ranged well above \$55 and were generally of the level of \$60. Further, there is one other point to be observed in comparing prices. It is not right only to compare this offer with the Sulexco price; it is also equally relevant to evaluate this price with reference to the loss that would otherwise take place if sulphur was not made available to the industry; such loss would be not merely in rupees but would also involve, as for instance, in the import of fertilisers, foreign exchange. It is also to be pointed out that deliveries of such large quantities of sulphur, which would have a major impact on supply position, are not easily come across.

6. In these circumstances, the State Trading Corporation, the Ministry of Industry, the Ministry of Food & Agriculture and the Department of Economic Affairs recommend to the Finance Minister that the offer of M/s. Oval Industries Incorporated should be accepted. It will be naturally the responsibility of the STC to arrange such guarantees and warrantees as are appropriate in commercial business relating to sulphur.

7. The offer is open for acceptance till tomorrow (23-8-1966).

Sd/-

(B. P. PATEL),

22-8-66

Secretary (I) agrees with the above proposal. As he had to leave for another meeting, he instructed me to confirm his agreement.

Sd/- S. S. MARATHE,
22-8-66.

Secretary EA agreed to recommend the proposal to FM. We may do so.

Sd/- C. S. KRISHNA MOORTHY,
22-8-66.

FM. I have just received this at 2.30 P.M. It is strange that this proposal which involves many factors for consideration and has been through many channels were not put before me earlier. I have certain queries and would like Secretary EA to see me at about 4.00 P.M. today.

Sd/- S. SACHIN CHAUDHRI,
23-8-1966.

I have discussed the matter with Secretary and Shri Krishna Moorthi. I understand the question has been discussed thoroughly by the concerned officers. While price seems to be steep the risk of losing the bargain is also real. The lesser of the two evil seems to be to accept the offer.

Sd/- S. SACHIN CHAUDHRI,
23-8-1966.

As FM's approval was being communicated on the telephone to Shri B. P. Patel, he further instructed that Shri Patel should be alerted to the need for taking adequate guarantees and warranties for performance by the firm. This was done and will be confirmed in writing also.

Sd/- C. S. KRISHNA MOORTHY,
23-8-1966.

APPENDIX IV

(See para 51)

NORTH & SOUTH TRUST COMPANY

P.O. BOX 34622

PFARRGASSE 3—VADUZ—LIECHTENSTEIN

August 12, 1966.

Mr. Hy Muskat
Oval Industries
47, West 34th Street,
New York.

Re: *Sulphur Offer No. 1566/566*

Dear Mr. Muskat :

This letter will confirm the conversations between you and the members of your organisation and myself in reference to the sulphur purchase from our firm. We are in a position to offer you the following sulphur for sale:—

Your requirement "A"

Not less than 30,000 metric tons of sulphur 99.5 pure per month and not more than 50,000 metric tons of sulphur 99.5 per cent pure per month, for a period of one (1) year.

Your requirement "B"

Not less than 30,000 metric tons of sulphur 99.5 per cent pure per month and not more than 50,000 metric tons of sulphur 99.5 per cent pure per month, for a period of one (1) year.

Specifications:

(a) 99.5 per cent	purity	(Minimum)
(b) 0.02 per cent to 4 per cent	Carbon	(Maximum)
(c) 0.01 per cent to 0.1 per cent	Ash	(Maximum)
(d) 0.01 per cent	Pitch	(Maximum)
(e) 0.5 per cent	Moisture	(Maximum)

- (f) To furnish a report of Acidity.
- (g) Commercially free from Arsenic, Selenium, Tellurium, and Chlorine.
- (h) Lump size on larger than 4".
- (i) Said sulphur to be that type known and referred to in the industry as "BRIGHT".

Delivery: To be made not sooner than ninety (90) days and not later than one hundred and eighty days (180) after the Letter of Credit has been opened.

Price: 99.5 per cent pure sulphur \$55.00 per metric ton F.O.B. Stockton and/or long Beach, California.

Terms: Payment to be effected by Irrevocable, transferable, non-cancellable, assignable, divisible, revolving and confirmed Letter of Credit issued in our favour at Swiss Bank Corporation, Paradeplatz 6, Zurich, Switzerland.

Enclosed please find the following documentation for your examination:

- (1) Engineering and evaluation and site inspection report dated May 25, 1965 prepared by Western Knapp Engineering Division of Arthur G. McKee & Company.
- (2) Resume report on the Crator Sulphur Deposits, Inyo County, California, dated September 10th, 1953; and prepared by Arnold H. Miller, Consulting Engineer, New York.
- (3) Report of State Mineralogist Page No. 588 and 589.
- (4) 7 pictures of this deposit taken July 5th and 6th, 1966 on a geologic inspection.

After your examination of the above documentation, please return them to us.

Trusting that we will finalise this transaction in the very near future, I remain.

Very truly yours,

NORTH & SOUTH TRUST COMPANY
Sd/- Joseph S. LaSpesa.

APPENDIX V

(See para 76.)

World production of elemental sulphur by countries :

(Long tons).

Country	1960	1961	1962	1963	1964
Native sulfur :					
Frasch :					
Mexico . . .	1,261,574	1,148,494	1,350,375	1,456,656	1,635,773
United States . . .	4,942,935	5,385,468	4,984,578	4,881,512	5,228,207
TOTAL . . .	6,204,509	6,533,962	6,334,953	6,338,168	6,863,980
From sulfur ores :					
Argentina . . .	39,265	22,183	22,303	22,142	18,995
Bolivia (exports)	1,175	4,896	7,247	9,793	10,635
Canary Islands	4,000	5,000	6,000	6,900	*6,900
Chile	30,901	43,994	63,228	57,861	49,693
China ^c . . .	120,000	120,000	120,000	120,000	120,000
Colombia	8,899	9,941	10,046	12,795	11,942
Italy . . .	79,703	68,668	53,068	41,128	28,374
Japan ² . . .	243,684	238,456	220,438	219,095	237,414
Mexico . . .	17,700	25,116	26,751	28,968	25,989
Philippines	43	158	926	47	68
Poland . . .	25,885	130,900	206,684	231,486	289,948
Spain . . .	1,336	..	..	..	..
Taiwan . . .	5,725	5,732	7,462	7,144	6,389
Turkey . . .	16,830	15,506	18,247	19,123	21,849
U.S.S.R. ^c . . .	800,000	900,000	950,000	950,000	950,000
U.A.R. (Egypt)	3,543	8,858	6,000	4,675	4,675
United States . . .	94,357	92,025	40,840	415	158
TOTAL . . .	1,490,000	1,690,000	1,760,000	1,730,000	1,800,000
Total native sulfur :	7,700,000	8,225,000	8,100,000	8,100,000	8,650,000

Country	1960	1961	1962	1963	1964
Other elemental :					
Recovered :					
Austria .			..	..	6,000
Bulgaria ^d .	5,310	4,949	5,502	6,291	6,400
Canada (sales) .	244,963	252,465	620,622	1,115,968	1,438,552
China ^{e, f} .	130,000	130,000	130,000	130,000	130,000
Finland .	..	..		37,611	67,063
France ^g .	778,157	1,080,013	1,325,538	1,386,285	1,487,141
Germany :					
East . . .	110,232	115,153	118,100	118,100	118,100
West	82,807	82,861	89,268	84,949	76,602
Iran ^h	20,000	20,000	15,000	20,000	105,000
Italy . . .	3,200	2,000	2,000	2,000	2,000
Japan ⁱ .	8,326	8,163	8,549	11,429	18,448
Mexico .	33,487	51,086	46,545	43,308	36,296
Netherlands ^j .	30,018	27,952	30,511	34,447	^k 34,447
Netherlands Antilles :					
Aruba and Curacao ^c	40,000	40,000	40,000	30,000	^k 30,000
Norway ^d	71,254	61,156	.. 45,175	....	..
Portugal ^e	10,915	8,813	6,677	2,953	^k 2,953
South Africa, Republic of ^f .	—	2,163	1,913	1,981	5,701
Spain ^g .	40,194	48,324	41,836	68,036	^k 68,036
Sweden ^h	39,368	30,511	29,920	25,885	^k 25,885
Taiwan .	876	1,968	2,130	2,310	2,780
Trinidad ^e	5,000	5,000	5,000	7,000	^k 7,000
U.S.S.R. ^c .	210,000	275,000	370,000	400,000	400,000
U.A.R. (Egypt)	2,369 ^g	2,545	2,039	2,355	2,427
United Kingdom ¹¹	62,402	58,405	51,929	46,600	^k 46,600

Country	1960	1961	1962	1963	1964
United States.	766,566	858,169	899,598	946,753	1,021,358
	2,700,000	3,270,000	3,890,000	4,525,000	5,140,000
World total ^{c2}	10,400,000	11,500,000	12,000,000	12,600,000	13,800,000

c Estimate.

p. Preliminary.

1. This table incorporates some revisions.

2. Data do not add exactly to totals shown because of rounding where estimated figures are included in the detail.

3. Includes sulfur from mixed sulfur-sulfide ore.

4. 1963 data.

5. In some years Iran produces mine sulfur equivalent to 250-1, 500 tons of sulfur No. estimates in total.

6. From sulfide ore.¶

7. Produced from Natural Gas, includes a small quantity derived from treatment of nickel-sulfide matter at Port Colborne, Ontario.

8. From refinery gasses.

9. From natural gas.

10. From shale oil.

11. Including sulfur recovered from petroleum refineries.

SOURCE : UNITED STATES MINERALS YEAR BOOK, 1964, VOL I, P. 1032

APPENDIX VI

(See para 93)

Record discussions held in the room of Secretary (Industry) at 9.30 A.M. on 17th February, 1966.

PRESENT:

Ministry of Industry

Shri S. Ranganathan, Secy.

Dr. S. S. Marathe

Ministry of Finance (EAD)

Shri C. S. Krishnamoorthi

Shri D. B. Dutt.

Ministry of Commerce.

Shri S. Than.

Ministry of Petroleum and Chemicals

Shri M. N. Kale

D.G.T.D.

Shri P. Jayantha Rao.

State Trading Corporation

Shri G. S. Sial

Fertilizer Industry

Shri M. K. K. Nayar

Shri C. R. Ranganathan.

The meeting was convened to review (i) the position regarding import of rock phosphate and sulphur (ii) the utilisation of the foreign exchange allotted already for 1965-66 (iii) to estimate the future requirement of foreign exchange in 1966 to meet the minimum requirements of the industry and (iv) to consider any other matter relating to the import programme of these two items.....

* * * * *

Sulphur.—The quantity of sulphur contracted so far is only 115,000 tons as against a requirement of 450,000 tons for the year

1966. M/s. Sulexco were expected to offer another 100,000 tons for the second half of the year sometime in June next. Thus the total availability was not likely to exceed 215,000 tons and it was necessary to locate more supply and arrange to import them as early as possible. It was explained that Canadian supplies under the Colombo Plan arrangement were being negotiated but the quantity that could be procured under this arrangement could not be indicated at present. French suppliers were also being persuaded to allot some sulphur to India in 1967 or later if not in the current year. The possibility of procuring some stray floating supplies from the United States/Mexico by making on the spot purchases was also mentioned in this connection. It may be possible to procure some sulphur in this manner if some are authorised to make purchases at prices to be negotiated on the spot, subject to a ceiling to be determined in consultation with the Finance/Economic Adviser who were to visit these countries. The STC were asked to formulate proposal in this regard.

APPENDIX VII

(See paras 95, 112)

Minutes of a meeting held on the 5th August, 1966 at 3.00 P.M. in the room of Secretary, Economic Affairs

PRESENT

Chairman

Shri S. Boothalingam, Secretary, Economic Affairs.

Department of Coordination

Shri P. Govindan Nair, Secretary.

Department of Agriculture

Shri B. Sivaraman, Secretary.

Ministry of Industry

Shri N. N. Wanchoo, Secretary.

Shri S. S. Marathe, Economic Adviser.

Department of Chemicals.

Shri Nakul Sen, Secretary.

Shri M. N. Kale, Deputy Secretary.

State Trading Corporation

Shri B. P. Patel, Chairman,

Shri G. S. Sial, Director.

Department of Economic Affairs

Shri C. S. Krishnamoorthi, Joint Secretary.

Shri C. S. Swaminathan, Director.

Introducing the subject for consideration, Shri C. S. Krishnamoorthi drew attention to the world shortage of sulphur and the decision earlier taken in this context that when offers of supply of sulphur were available, Secretary (Industry) will be authorised to take a decision in consultation with the Department of Economic Affairs in order that the maximum quantity may be secured. He pointed out that as against the requirement of 465,000 tonnes of sulphur for

the calendar year 1966, the maximum quantities expected will only be of the order of 270,000 tonnes. Even in this there were doubts about the arrival of 45,000 tonnes. He mentioned that the IDA has been persuaded to include agro-chemical industry (including fertilizer production and pesticides production) as an eligible industry for financing under the forthcoming IDA credit. This will mean that financing for rock phosphate and sulphur would be available; but would not ensure supply in the context of acute world shortage especially of sulphur. He referred to the proposal of the Economic Adviser (Industry) to allow the importers' freedom to arrange their own imports.

2. Explaining the proposal, Shri Marathe said that the main object of his proposal was to prevent complaints arising about Government not providing enough of sulphur for fertiliser production thus giving an alibi to the fertiliser producers. The manufacturing units might not succeed any better than Government but it would be their judgment if they were to buy a certain quantity at a certain price.

3. Shri Krishnamoorthi pointed out that the problem in accepting such a proposal was that the higher prices which might be paid by the importers would have their repercussions on the comparatively low prices which Messrs. Sulexco have been charging so far. Mr. B. P. Patel said that if, in a sellers market, a number of individual actual users are allowed to compete for securing their supplies, it would only raise the prices and would prove to be uneconomical. He felt that if a single agency was allowed to procure sulphur from the world market and was allowed a free hand to accept reasonable prices—at more or less ruling rates—without having to go through a detailed procedure of getting sanction etc., it would be possible not only to secure substantial quantities of sulphur but also to ensure that the prices paid were not out of line with the market prices. If STC was allowed to proceed on this basis to get another 200,000 tonnes, he felt that this would be a much cheaper arrangement to India and would also enable the full demand to be met. He was of the view that it would be a mistake at this stage for Government to withdraw from the responsibility of making sulphur available for the actual users.

4. Secretary, Economic Affairs, enquired what the STC would consider a reasonable price. For instance, he pointed out that the quotations received by STC have been very much higher than the Sulexco prices. Would not the effect of accepting higher prices, he enquired, result in Sulexco tending to charge higher prices. Since purchases from Sulexco are of the order of 150 to 200 thousand ton-

nes a year, this will have to be taken into consideration. Shri Patel explained that Sulexco were institutional buyers and sellers and had their own pricing system. In view of limitations of the quantities that they can supply and because STC would be getting the sulphur from merchants who buy from various sources, the payment of higher prices by STC was not likely to affect the prices of purchase from Sulexco.

5. Secretary, Economic Affairs, enquired whether the system of making purchases through the STC will cause difficulty from the IDA angle. Shri Krishnamoorthi said that we could put it across suitably to IDA and he hoped that they would not raise any difficulties. Shri Sivaraman raised the question that if all purchases were to be canalised through the STC it might give rise to problems with some of the fertiliser producers. For instance, some of the bigger fertiliser producers having foreign collaboration might be able to secure offers through their collaborators for sulphur at prices which they considered reasonable. If they were to be stopped from importing sulphur at that price, because STC hopes to secure better prices or because STC had earlier bought sulphur at lower prices, STC might have to guarantee the prices to them; otherwise if STC ultimately buys at higher prices than were available to these fertiliser concerns, they could point out that the Government was making them pay higher prices. Secretary (Agriculture) also pointed out that since for the next two or three years sulphur supply was going to be very difficult, a factory like Coromandel may like to make a commitment for the next year or two. He felt that if a company was prepared to get its supplies on a long term contract, it should be allowed. After detailed discussion of this aspect, it was felt that if any private sector unit desired to enter into a bulk contract for not less than its six months' requirements, subject to a minimum of 10,000 tonnes, at reasonable prices (Government would consider whether the price was reasonable or not in the circumstances prevailing in the market at that time), a licence for the purpose should be given to that private party, it was also regarded as necessary that STC confirms that the price at which the purchase will be made by the private party, is comparable with STC's last purchase.

6. The meeting, therefore, proposed that the general scheme should be as below:—

- (i) The State Trading Corporation should be the centralised authority for procuring sulphur, and will be allowed to buy sulphur at reasonable prices depending upon the international sulphur market situation.

- (ii) So far as the purchase from Sulexco is concerned, it can be arranged through their sole agents as hitherto and either the import be done through the sole agents or if possible arranged by STC. STC will try as far as possible to make long term contracts and they may be permitted to make forward commitments for delivery upto June, 1968, subject to the condition that upto two-thirds of the estimated requirements may be covered by such forward purchases.
- (iii) Distribution of the sulphur among various industrial consumers will be done, as at present, according to a distribution arrangement worked out by the Secretary (Industry).
- (iv) The STC would charge an average price to the fertiliser industry. Shri Marathe pointed out that non-priority industries have been actually paying quite high prices for their sulphur. He therefore suggested that whereas the average price should be charged by the STC to the fertiliser industry, for the non-priority industries STC should charge the higher market price.
- (v) Any private sector fertiliser unit desiring to make a bulk contract for sulphur for not less than six months requirements of the unit, subject to a minimum of 10,000 tonnes at reasonable prices, may be permitted to enter into such a contract and be given an import licence for the purpose. The licence will mention both the unit price and the total value.

7. The meeting decided that these proposals should be submitted for approval by the Industries Sub-Committee of the Cabinet. The Ministry of Industry will prepare the paper and with the concurrence of the Department of E.A., Department of Agriculture, the Department of Chemicals and the Ministry of Commerce, will submit it to the Cabinet Sub-Committee.

APPENDIX VIII

(See para 103)

(To be Published in the Gazette of India Extraordinary Part I—
Section I)

GOVERNMENT OF INDIA

MINISTRY OF COMMERCE

IMPORT TRADE CONTROL

PUBLIC NOTICE No. 124-ITC (PN)/66

New Delhi, the 27th August, 1966.

SUBJECT: *Canalisation of import of Sulphur (S. No. 25/V), Potassium Chloride (S. No. 22.31/V), Newsprint (S. No. 44/V), Asbestos raw (S. No. 98/V) and certain other items through an agency approved by Government for the period April '66—March '67.*

Attention is invited to the list of items given in Part 'C' of Section II of the Import Trade Control Policy (Red Book) for the period April 1966—March 1967, the import of which is canalised through an agency approved by Government.

2. It has now been decided that the import of following items also will be canalised through an agency approved by Government:

- (1) Sulphur (S. No. 25/V)
- (2) Potassium Chloride (S. No. 22.31/V)
- (3) Newsprint (S. No. 44/V)
- (4) Asbestos Raw (S. No. 98/V).

3. It has also been decided that the State Trading Corporation of India Limited, New Delhi will be the approved agency for the import of the above mentioned items and also for the import of the items namely, (i) Mercury (S. No. 266/IV), (ii) Caustic Soda [S. No. 22(a)/V], (iii) Soda ash, including calcined natural soda and manufactured sosquicarbonates (S. No. 26/V, (iv) Rock phosphate [S. No. 40(a)/V], (v) Sodium Nitrate [S. No. 40(b)/V], (vi) Muriate of potash [S. No. 40(c) (1)/V] (vii) Sulphate of potash [S. No. 40(c) (ii)/V], and (viii) Sulphate of Ammonia, Mineral Phosphate [S. No. 40(d)/V] whose imports have already been canalised

vide Part 'C' of Section II of the Import Trade Control Policy (Red Book) for the period April 1966—March 1967.

Sd/- P. D. KASBEKAR,
Chief Controller of Import and Exports.

Copy to all concerned.

By order etc.

Sd/- S. R. MINOCHA,
Deputy Chief Controller of Imports and Exports.

[ISSUED FROM FILE NO. IPC (GENL. 34)/66]

APPENDIX IX

(See para 104)

MINISTRY OF INDUSTRY

NOTE FOR THE INDUSTRY COMMITTEE OF THE CABINET

SUBJECT: *Procurement policy in respect of Sulphur*

Since the middle of 1965, the supply position of sulphur has been getting increasingly difficult. While the world demand for sulphur has risen sharply, the supplies will take some time to catch up with the growth of demand; and in the result, there has been a rise in prices of sulphur and also in recent months an acute shortage of supplies.

2. In the past, we used to obtain from the United States about 200,000 tons of sulphur and this was financed from US Aid funds. In 1965, because of certain differences between exporters of sulphur—SULEXCO—and the US Government and resulting litigation, we were required to finance our purchases of sulphur against free foreign exchange. In 1966, the SULEXCO which is consortium of sulphur producers, decided that their members shall individually deal with exports to India, and it was, however, indicated that we could not expect more than the traditional level of supplies (i.e.) approximately 200,000 tons from the member firms of SULEXCO.

3. Apart from US., other possible suppliers are Canada, Mexico and France. According to present indications, the supplies likely to be available from these sources are limited and in any case, there is little likelihood of our being able to make firm purchase arrangements for substantial quantities at prices charged by producers to their established customers.

4. The total availability of supplies of sulphur during the calendar year 1966, is, therefore, estimated to be as follows:

	Tons.
1. Supplies from SULEXCO-members (i.e.) Texas Gulf and Free Port Sulphur Co. (inclusive of 40,000 tons offered by M/s. Texas Gulf from their Canadian mines and to be financed under Colombo Plan).	200,000

	Tons
2. GSA programmes against US Aid Funds.	15,000
3. Sulphur which may be purchased against NDR scheme licences.	20,000 to 30,000
	<hr/> 235,000 to 245,000 <hr/>

In addition, some supplies may materialise from Canada, but deliveries are unlikely to be in this calendar year.

5. Recently, STC has been given permission to negotiate a deal with an American firm M/s. Oval Industries Incorporated of New York. If the deal materialises, it will result in imports of sulphur at the rate approximately 30,000 tons per month for 12 months. These purchases will have to be at \$ 55 per ton f.o.b. which is considered to be a reasonable price for a large quantity in the present circumstances but which is higher than the present prices offered by the US suppliers which is \$ 39½ per ton for limited quantities.

6. As against the total availability of 235 to 245,000 tons (plus some supplies from Canada and/or under the STC deal), the estimated requirements for the current year are 465,000 tons and next year, they are expected to increase further to 600,000 tons. According to present assessment by trade and industry, the shortage of sulphur is likely to remain at least till 1968. The question, therefore, arises as to whether any change is needed in our present arrangements for procurement of sulphur. Under the existing arrangements, purchases of sulphur are effected through the US suppliers' Indian agents and are allocated to Actual Users on the basis of the recommendations by the DGTD. These allocations take into account the relative priority of industries and distribute limited supplies equitably amongst different users.

7. Since the beginning of 1966, we have also tried to work out arrangements under which offers of sulphur in small or large lots and at varying prices might be considered quickly by the Ministry of Industry in consultation with the Department of Economic Affairs. This arrangement was deemed necessary because quite often offers were made for stray lots of sulphur and these offers were open only for short periods. The arrangement for taking quick decisions on such offers has worked fairly satisfactorily, but against the permissions granted to different parties, no substantial quantities of sulphur have been imported mainly because in the context of world shortage and rising prices, the suppliers abroad backed out. In the

result, the present procedure has not succeeded in augmenting supplies.

8. The arrangements for the procurement of sulphur were recently considered at a meeting taken by Economic Secretary at which Secretary (Industry), Secretary (Food and Agriculture), Secretary (Chemicals), Secretary (Coordination), and Chairman, STC were present. The general consensus was that the supply position in regard to sulphur will continue to be difficult throughout next year, and possibly in the earlier part of 1968. It was felt that in order to secure adequate supplies of sulphur, it would be necessary to allow a greater degree of flexibility to the State Trading Corporation for contracting small or large lots of sulphur at negotiated prices to suit the market conditions, on commercial basis. It was felt that any kind of fixed ceiling, within which purchases by STC may be allowed freely, would not serve the purpose effectively, because conditions may vary and the existence of ceiling on prices may get known, with the result that no offers would be forthcoming except at or around the ceiling prices. It was also agreed that STC may be permitted to make commitments for deliveries of sulphur upto June, 1968.

9. An important aspect of any arrangement for making purchases through STC is that such arrangements should not result in a reduction of supplies from our traditional sources namely, USA/Canada, either against free foreign exchange or against available credits. It was agreed that all imports of sulphur should be canalised through the STC, which may, to the extent necessary use the present trade channels, so as to avoid any diminution in supplies from traditional sources. The distribution of sulphur will, as now, continue to be made on the basis of recommendations by the DGTD and other sponsoring authorities. Canalisation of imports through the STC will also strengthen the position of the STC in obtaining supplies at reasonable prices.

10. It was, however, felt that in view of the importance of sulphur as an essential raw material for fertiliser production, it would not be desirable to rule out completely purchases to be made large users such as private sector fertiliser units. It is even possible for some of the bigger fertiliser producers through their international connections to obtain some quantities which may not be offered to other parties. There is also the consideration that, if fertiliser factories are not allowed to import sulphur on their own, and for whatever reasons our efforts to procure sulphur through traditional sources and through STC's efforts do not succeed to the extent of meeting bulk of the requirements, we would be taking the risk of

being accused of overlooking certain possibilities of supplies. The criticism would be particularly strong if, as a result production in essential industries such as fertiliser or steel gets adversely affected. At the same time, it is necessary to ensure that permitting imports on private account does not either reduce the quantum of supplies from USA/Canada through traditional channels or result in extraordinarily high prices being paid. For this purpose, i.e. to ensure that the purchase is genuinely by major consumers of sulphur and that Government is in a position to keep aware of such purchases, it was suggested that any fertiliser producer may be permitted to contract for sulphur provided that the purchase be in quantity of not less than ten thousand tons per order. It was also regarded as necessary that STC confirms that the price at which the purchase is being made is comparable with STC's last purchase. In cases where the price is deemed to be higher than the STC's purchase price but there are other considerations such as quantity, deliveries, or any other special factor, the proposal may be considered by Government in the Ministry of Industry, and, after consultation with the Department concerned, a view may be taken as to whether or not imports may be permitted.

11. As the issues involved are of considerable complexity and importance, it was felt that the following recommendations may be submitted to the Industry Committee of the Cabinet for favour of their approval:

- (a) That STC should be made, subject to (c) below, the sole agency for imports of sulphur;
- (b) that the STC be given the flexibility in deciding upon quantities to be procured and the prices at which purchases are not to be made as proposed in para 8;
- (c) that in view of considerations in para 10, above, direct purchases by fertiliser producers (or any other larger users) be permitted, under the conditions specified in that paragraph.

Minister (Industry) has seen and approved of the note. The Ministries of Finance, Commerce, and Petroleum and Chemicals have seen the note and conveyed their concurrence. The comments offered by the Ministry of Food and Agriculture are attached. (Annexure—D).

Sd./- K. N. WANCHOO,
29-10-1966

Secretary to the Government of India.

APPENDIX X

(See para 105)

GOVERNMENT OF INDIA

MINISTRY OF FOOD & AGRICULTURE

(DEPARTMENT OF AGRICULTURE)

New Delhi, the 19th October, 1966.

SUBJECT:—*Procurement policy in respect of Sulphur.*

Will the Ministry of Industry kindly refer to their U.O. Note No. 5737/EA/66, dated 21st September, 1966 on the above subject?

The draft note sent therewith has been examined by this Ministry in the light of the minutes of the meeting held in the Department of Economic Affairs on the 5th August, 1966 regarding problems connected with import of sulphur. The following comments are offered in the matter.

1. In the draft note it has been proposed that fertiliser producers may be permitted to contract for sulphur imports in quantities not less than 10,000 tonnes per order. In the light of the current shortage of sulphur the quantity per order is considered high. A super-phosphate factory producing approximately 30,000 tonnes of super-phosphate per year requires only about 4,000 tonnes of sulphur in a year. The number of Actual Users who can take advantage of this concession and place order for 10,000 tonnes or more at a time will thus be very few. Therefore it is felt that the quantity to be permitted for each contract by the Actual Users should be fixed at one years' requirement of sulphur or 10,000 tonnes which ever is less.

2. In regard to the price, the condition regarding prior clearance of price by the STC may lead to avoidable delays and actually inhibit the firms from closing any offers received by them at short notice; and seemingly this confers no advantage over the existing procedure which itself is considered to be not satisfactory as pointed out by Shri Marathe in his note circulated at the meeting held on 5th August, 1966. It is desirable to introduce some flexibility in the system so that the actual user may be allowed import by getting a speedier decision, and on reasonable prices. This may be kept in view while drawing up a detailed procedure.

3. The parties to whom actual users' licences are issued should not normally be eligible for allotments from the quantities procured by STC which should be earmarked in the first instance for units which do not get actual users' licences. They should also not be allowed to sell the sulphur to other parties with the prior consent to be obtained in writing from the Dte. General of Technical Development. This will prevent black-marketing of the quantity imported under actual users licences. The draft note may please be amplified to incorporate these points.

Sd./- S. K. MIRCHANDANI,

Deputy Secretary to the Government of India.

Min. of Ind. (Shri S. S. Marathe), New Delhi.

M/F. & A., Deptt. of Agri. U.N. No. 122/66-M, dated 10-10-1966.

APPENDIX XI

(See para 107)

(To be published in the Gazette of India Extraordinary
Part I Section 1)

GOVERNMENT OF INDIA

MINISTRY OF COMMERCE

IMPORT TRADE CONTROL

PUBLIC NOTICE NO. 3—ITC (PE)/67

New Delhi, the 7th January, 1967.

SUBJECT:—*Import of Sulphur (S. No. 25/V)-April '66-March '67.*

Attention is invited to para 3 of Ministry of Commerce Public Notice No. 124-ITC (PN)/66, dated the 27th August, 1966 according to which the State Trading Corporation of India Ltd., New Delhi will be the approved agency for the import of sulphur.

2. The following further decisions have been taken in regard to the arrangements for import of sulphur:—

- (i) Applications for import of sulphur under the Letter of Authority procedure in quantities of 5,000 tonnes and above but less than 50,000 tonnes will be considered from all categories of importers viz., actual users, established importers and others.
- (ii) Applications for direct import of sulphur in bulk i.e., in quantities of 50,000 tonnes and above will also be considered on an ad hoc basis.
- (iii) All such applications should be made in the prescribed form and manner and should be accompanied by firm offers from overseas suppliers indicating the quantities, prices, delivery schedule etc. They should be addressed of Chief Controller of Imports and Exports, New Delhi, by name to Shri S. R. Minocha, Deputy Chief Controller of Imports and Exports. In the case of dated offers, every efforts will be made to inform the applicant in regard to the decision taken, within the indicated time limit.

Sd./- P. D. KASBEKAR,
Chief Controller of Imports & Exports.

APPENDIX XII

(See para 121)

Record of discussions which Chairman STC had with Mr. Graupner of M/s. Sulexco on November 29, 1966.

12.00 Noon.—The delegation accompanied by Mr. Varadraján met Mr. Graupner of M/s. Sulexco. He mentioned to the Chairman that he had received a cable from India saying that STC was reported to have entered into a contract for the purchase of 6.5 million tonnes of sulphur at a price of \$60/- per tonne. Chairman informed Mr. Graupner that the information was not correct and that it was all in the nature of k'te flying.

Mr. Graupner elucidated in detail the prevailing situation in regard to supplies and prices of sulphur on the American continent. He also dwelt at length on the demand and supply position in Europe. His estimate was that the supply of sulphur would continue to be difficult for some more time to come. According to him the prevailing prices were about \$7-38 per tonne FOB US ports some \$10/- more in Canada on account of the higher transportation charges from places of production in the interior to the ports. On account of the levy of export duty in Mexico the prices for sulphur of Mexican origin would still be higher. Mr. Graupner stated that Sulexco would be in a position to supply in 1967 about the same quantity as in 1966 and perhaps a little more in case the pressure from Europe decline as was anticipated. In this connection, he stated that producers of fertilisers in Europe had by now surpluses of stocks of fertilisers. Their demand for raw materials was stable. They were not likely to make commitments. This may throw out the possibility for more supplies to India.

(3) Mr. Graupner then referred to the issue of notification of the Government of India canalizing the import of sulphur through the State Trading Corporation and stated that this measure appears to him to be unnecessary and that it would be desirable for India to revert to the same system as before the notification. Chairman made the following observation in regard to the several points referred to by Mr. Graupner:—

- (i) He recalled that India's sulphur requirements were met almost entirely by U.S.A., supplemented to a small extent by Canada for the last several years. The fulfilment of India's requirements from these sources was satisfactory and India did not have to look for this commodity from any other source. Moreover, the projection of India's re-

quirements from plan to plan and even year to year are not only known to her traditional suppliers but are in fact worked out in associations with various authorities and producers in USA. For the years 1964 and 1965 an average supply of about 270,000 tonnes of sulphur came annually from the members of Consulex and other producers in Canada. Against the common knowledge of India's requirements of about 465,000 tonnes, the indications so far show that India would receive from the members of Sulexco some 150,000 tonnes from USA and another 50,000 tonnes would come from the members of Consulex and other traditional suppliers in Canada. This sudden shortfall in the supplies from India's traditional sources gave rise to a wide gap between the supply and demand of sulphur in India. We, therefore, look to Sulexco for reviewing their position once again and see their way to increase the supplies so as to narrow this gap and to meet our growing requirements for the next two years which are well-known to Sulexco.

Mr. Graupner remarked that India should have looked ahead and entered into long term contracts. As this was not done India has to take in a place after the requirements of other parties with whom they have contractual obligations, are fulfilled. Chairman pointed out that categorisation of India as if it was a casual customer, was not fair. India has been the traditional and the regular buyer for the last several years. In view of India's dependence upon its traditional suppliers continuously over a period of years then they should recognise an obligation not only to maintain the supplies at the previous years' level but also to earmark larger quantities in conformity with her increasing requirements known to the suppliers in advance.

Referring to the Government notification on the canalisation of the sulphur through the State Trading Corporation, it was explained that the Government had resort to this measure as a practical necessity against the background of shortfall of supplies from the traditional sources and the difficulties experienced by India to secure supplies from other sources. The object of canalisation is to bring about closer co-ordination at operational level and a degree of unified approach in negotiating purchases on an *ad hoc* basis or on a long term basis according to the exigencies of a particular case thereby to maximize the availability of sulphur from the traditional and new sources of supply. The system of canalization resorted to by the Government of India not only envisages the retention of the agents of the traditional suppliers but to avail of their influence and experience in

securing maximum quantities of sulphur from their principals. It is permissible under the system of canalisation to afford sufficient scope for the agents to secure larger supplies and to earn commission thereon and physically handle the supplies on their usual conditions.

Mr. Graupner expressed his doubts whether their colleagues would appreciate the STC's association alongwith their agents. To this question Chairman remarked that when India affords full scope to the suppliers' agents to earn their usual commissions and even handle the commodity physically there should be no objection on the part of the suppliers or their colleagues to the association of STC on the purchase side as a co-ordinating agency at the instance of the Government of India particularly by Sulexco, who have found it necessary to have a co-ordinating agency for the suppliers.

In regard to immediate supply of sulphur Mr. Graupner mentioned that we should contact Mr. Thomas Vaughan, Executive Vice President of Free Port Sulphur Corporation and Mr. Peter Black. As Chairman was to leave New York in the evening, both these gentlemen when contacted by F.A. next day stated that they had no sulphur stocks with them presently and were therefore not in a position to supply anything immediately.

[STC/CHEM-19(44)/A/66]

APPENDIX XIII ..

(See para 121)

TAXAS GULF SULPHUR CO.

200 Park Avenue,

New York—N. Y. 10017

December 22, 1966.

Mr. B. P. Patel,
Chairman,
S.T.C. of India,
New Delhi.

Dear Mr. Patel,

Thank you for your letter of December 8 which has just reached us. Seemingly, it has delayed in the postal service.

As I told you when we met several weeks ago, the acute world-wide shortage of sulphur has brought innumerable problems to our doors, and not the least of the necessary adjustments is that I now must wear two hats. One when I attend to our cooperative venture at Sulexo, the other when we here market in export our Texas Gulf production of sulphur produced outside of the United States. Sulexco may, by law, serve only sulphur produced in the United States.

You will recall my having explained to you, that since the once huge sulphur stocks of the Sulexco parent Companies have been sold, shipped and depleted during the past years, availability today is from daily production only. As such, the Sulexco pool of available sulphur tonnage received from its Parent Companies is very much less than it used to be. Additionally, to compound our problems, Washington has placed a ceiling on Sulexco, thus cutting back exportable tonnage severely. **The result is, that what tonnage Sulexco has available for 1967, is almost entirely used upto full existing long term contracts. Spot or annual buyers are, therefore, practically left out. India is one of those markets and I remember well, how for years we used to urge the people in Government offices in New Delhi, to permit forward buying under contract. But to no avail.**

Texas Gulf, in order to serve our many friends and customers of record in India and in recognising the severity of the problem, have in view of the shortage of Sulexco Sulphur, agreed to independently squeeze what they can for India from their production in Canada.

That this possibility exists, is due to a great measure to the foresight and realistic planning of Mr. Dharamsinh Morarji and Mr. Pratapsinh Morarji. Many months ago first one, then the other made special trips to New York, as you remember I told you, to plead with their friends at Texas Gulf Sulphur Company to keep India on the list of receivers of sulphur.

The result is, of course, well known. Sulexco transferred the remaining second half 1966 contract with Dharamsinh Morarji & Company to Texas Gulf who serve the tonnage out of Canada. For 1967, this arrangement could continue and if left undisturbed, very likely will. India has to the 'Morarji' to thank for this. I hope New Delhi will officially do so.

You mention in your letter Mr. C. S. Ahluwalia, the Commercial Secretary of the Indian High Commission in Ottawa. We have had various contacts with him and appreciate his friendly help. He has been informed of our position. He understands that our sales and shipments would go to India only through our normal channels; namely, through Dharamsinh Morarji. We have also informed the Canadian Government people in Ottawa that this is the only basis under which we would supply India and then have fully agreed to this requirement.

In conclusion, let me say that while we appreciate the opportunity which you offer and I quote from your ".....to develop the Indian market for a continuous supply of our sulphur and that your interests in this regard will be fully saved and looked after by us to mutual advantage," we decline with thanks.

Dharamsinh Morarji and Company are the duly authorised Distributors in India under contract of Sulphur Export Corporation since the inception of Sulexco in 1958. For long years prior to that, they already represented the interests of Texas Gulf Sulphur Company in India and continue to do so.

You will agree that one does not reward a job done in a superior way for so many years by dismissal.

With kind personal regards,

Sincerely yours,
Sd/-

APPENDIX XIV

(See paras 19, 26.)

MINISTRY OF FINANCE

DEPARTMENT OF ECONOMIC AFFAIRS

12th December, 1967

SUBJECT:—*Draft Report of the Committee on Public Undertakings (1967-68) on the contract entered into by STC with Messrs. Oval Industries for import of sulphur.*

Since the Department of Economic Affairs has had no opportunity to state its views before the Committee but has been now requested by the Commerce Ministry to send its comments direct to the Lok Sabha Secretariat, in this note certain clarifications are given.

2. The references to the role of the Department of Economic Affairs appear in a few places as indicated in the following paragraphs. However, the basis of the references is the note reproduced at Appendix III of the Draft Report. That note summed up the discussion that took place at the Inter-Ministerial meeting on the 22nd August, 1966 and was the basis on which the approval of the Finance Minister was sought. Before touching on matters connected with the actual note and orders, it will be useful to give briefly a background on account of which this discussion took place on the 22nd August, 1966.

3. In the context of the increasing requirement of sulphur imports for production of fertiliser in this country and the diminishing availability of sulphur generally in the World market, and particularly against aid funds, the question of adequate foreign exchange availability for sulphur assumed very great importance in 1965-66. For the year 1966, the quantity of sulphur contracted was only 115,000 tonnes, as of 15th February, 1966, as against a requirement of 450,000 tonnes. Since fertiliser production was considered a matter of very high priority there were several discussions for considering how the sulphur availability could be improved and how procedures could be so devised that very quick decisions could be taken when offers were received, so that in a difficult international market as much could be secured as possible. In fact, in the previous year, when the shortage had begun being felt, an officer was sent to USA and

Canada, with the approval of the Finance Minister, to explore possibilities of getting sulphur under aid and/or on a long term basis. It then transpired that certain other countries had entered into long term agreements with producers for purchase of sulphur, for as much as five or seven years, and that the position was sure to continue to be very difficult and purchasers were likely to bid for every available lot. After taking into account all availabilities from customary suppliers, the gap between our requirement and supplies was expected to continue to be large. In all this background, a suggestion came up at one of the meetings held in February 1966, in the Department of Industry, that when offers came up from time to time the foreign exchange availability should be indicated within 24 hours, since such offers as were received were ordinarily open for acceptance for a very short time. This was considered in the Department of Economic Affairs and it was decided that in the interest of expeditious decisions, it would be better to simplify the procedure and make initially an "On Account" provision of Rs. 1 crore in free foreign exchange to the Ministry of Industry and that the Secretary, Ministry of Industry be entrusted with the authority of deciding the offers taking into account the prices. Following this, an Office Memorandum (as in the Appendix to this note) was issued on 10th March, 1966.

4. Accordingly, offers whether through private sector importing agents or the STC were received and considered by the Ministry of Industry. The proposal of the 30,000 tonnes of sulphur monthly from an American firm was also reported to the Ministry of Industry by the STC on the 18th August, 1966. However, since this offer involved a very large amount of foreign exchange, far exceeding the funds placed at the disposal of the Industry Ministry, and also had aspects like an option for a five year commitment, it was felt necessary that the Department of Economic Affairs should also be consulted on this. Accordingly, the proposal was discussed in a meeting on the 22nd August with the Secretary, Economic Affairs, in which the Chairman, STC, explained the proposal and the representative of the Ministry of Industry supported it. The note recorded (which has been reproduced at Appendix III of the draft Report) sums up the nature of the proposal.

5. From the procedures mentioned above, it will be clear that the officers who met and discussed were performing certain specific agency responsibilities. The STC had been exploring possibilities of purchasing substantial quantities of sulphur. The STC representatives who had had other dealings with the party making the offer, were *prima facie* satisfied about the genuineness and the workability of the offer. The party had also offered to satisfy the STC

on the source and availability of sulphur. The representative of the Ministry of Industry was performing functions which the Secretary, Industry, had under the March 1966 orders of forming a judgment about the unsatisfied requirements for industry and the desirability of arranging supplies at particular levels of price. The Economic Affairs Department representatives had the responsibility to see if the required foreign exchange could be made available for securing the quantity of sulphur that was offered and whether, from the point of view of price, the acceptance of the present offer would be consistent with the over-all prices for which sulphur were being bought, taking also into account the scarcity conditions, the general range of prices for which sulphur was being offered and the priority requirements of the fertiliser production.

6. With this background, certain comments/clarifications are offered on some of the paragraphs in the draft Report of the Committee, in which the role of the Department of Economic Affairs has been commented upon.

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8. In para 19, it is said that:

"The Committee feel that before putting up the proposal to Finance Minister, the Secretaries of the Ministries concerned should have asked STC the basis on which it considered 30,000 tonnes of sulphur per month as genuine offer and one workable even for a major sulphur producer of the world."

It is evident from para 4 of the note (Appendix III of the Report) that the question was considered and that STC had answered the question. The answer is contained in the portion quoted below:—

"The STC had *prima facie* reason to believe that the offer is genuine and workable. The firm has offered a 5 per cent performance bond and has also expressed its willingness to satisfy the STC on the source and availability of the sulphur".

Evidently, the officers representing different departments were, while taking care that the various aspects had been considered, were not trying to substitute for each other's functions in arriving at a decision. The STC was offering to procure sulphur in an extremely difficult market, they had an offer on which they were *prima facie* satisfied and the party was ready to satisfy the STC on the source and availability of the sulphur. The officers recognis-

ed that there was need to proceed warily. The question before the Economic Affairs Department was, subject to the deal being possible, could foreign exchange be made available and would the price be acceptable from an overall point of view. The note of the STC Chairman dated 22nd August, 1966 brought out the fact that all the supplies possible from the traditional sources were being availed of and also summarised price trends and the market position. In fact, in recommending the case to the Finance Minister, it was specifically put by the STC Chairman:

"It will be naturally the responsibility of the STC to arrange such guarantees and warranties as are appropriate in commercial business relating to sulphur".

Such guarantees and warranties extend to source of supply, quality assured, availability etc. The Finance Minister's order also reiterated that STC "should be altered to the need for taking adequate guarantees and warranties for performance by the firm". Thus, it is submitted that there is no ground to believe that the aspect of the need for the STC to go into the genuineness of the offer was overlooked. The release of the foreign exchange was subject to all these conditions and, in stipulating the conditions the Department of Economic Affairs, it is submitted did discharge its responsibilities.

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10. In paras 25 and 26, references have again been made to the Finance Minister's note. In para 26, it is said:

"The statement of the Secretary, Department of Economic Affairs that the question has been discussed thoroughly by the concerned officers' was misleading in as much as no enquiries about the genuineness of the parties or the sources of their supplies were made by the concerned officers".

The Secretary, Department of Economic Affairs has not been examined by the Committee: reference is evidently to the note recorded by the then Finance Minister following his discussion with the Secretary and Joint Secretary, Economic Affairs. The question is whether anything that the Secretary, Department of Economic Affairs, might have said had the effect of misleading the Finance Minister. It is submitted that such a view cannot be substantiated. The note of the Chairman STC submitted to the Minister clearly said that *the firm was in the nature of a commission agent, and the STC had prima facie reason to believe that the offer was genuine and workable, that the firm had expressed its willingness to satisfy the STC*

on the sources and availability of sulphur. The note of the Chairman STC also stated that it would naturally be the responsibility of the STC to arrange such guarantees and warranties as are appropriate in the commercial business. The minute recorded by the Finance Minister reads as follows:—

“I have discussed the matter with Secretary and Shri Krishna Moorthi. I understand the question has been discussed thoroughly by the concerned officers. While price seems to be steep the risk of losing the bargain is also real. The lesser of the two evils seems to be to accept the offer”.

The sentence which follows upon “I understand that the question has been thoroughly discussed by the concerned officers” seems clearly to indicate what the Finance Minister had in mind viz. that the concerned officers had discussed the question of the price, considered it steep but worth accepting. This is the aspect which was the common concern of the STC, the Industries Ministry and the Economic Affairs Department. The specific responsibility of the STC was, of course, quite clear, and was accepted by the Chairman, STC, himself as including the obtaining of the necessary guarantees and warranties in regard to the supply of sulphur. The Finance Minister, while approving the proposal also clearly directed that adequate guarantees and warranties for performance by the firm should be taken by the STC. It will be clear from this that the Finance Minister was not misled into believing that enquiries had been made and that the Secretary, Economic Affairs, had satisfied himself about the genuineness of the parties or their supplies. Secretary Economic Affairs, it will be obvious from the note, had only given clarifications to the Finance Minister, on the basis of the proposal that was contained in the note, and not held out assurances other than contained in the note. This will be evidence from the fact that the Finance Minister agreed that the conditions should be imposed, as suggested in the note itself about STC getting guarantees and warranties. Under Finance Minister's instruction, the condition was not only incorporated in the formal communication to the STC, but was communicated to them over the telephone all of which shows that the Department of Economic Affairs and the Finance Minister were throughout wary of the aspect of genuineness of the offer and the need to exercise caution on this score.

APPENDIX XV

Summary of Conclusions/Recommendations contained in the Report

S. No.	Reference to para No. of the Report	Summary of Conclusions/Recommendations
1	2	3
1	14	It is seen that Oval Industries Inc., New York had not done any business in sulphur prior to the time the discussion was held between Muskat brothers and Chairman, S.T.C. in April, 1966. It is only as a result of this discussion that this firm took interest in sulphur and subsequently made an offer in August, 1966. As events proved, the supplies envisaged under the offer did not materialise.
2	15	The Committee find that in February, 1966, S.T.C. had been asked by Government to look into the possibilities of importing sulphur into India. There would, therefore, have been no objection in Chairman, S.T.C. enquiring about availability of sulphur from Embassies abroad or persons or firms established in the trade.
3	18	It is seen that the Secretaries of the Ministries of Finance, Industry and Agriculture knew that Oval Industries themselves were not mining sulphur nor were engaged in the sulphur trade. Most of the sulphur producers in U.S.A. were known in the trade circles. Offers of supply of sulphur from non-traditional sources had been in small quantities. Therefore the offer of any firm to supply 360,000 tons of sulphur over 12 months i.e., about 30,000 tons a month especially from a firm which had not done any business in sulphur in the past, could raise doubts about the possibilities of such supplies materialising.
4	19	Considering the fact that Oval Industries as well as their agents in India M/s. Amarjyothi were fresh entrants in the sulphur trade and

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also considering the magnitude of the contract coupled with tight sulphur position in the world market, the Committee feel that before putting up the proposal to Finance Minister, the Secretaries of the Ministries concerned should have asked S.T.C. the basis on which it considered 30,000 tons of sulphur per month as genuine offer and one workable even for a major sulphur producer of the world.

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The Committee find that very little scrutiny was exercised by the S.T.C. and officers of the Ministries concerned on merits of the offer. The decision of the Secretaries concerned related to the acceptance of the offer at \$ 55 per ton which was higher than the rate at which purchases had been made previously. As regards the genuineness of the proposal, they had relied solely on the judgment of S.T.C. The Committee are of the view that the statement of the Secretary, Department of Economic Affairs that "the question has been discussed thoroughly by the concerned officers" was misleading in as much as no enquiries about the genuineness of the parties or the sources of their supplies were made by the concerned officers nor the S.T.C. deemed it fit to bring it to their notice that the transaction had developed at their initiative and that the Indian and American firms were new to the business.

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In as much as Muskat brothers came in contact with S.T.C. for the first time in April, 1966 only and the supplies under the first contract had not materialised, the Committee feel that the STC would have been well-advised not to have entered into a much bigger contract running into several crores with a firm then hardly known to it and which was proposing to enter a new line of business whose supply position was very difficult.

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It is noticed that although S.T.C. informed the Oval Industries on the 23rd August, 1966 about the acceptance of their offer it did not call for Dun and Bradstreet Report on the credentials of the firm till the 25th August, 1966. There is nothing to indicate that serious efforts were made to expedite receipt of reports before the signing of the contract on 7th September, 1966.

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8	42	<p>Most of the contracts entered into by S.T.C. have been for one or two shiploads and the largest single contract has been for 60,000 tons. The contract for deliveries of 30,000 tonnes of sulphur every month for a year was six times bigger than the biggest contract that had ever been signed by S.T.C. That such large deliveries were considered "not impossible" and "not unrealistic" indicates that the Corporation had no clear idea of the sulphur trade and relied too much on representation of firms than on its own judgment about the availability of sulphur in the world market and the capacity of the party to fulfil the contract.</p>
9	50	<p>The Committee feel that the stipulation under which S.T.C. agreed that the letter of credit would become operative on Oval Industries furnishing the performance bond was not enough because in the event of a default such a performance bond would not have enabled S.T.C. to recover the sum indemnified. Since S.T.C. had not done any business with the firm earlier, the Committee feel that by opening the letter of credit the Corporation took graver risk than was warranted by the circumstances of the case. In fact, if the contract had not been cancelled in time, the Corporation might have involved itself in avoidable litigation and loss of money.</p>
10	56	<p>The Committee are of the view that Oval Industries had made the offer to S.T.C. on the assurance of North and South Trust Co. that it would be able to supply sulphur. The effort of Oval Industries to conclude this deal was in the nature of a speculation in a new line selected because Chairman, S.T.C. had indicated to that firm that India was searching for sulphur supplies. S.T.C. being aware of the background might have made proper investigations and enquiries from other sulphur suppliers and producers.</p>
11	58	<p>The Committee suggest that the balance amount of Rs. 47,500 due from Oval Industries by way of compensation for the infructuous deal should be recovered early.</p>
12	72	<p>Considering all aspects of the matter, the Committee are of the view that the entire deal</p>

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was finalised with the good offices of Shri M. R. Dutt and Major Vipin K. Khanna and that the firm of M/s. Amarjyothi was set up as there was the possibility of earning a commission of over Rs. 11 lakhs on the sulphur contract. This view is strengthened by the following facts:

- (i) Shri Dutt had been meeting S.T.C. officials in connection with the sulphur offer although he himself had no standing in the firm of M/s. Amarjyothi.
- (ii) The firm was created with Shrimati Dutt as one of the partners, as otherwise there was no necessity of creating a separate firm. M/s. D.S.S. Industries which was known to Shri Dutt had already been doing export-import business and the functions of M/s. Amarjyothi were not intended to be different.
- (iii) The Chairman, S.T.C. had met Muskat brothers in U.S.A. in April, 1966 and had mentioned India's sulphur requirements. The offer of Oval Industries would have normally been made to S.T.C. direct. Shri Dutt was acting as a channel between Muskat brothers and S.T.C. in connection with leather business and through his efforts the creation of M/s. Amarjyothi and its appointment as Indian agents later was made possible.
- (iv) The sulphur deal with S.T.C. was the first transaction negotiated by M/s. Amarjyothi and from the information supplied it can be presumed that this firm has not done any business of consequence ever since.

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On the question of S.T.C.'s dealings with M/s. Amarjyothi, the Committee's views are as follows:—

S.T.C.'s officials had not proceeded in a cautious manner in dealing with this offer. Shri M. R. Dutt had been known to S.T.C. since April, 1966. He did not represent any firm in India or abroad in any official capacity. Reference to him

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as an 'associate' of Muskat brothers without any record to that effect is too vague to be relied upon for doing business with him by an institution owned by Government. S.T.C.'s dealings with him have been only in his individual capacity. The Committee consider that the propriety of S.T.C. addressing communications to Shri M. R. Dutt who had no *locus standi* in the transaction at that stage needs to be examined. The letter dated 17th October, 1967 received from M/s. Oval Industries has obviously been procured by S.T.C. because during evidence before the Committee S.T.C. failed to establish his *locus standi*.

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Some sugar mills in the country are using sulphur for refining purposes while others employ the carbonisation process which does not require sulphur. The Committee understand that the carbonisation process is slightly costly but the recovery of sugar is larger. Since there is world shortage of sulphur and it involves foreign exchange the Committee suggest that Government shou'd induce the sugar mills that are using sulphur to switch over to the carbonisation process. Similar efforts should be made in other fields where substitution of sulphur is possible.

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III

The Committee are surprised how a matter which was considered at length by the Committee of Secretaries and their recommendations were to be placed before the Cabinet Sub-Committee could be by-passed by the Ministry of Commerce. There was a gap of about three weeks from the date of meeting of the Committee of Secretaries and the date of issue of the canalisation order. The Committee cannot believe that new developments could have taken place to such an extent as would justify issue of canalisation order immediately. In fact there is no evidence to support such a view. Even if any such urgency was felt, there was no difficulty in calling a meeting of the Cabinet Sub-Committee. The Committee feel that the proper course for the Minister was to have placed the matter before the Cabinet Sub-Committee at the earliest possible opportunity instead of taking an *ad hoc* decision overruling the recommendations of the Committee of Secretaries.

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The Committee also find that the decision regarding canalisation was taken on the basis of oral representations received by the Minister of Commerce about the acute scarcity of sulphur. The order of the Minister communicated through the note dated 26th August, 1966 of Shri S. Ramachandran (Joint Secretary, Ministry of Commerce) does not indicate the intention behind the issue of the order or the basis for the issue of such an order. The Committee regret to point out that the decision of the Minister which was based on "oral" representations received by him was ill-advised and not justified in the circumstances, especially in view of the fact that the policy regarding import of sulphur was discussed by the Committee of Secretaries only three weeks earlier and the matter was pending before the Cabinet Sub-Committee for decision. It should be considered whether as a safeguard it would not be proper to evolve a procedure that in such matters in future no final orders should be notified without the concurrence of the Cabinet. In other words, if any matter is pending before the Cabinet or a Cabinet Sub-Committee, any independent decision changing the existing policy should not be taken by a Minister till a decision has been given by the Sub-Committee or Cabinet.

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It is seen that the offer of M/s Oval Industries for supply of 360,000 tonnes of sulphur was accepted on the 23rd August, 1966 and the decision of the Minister of Commerce for canalisation of sulphur was communicated on the 26th August, 1966. STC for some time past had been in favour of canalisation as is seen from the minutes of the meeting held on the 5th August, 1966. The Committee, therefore, have a feeling that the prospects of large supplies materialising out of this offer influenced STC and in turn the Minister of Commerce, which led to the decision to canalise imports.

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The Committee find that the circumstances which led to the decision of the Minister of Commerce ordering canalisation are not known. They feel that Government should lay down a procedure making it incumbent on a Minister

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to record reasons where he orders reversal of policy without there being anything in writing before him, so that at any later date the intention behind the passing of such orders does not remain obscure.

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Upto the time of passing of the canalisation order STC had entered into sulphur contracts under a barter deal or Colombo Plan or USA Aid. In pursuance of Minister of Commerce's order, the Chief Controller of Imports and Exports, canalised all imports of sulphur through STC. No other written instructions were issued to STC to exclusively undertake this work. The Committee feel that the proper course for the Ministry would have been to issue a written direction to STC to undertake all future imports of sulphur and other commodities mentioned in the Notification issued by the Government in as much as this course of action was being imposed on STC. The Committee suggest that whenever Government desire a public undertaking to accept any responsibility or pursue any course of action which is beyond its normal course of business, they should issue written directions. This would enable a clear appreciation of the functions of an undertaking carried out in its own commercial judgment and those undertaken in accordance with the specific policy or direction of Government.

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The Committee find that the note prepared by the Ministry of Industry was sent to the Ministry of Commerce on the 21st September, 1966. The note put up to the Cabinet Sub-Committee was actually signed by the Secretary, Ministry of Industry on the 29th October, 1966. The Committee consider it highly regrettable that the Ministry of Commerce gave its concurrence without mentioning the fact that the Minister had in the meantime ordered canalisation of sulphur through STC. They fail to understand why this fact could not be brought to the notice of the Ministry of Industry at any time after 21st September, 1966 and before the meeting of the Cabinet Sub-Committee. It is no less surprising that other Ministries and especially the Ministries of Industry and Finance who had been processing the offers for supply of sulphur and

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knew the procurement policy for import of sulphur, also overlooked to mention such a basic change of policy.

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It seems that after the canalisation order was issued there was opposition from actual users and established importers and the general view of the Ministries was that in the prevailing position regarding supply of sulphur, the canalisation order was inopportune. From what has been stated above, the Committee feel that the decisions taken by the Economic Secretaries at the meeting held on the 5th August, 1966 were incorporated in the note dated the 29th October, 1966 while the information regarding issue of canalisation order on the 27th August, 1966 was withheld. The Committee suggest that an enquiry should be made to find out how the concurrence of the Ministry of Commerce was given without mentioning about canalisation of sulphur and responsibility fixed in the matter. The Committee are also not convinced that the information regarding canalisation was not deliberately withheld from the Sub-Committee. The proposed enquiry should, therefore, cover this aspect also.

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It is seen that for import of sulphur the country was depending upon monopoly suppliers in America acting through their two Indian agents i.e. M/s Dharamsi Morarji & Co. and M/s. EID/Parry Ltd. who were working closely through their monopoly suppliers. When import of sulphur was canalised through STC in August 1966, S.T.C. took initiative in contacting various foreign parties for supply of sulphur. The Corporation, however, found it impossible to break the ring of monopoly suppliers in USA/Canada who wanted to deal with their Indian agents directly and not through a State trading organisation in India. Thus, the advantage that was thought to accrue as a result of canalisation did not materialise and the expectations of supply of sulphur during the year 1967 became so uncertain that the policy of canalisation had to be reversed in January, 1967. This change of policy brought about under the pressure of foreign monopolists and their Indian agents did no credit to Government. This should be a lesson for the

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future. While adopting any such policy, proper steps and sufficient precautions should be taken to meet the challenge of Indian and foreign monopolists who might try to frustrate the efforts of a public undertaking.

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It appears that there has been a general rise in export price of sulphur from the year 1965 onwards. The devaluation of the Indian rupee in June, 1966 has adversely affected the import costs. Thus the landed cost of sulphur had steeply increased from an average of Rs. 280 per tonne in 1965-66 to Rs. 537.18 in February, 1967, a rise of 90 per cent. It is also seen that commercial imports from non-traditional suppliers of sulphur cost much more than imports from traditional suppliers. The Committee feel that the country's dependence on "spot" purchases, which cost more, should be reduced to the minimum. They, therefore, suggest that Government should examine entering into long term contracts with foreign suppliers to ensure a regular flow of imports at economical prices until such time as the indigenous sources of supply of sulphur as also use of alternative raw materials for fertiliser and other sulphur using industries are adequately developed. In choosing suppliers, dependence on one supplier or one group of suppliers should be avoided.

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The need for development of indigenous sources for production of sulphur and development of alternative sources of raw materials, with a view to achieve self-sufficiency and save scarce foreign exchange, cannot be over-emphasised. Hitherto in the schemes started for India's industrial development, the production of sulphur had not received special attention, probably because of limited requirements of the country and also easy availability of imports. Now while the demand has been increasing, the imports, besides rise in price, have become uncertain. Government might direct its special attention to indigenous production of sulphur.

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It is seen that the position regarding supply of sulphur for the year 1967-68 is not unsatisfactory. As regards future policy regarding import of sulphur, the Committee feel that in the

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interests of the country canalisation through a Government agency will be a desirable objective as it can result in purchases being made at economic prices. It would also avoid unhealthy competition among Indian buyers which is likely to arise in times of shortage and in a market where there are few sellers and too many buyers. However, the Committee are of the view that canalisation by STC should be resorted to only when it proves its capacity of importing sulphur regularly and in sufficient quantities at reasonable prices and wins the confidence of importers and actual users in India as also of foreign suppliers.

Sl. No.	Name of Agent	Agency No.	Sl. No.	Name of Agent	Agency No.
7.	Bahree Brothers, 188, Lajpatrai Market, Delhi-6.	27	33.	Bookwell, 4 Sant Narakari Colony, Kingsway, Camp, Delhi-9.	96
28.	Jayana Book Depot, Chaparwala Kuan, Karol Bagh, New Delhi.	66		MANIPUR	
29.	Oxford Book & Stationery Company, Scindia House, Connaught Place, New Delhi—1.	68	34.	Shri N. Chaoba Singh, News Agent, Ramlal Paul High School Annex, Imphal.	77
30.	People's Publishing House, Rani Jhansi Road, New Delhi.	76		AGENTS IN FOREIGN COUNTRIES	
31.	The United Book Agency, 48, Amrit Kaur Market, Pahar Ganj, New Delhi.	88	35.	The Secretary, Establishment Department, The High Commission of India, India House, Aldwych, LONDON, W.C.—2.	
32.	Hind Book House, 82, Janpath, New Delhi.	95			

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