

SIXTH REPORT

COMMITTEE ON PUBLIC UNDERTAKINGS

(2005-2006)

(FOURTEENTH LOK SABHA)

**MMTC LIMITED - TRADE IN GOLD (IMPORT OF GOLD
BY MMTC)**

**MINISTRY OF COMMERCE & INDUSTRY
(DEPARTMENT OF COMMERCE)**

(Action Taken by the Government on the recommendations contained in the 6th Report of the Committee on Public Undertakings (13th Lok Sabha) on MMTC – Trade in Gold (Import of Gold by MMTC)



**Presented to Lok Sabha on 22.08.2005
Laid in Rajya Sabha on 22.08.2005**

**LOK SABHA SECRETARIAT
NEW DELHI**

August 2005 / Sarvana 1927 (S)

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COMPOSITION OF COMMITTEE ON PUBLIC UNDERTAKINGS

(2005 – 2006)

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Shri Rupchand Pal

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3. Shri Gurudas Dasgupta
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5. Shri Suresh Kalmadi
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- | | | |
|----|-------------------|--------------------|
| 1. | Shri John Joseph | Secretary |
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| 3. | Shri J. P. Sharma | Director |
| 4. | Shri Ajay Kumar | Assistant Director |

INTRODUCTION

I, the Chairman, Committee on Public Undertakings having been authorized by the Committee to submit the Report on their behalf, present this Sixth Report on Action Taken by the Government on the recommendations contained in the Sixth Report of the Committee on Public Undertakings (13th Lok Sabha) on MMTC Ltd. – Trade in Gold (Import of Gold by MMTC).

2. The Sixth Report of the Committee on Public Undertakings (2002-03) was presented to Lok Sabha on 30th July, 2001. Action Taken Replies of the Government to the recommendations contained in the Report were received on 19.4.2005. The Committee on Public Undertakings considered and adopted this Report at their sittings held on 17th August, 2005. The Minutes of the sitting are given in Appendix – I.

3. An analysis of the action taken by the Government on the recommendations contained in the 6th Report (2002-03) of the Committee is given in Appendix -II

New Delhi
17 August, 2005
 26 Sravana 1927(S)

Rupchand Pal
 Chairman,
 Committee on Public Undertakings

CHAPTER I

REPORT

This Report of the Committee deals with the action taken by the Government on the recommendations contained in the Sixth Report (Thirteenth Lok Sabha) of the Committee on Public Undertakings (2002-2003) on “MMTC Limited – Trade in Gold (Import of Gold by MMTC)” which was presented to Lok Sabha on 30th July, 2001

2. Action Taken notes have been received from Government in respect of all the recommendations contained in the Report. These have been categorized as follows :

- (i) Recommendations/Observations that have been accepted by the Government : (Chapter II)

Sl. Nos. 1, 3, and 4, (Total 3)

- (ii) Recommendations/Observations which the Committee do not desire to pursue in view of Government's replies :(Chapter III)

Sl. Nos. 2 and 5 (Total 2)

- (iii) Recommendations/Observations in respect of which replies of Government have not been accepted by the Committee:(Chapter IV)

Sl. No. 6 (Total 1)

- (iv) Recommendations/Observations in respect of which final replies of the Government are still awaited : (Chapter V)

NIL (NIL)

3. The Committee will now deal with the action taken by the Government on some important aspects of the recommendations in the succeeding paragraphs.

I. RECOMMENDATIONS AT SL. NOS . 1 TO 5

4. The Sixth Report (Thirteenth Lok Sabha) on MMTC Limited – Trade in Gold was based on Audit Paragraph No. 6.3 in the C&AG's Report No. 3 (Commercial) of 1998. The report dealt with various issues raised in the C&AG's report relating to the Import of Gold. The Committee in the Report had recommended for

investigation by the Central Vigilance Commission (CVC) or the Central Bureau of Investigation (CBI) on some of the issues like – turning down by MMTC the reasonable offer of the Bank of Nova Scotia to supply gold in 1984 and alleged suspicious involvement of one Shri Amarnath, a Senior Group General Manager of MMTC (Recommendation at S.No. 1); mysterious involvement of unsolicited intermediary M/s Shattaff in Gold import by MMTC (Recommendation at S.No. 2); Special favours shown to the Union Bank of Switzerland (UBS) in the matter of selection of supplier of gold (Recommendation at Sl. No. 3); inclusion of restrictive clause in the Agreement with UBS that MMTC should not enter into agreement for supply of gold from any other party thereby compromising the interests of MMTC (Recommendation at Sl. No. 4); the reasons for continued import of gold from UBS at higher rate of interest despite getting an erratic supply and that too after signing contract with another supplier of gold namely, Credit Suisse bank (Recommendation at Sl. No. 5).

5. From the final action taken reply received from the Government on 19th April, 2005, it may be seen that on all the five recommendations made at S.Nos. 1 to 5 of the Sixth Report where the Committee had recommended for probe by CVC or CBI, the CBI had given their investigation report in which it has been concluded that there is no evidence to prosecute the officers of MMTC in a court of law. But there have been procedural irregularities and system deficiencies which have been brought to the notice of the Government. For instance, in the case of action taken reply to recommendation at Sl. No. 2 regarding involvement of unsolicited intermediary in gold imports, the CBI in their inquiry report has inter-alia pointed out that :-

“.....MMTC was in touch with M/s Shattaf Trading Co. and had been dealing with the Company in the matter of supply of gold on behalf of Credit Suisse. Inquiry has shown that there were defects in the process followed for selection of supplier of gold. For instance, Technical Examiner, CVC had also opined that the offers were received through telex instead of sealed bid system and the whole process seems to be quite arbitrary, ad-hoc and non transparent. However, these were essentially procedural irregularities and were not sufficient to impute criminality to the conduct of the officials who dealt with the matter. The procedural irregularities were attributable partly to systematic inadequacies and partly to the concerned officials of MMTC viz. Mrs. Girija Bhan, then Divisional Manager and Mr. I.P. Hazarika, then Director (Finance). However, no action is possible against them at this stage since both of them have retired from the services of MMTC long back.”

6. The Committee, while taking note of the findings of the CBI, recommend that the Government must direct MMTC to comply with the procedures laid down for carrying out their business activities in future to avoid recurrence of procedural irregularities pointed out by the CBI which have been attributed to systemic inadequacies. The Committee further recommend that complete transparency should be observed in future in matters involving selection of a party from amongst many competitors from whom offers are received for executing an agreement so as to reflect total fairness and transparency in the transactions.

II. DELAY IN FURNISHING THE ACTION TAKEN REPLIES

7. The action taken replies of the Government on the recommendations, contained in the Sixth Report (13th Lok Sabha) which was presented to the Parliament on 30th July, 2001, were required to be furnished to this Secretariat within six months of presentation of the report i.e. by 29th January, 2002. However, the Government has furnished the final action taken replies only on 19 April, 2005 i.e. after a lapse of more than 3 years. The Ministry have stated that in pursuance of Committee's recommendations for a thorough probe by an

independent agency preferably by CBI and CVC, the Ministry of Commerce immediately referred the matter to CVC for probe on 29/10/2001. The CVC, however, informed that it does not have an in-house investigating machinery and suggested that the matter may be referred to CBI. Accordingly, the matter was referred to CBI on 8/2/2002. The CBI, in turn, suggested to the department that the matter may be entrusted to Economic Offences Wing of Delhi Police as CBI was saddled with investigations of a large number of cases relating to import of gold by MMTC Limited. This was examined by the Ministry and the CBI was advised on 23/7/2002 to commence investigations nevertheless, as this would rather facilitate the earlier investigations relating to import of gold already entrusted to it by CVC on the basis of recommendation of Task Force Report.

8. The Ministry of Commerce had been seeking extension of time for furnishing Action Taken Replies from time to time on the pretext that CBI has not furnished its report. In September, 2003, the Ministry of Commerce had furnished the Action Taken Replies. On scrutiny of the Action Taken Replies, it was noticed that 5 out of 6 Action Taken Replies to the recommendations were only interim in nature, as the CBI Report was pending. Thereafter, the Ministry while seeking extension of time up to 30th March, 2005 for furnishing Action Taken Replies, intimated that preliminary inquiry registered by CBI on 20th June, 2003 was at the initial stage and its finalisation was likely to take some more time as it involved scrutiny of voluminous files and examination of MMTC officials. While considering the request of the Ministry for extension of time for furnishing Action Taken Replies, the Committee decided to hear the views of the representatives of the Ministry of Personnel and CBI with a view to ascertain the reasons for taking long

time in completion of the investigation and also the present status of the investigation.

9. Accordingly, the representatives of the CBI appeared before the Committee for oral evidence on 22 November, 2004. While giving the reasons for delay in completion of the investigation by the CBI and also the present status, the Director, CBI, in his deposition submitted that:-

“.....It is most humbly submitted that a reference was made to CBI from the Ministry of Commerce on 14.2.2002 forwarding therewith a copy of the Sixth Report of the PUC regarding MMTC in which a request for inquiry / investigation into recommendations No. 1 to 5 of Chapter III of the Report was made.

The matter was examined in CBI and it was considered necessary to obtain some additional information to be able to take up the matter for a regular inquiry. Accordingly, a request was sent to the Ministry of Commerce on 27.9.2002 to provide the necessary additional information. In fact, since the matter was old, the Commerce Ministry set up a Task Force, the Report of which was received only on 12.5.2003. Since it was an old matter, the Ministry of Commerce also took substantial time to respond to our request and the final response of the Ministry of Commerce was received only on 25.3.2003. As a result of the inquiries into the matter, an inquiry by the CBI could be started by registering a preliminary inquiry on 13th June, 2003.

After the preliminary inquiry was registered, the Ministry of Commerce was requested to make available the relevant files. But MMTC took about two months to hand over the original documents to CBI, it being a very old matter.

During the course of inquiries, several other references were also made to MMTC. But MMTC took 1 to 6 months time to respond to these references saying that the records pertaining to the matter not being readily traceable. Further, during the course of inquiries, several key officials of MMTC, who had by now retired from the service, could not be located quickly as it took time to trace them out. Two key officials who have dealt with the matter, Ms. Girija Bhan and Mr. I.P. Hazarika could be finally examined only in March, 2004.

Since the matter was highly technical in nature and involved financial implications, a reference was made to the Chief Technical

Examiner, Central Vigilance Commission in March, 2004 to evaluate the different offers received by MMTC in November, 1986 for supply of gold. The Central Vigilance Commission took about three months to furnish its report in the matter. Field inquiries in this matter were finally completed on 16.6.2004. Thereafter, the matter was examined at various levels in CBI including the examination from legal point of view. The CBI finally took a decision in the matter on 13.9.2004 and a self-contained report in respect of the inquiry conducted by the CBI in the matter was sent to the Ministry of Commerce on 16.11.2004. The inquiry in this matter is complete. The CBI has come to the conclusion that there is no evidence to prosecute the officers of MMTC in a court of law. But there are procedural irregularities which have been pointed out in our self-contained report to the Ministry of Commerce of 16.11.2004 to take action as they deem appropriate.

So, so far the CBI is concerned, the matter is closed and the inquiry report has been submitted to the Ministry of Commerce.”

10. The Committee note with concern that the final action taken replies to the recommendations contained in the Sixth Report have been furnished by the Government after a period of more than 3 years. In this regard, the Committee note that after the presentation of the Report the Government has taken 3 months time to initially refer the matter to the Central Vigilance Commission (CVC) for probe and no reason for this delay has been furnished by the Government. Even thereafter, when CVC had expressed their inability to conduct the probe on the ground of not having any in-house investigating machinery, the matter kept shuttling between the CBI and the Ministry. The CBI could be finally convinced only on 23 July, 2002, i.e. after a period of one year from the presentation of the Report, to investigate the matter and CBI could start its inquiry by registering a preliminary inquiry only on 13th June, 2003. The Committee express its dissatisfaction on the slow progress on such an important issue. The Committee, therefore, believe that there has been slackness on the part of the Government in taking prompt actions on the recommendations of the Committee. The

Committee, therefore, strongly feel that the Government should have taken all necessary steps in time and could have furnished the Action Taken Reply within the stipulated time. The Committee recommend that in future Government should promptly take action on the recommendations contained in all Parliamentary Committee reports.

III. RECOMMENDATION AT SL. NO. 6 REGARDING THE MISSING FILE

11. The Committee in their Sixth Report have recommended with regard to the missing file as follows:-

“The Committee have been informed that necessary papers regarding import of gold could not be made available to the Audit for examination due to the fact that the relevant file was untraceable in the Ministry of Commerce. The Committee have been informed that the file still remained untraceable and nobody could be held responsible for the missing of the file. The Ministry are also not sure whether the file had been weeded out at all as they had stated in their reply that it could have most probably been weeded out. The Committee have been further informed by the Ministry that attempts were made to trace the file in the Section and the Record Room which did not produce any positive results. The Committee wonder as to how such sensitive files involving important decisions taken by the Government could have been classified as files that could be weeded out, especially, when such transactions are subjected to detailed scrutiny by the Audit. The Committee also wonder as to how the Ministry could launch its search efforts when they felt that the file could have been weeded out. It is an established practice of office management that every file in the Section is properly entered in the file register and when action is complete, its fate about its retention is decided and proper entries are made in the file registers, if they are to be weeded out. It is obvious from this episode that the Ministry of Commerce does not have a proper system of records management and there have been no regular system of checks through inspections by senior officers about the status of record management, despite government orders existing on the subject and there was complete abdication of responsibility on the part of officers in senior supervisory capacities in the Ministries which had been taken advantage of by unscrupulous elements to ensure their escape from many wrong doings. The Committee take a very serious note of the manner in which the Ministry of Commerce is being managed in respect of affairs of record management and in the observance of office procedure and desire that appropriate action should be initiated to fix responsibility on the senior-most officer who dealt with the subject at a level not below the level of Joint Secretary and also to initiate remedial measures in the Ministry at least

from now on so that such unfortunate incidences do not recur which could be taken advantage of by wrong doers. “

12. The Government (Ministry of Commerce and Industry) in their action taken reply dated 23rd July, 2003 have stated as follows:

“It has already been reported to COPU vide O.M. No.12/23/97-EP(LSG)/FT(M&O) dated 29/10/2001 that the file relating to the issue bearing No.10/22/86 EP(LSG) was not traceable despite several efforts both in the section as well as in the Record Room. The Vigilance Section of the Ministry of Commerce which probed this issue has stated that the enquiry could not make much headway due to the following:

i) The section concerned reported that file movement registers were only available from 1993 onwards and no movement records were available for the period 1987-88.

ii) Though the file movement records of Commerce Secretary's office indicated the relevant dates on which the file had been submitted to CS, backward tracing of the file was not possible as the movement registers for the relevant period were not available with the office of Joint Secretary (Surjit Mitra) and in the EP(Gem&Jewellery) Section.

iii) As per Retention Schedule, the file registers are required to be maintained for 15 years while file movement registers are required to be maintained for one year. The Manual of Office Procedure is silent about any other method to help in tracing the movement of a file after a lapse of 10 years or so.

iv) Shri P.N. Gopalkrishna, PS and Shri H.R.Sharma, P.A. who were posted with the then Joint Secretary(R.Dayal) have retired from Government service on 30.9.91 and 30.1.93.

Subsequently, therefore, the vigilance file was closed with the approval of Commerce Secretary. However, to prevent loss of files, detailed guidelines were issued by O&M Section vide their O.M.No.1-34(9)/98-O&M dated 25.3.1998.

The Gem & Jewellery Division of the Department of Commerce have since reconstructed the missing file by getting the necessary papers available with MMTC, Ministry of Finance and RBI. Efforts are also being made to maintain the records henceforth in a systematic manner and in accordance with Office Procedure guidelines.”

(Ministry of Commerce & Industry (Department of Commerce))

The Remarks of C&AG on the reply of the Government was as follows:

“As detailed guidelines have now been issued for proper maintenance of files, we have no further comments.”

The Comments of the Ministry on the above mentioned remarks of C&AG is as follows :

“No comments.”

Comments of the Committee

13. The Committee are not satisfied with the reply of the Government on the recommendation pertaining to missing documents on import of gold. While taking a serious note of the manner in which the records were being maintained in the Ministry of Commerce and the observance of office procedure, the Committee had desired that the Government should initiate appropriate action to fix responsibility on the senior-most officer concerned and also to initiate remedial measures to avoid recurrence of such unfortunate incidences in the future. The Committee, however, note that action taken reply of the Ministry does not reflect any serious efforts on their part in fixing the responsibility. Instead, the Ministry have simply washed away their hands by stating that movement registers for relevant periods were not available with the office of the Joint Secretary and in the EP (Gem & Jewellery) section and two P.As posted with the concerned officers have since retired from service. According to the Ministry, their Manual of Office Procedure is silent about any method to help in tracing the movement of a file after a lapse of 10 years or so. The Committee wonder as to whether the Manual on Office Procedure was serving any purpose at all. In the opinion of the Committee, the justification that the missing file was reconstructed by getting necessary papers from MMTC, Ministry of Finance and RBI, cannot absolve

Ministry of the serious lapses committed in preserving important documents and fixing the related responsibility.

14. The Committee, however, note that to prevent the loss of files and to keep track of the movement of files among the officers detailed guidelines have since been issued by the Ministry. In this regard, the Committee while reiterating their recommendation about fixing the responsibility for the missing file, feel that the matter should not remain unresolved but must be taken to a logical conclusion. The Committee further recommend that the detailed guidelines issued by the Ministry should be scrupulously followed so as to avoid recurrence of such unfortunate incidences in the future.”

CHAPTER –II

RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT.RECOMMENDATION SL. NO. 1 OFFER FROM BANK OF NOVA SCOTIA FOR GOLD IMPORT:

The Committee note that under the successive Exim policies beginning from the term 1985-88 onwards, MMTC has been trading in gold to help export of jewellery. Under various schemes of the Exim Policies, MMTC was to import gold and supply it to approved gold jewellery manufacturing units which were mainly 100% Export Oriented Units and also those situated in the Export Processing Zones apart from those in the Domestic Tariff Area. MMTC could give gold to these units on loan basis or on outright sale basis subject to the condition that the export of jewellery made out of this imported gold was made within three months from the date of sale or loan. Under the various schemes, 86096 Kgs. of gold was imported by MMTC during the period of 9 years beginning with 1988-89 and ending with the year 1996-97. Out of this, 83731 kgs of gold jewellery was stated to have been exported out of the country upto 1996-97. The Committee find it that in order to import gold for supply under various schemes, advance action was started in 1984 itself so that the schemes under Exim Policy of 1985-88 could be implemented without any delay. The Committee note that in February, 1985, MMTC proposed to the Ministry of Commerce for approval, their decision to enter into an agreement with Bank of Nova Scotia for supply of gold on consignment basis. But the Ministry of Commerce did not take any positive action on the proposal and in November 1986, fresh offers were invited from five foreign banks, although the Bank of Nova Scotia extended its offer upto December 1985. The Ministry did not offer any explanation to Audit as to what prevented it from processing the offer of Nova Scotia Bank to a logical end. According to Audit, this offer was allowed to lapse, despite its extension upto December 1985. However, the Ministry sought to explain to the Committee stating that this could not have been processed earlier, as the Schemes for Import of Gold were notified in June 1988 only. The Committee are not convinced with the reply of the Ministry and its attempt to portray this episode as a separate incident in isolation, in view of the developments later in the matter of import of gold which reveal special favours shown to another supplier of gold who came into the scheme through an unsolicited intermediary and the Committee cannot but help come to the conclusion that there appears to be a design behind this move to deliberately scuttle a reasonable offer in order to accommodate another firm on some extraneous considerations. The Committee wish to point out here that the unsolicited intermediary firm, was one M/s Inter Gold (India) Ltd., which incidentally had one Shri Amarnath, a Senior Group General Manager of MMTC in it as a Director and this firm received a loan of Rupees One Crore from MMTC. Interestingly, Shri Amarnath who became a Director in the Board of Directors of M/s Inter Gold (India) Ltd. in June 1987 shares his postal address with one Ms.

Usha Khandwala who had been a Director of this Company since 23 August 1985 and the date of incorporation of this firm was 20 May, 1985.

The Committee are of the view that if the offer of the Bank of Nova Scotia was too early to merit any processing in view of the fact that gold imports schemes came into being only in June, 1988, then on the same count, the offers invited in 1986 from five foreign banks were also too premature to merit any consideration, although a flimsy excuse has been cited that the draft gold import schemes took some concrete shape by then. The Committee cannot buy this argument further in view of the fact that MMTC has been importing gold for various schemes from 1986 onwards under the Exim Policy of 1985-88 and there was no unreasonable haste in calling for offers in the year 1985 itself for the schemes meant for the year 1985-88. The Committee, therefore, feel that there was a pre-meditated deliberate design behind this seemingly innocuous isolated incident, which requires a thorough probe by an independent authority such as the Chief Vigilance Commissioner and the Central Bureau of Investigation to get at the truth.

Reply of the Government:

1) The Ministry had already clarified that the offers received by several banks for supply of gold to MMTC on loan or consignment basis were evaluated by MMTC on commercial considerations for final selection of the competitive bid. The basic function of the Ministry was to frame policies and procedures keeping in view the overall export policies of the Government of India, while the commercial aspects of trade proposals are examined by the agency concerned, in this instance, by MMTC. The three member Task Force set up by the Ministry of Commerce to go into various aspects of C&AG's report, has examined the reconstructed file made available to them by the Ministry and come to the conclusion that right through the process of finalizing the scheme, the concerned authorities viz. Ministry of Commerce, Ministry of Finance and RBI were not only informed, but that necessary approvals were taken in the final selection of the Union Bank of Switzerland as a supplier of gold.

2) As recommended by Committee on Public Undertakings for a thorough probe by an independent agency preferably by CBI and CVC, the Department immediately referred the matter to CVC for probe on 29/10/2001. The CVC, however, informed that it does not have an in-house investigating machinery and suggested that the matter may be referred to CBI. Accordingly the matter was referred to CBI on 8/2/2002. The CBI, in turn, suggested to the department that the matter may be entrusted to Economic Offences Wing of Delhi Police as CBI was saddled with investigations of a large number of cases relating to import of gold by MMTC Limited. This was examined in the Department and the CBI was advised on 23/7/2002 to commence investigations nevertheless, as this would rather facilitate the earlier investigations relating to import of gold already entrusted to it by CVC on the basis of recommendation of Task Force Report.

3) In their inquiry report, CBI have informed that the enquiries have revealed that Bank of Nova Scotia submitted proposals to SBI in August, 1984 on the basis of discussions held with SBI and Ministry of Commerce to facilitate the current gold replenishment programme to begin on August 15, 1984 and for supply of gold on consignment/loan/sale on an on-going basis. The same was sent by Ministry of Commerce to MMTC after which the latter sent formal proposal in October, 1984 expressing its intention to function as one of the outlets for the replenishment of gold to exporters. The enquiry has revealed that various departments of the Government raised a number of queries on the proposed scheme of MMTC. After a lot of deliberations with MMTC officials, the scheme was ultimately approved by the Government in December, 1987. Finally the agreement as approved by the Government was signed by MMTC with UBS on 30th August, 1988.

4) In view of the above, it may be seen that although the action was initiated by MMTC in 1984 at the instance of Ministry of Commerce, the final agreement was signed only in August, 1988 after getting due clearance from GOI.

5) As regards the observations of Committee regarding the role of Shri Amar Nath, a Senior Group Manager of MMTC in sanction of loan of Rs. 1 crores to M/s Inter Gold (India) Ltd., who became a Director in the Board of Directors in the said firm, CBI has concluded that Shri Amar Nath did not play any role in sanction of loan. He also did not play any role in grant of licence to said firm for setting up its unit in SEEPZ, Bombay. At that point of time there was no rule in MMTC prohibiting any senior MMTC official joining a private concern after retirement. Regarding the sharing of postal address with one Ms. Usha Khandwala, Shri Amarnath has informed during the course of inquiry that building comprising the flats in which he shifted on becoming the Director in the Company is owned by Ms. Usha Khandwala.

6) In view of the above no action on the part of this Department is required to be taken.

(Ministry of Commerce & Industry (Department of Commerce)
O.M. No. 12/23/97-EP(LSG)/FT(M&O) dated 14th March, 2005)

Para-wise remarks of Office of C&AG on the Reply of the Government:

1) to 4) Even though the offer from Bank of Nova Scotia lapsed on 31.12.85, it was ready to consider fresh offers for supply of gold beyond that period after GOI approval. The approval of GOI could not materialise due to bureaucratic delays as confirmed by the CBI report.

5) In 1987, MMTC (ECDA) Rules did not forbid any retired MMTC official from joining private concerns with which MMTC had business dealings. Soon after retirement of Shri Amarnath, the MMTC(ECDA) Rules, 1975, was amended in 2000 providing for such prohibition. Since CBI have also termed the joining of

Shri Amarnath as Director in M/s Inter Gold (India) Ltd., as unethical, we have no further comments.

Further reply of the Government

In view of the findings in the CBI report as summarised in para 4) & 5) above, no further comments of this Department are called for.

(Ministry of Commerce & Industry (Department of Commerce)
O.M. No. 12/23/97-EP(LSG)/FT(M&O) dated 19th April, 2005)

RECOMMENDATION SL. NO. 3 SELECTION OF UNION BANK OF SWITZERLAND FOR SUPPLY OF GOLD:

The Committee note that the Union Bank of Switzerland was finally selected for supply of gold although they submitted their offer four days after the other banks have sent their offers and no invitation was sent to Union Bank of Switzerland to participate in the bid by MMTC. The Committee have been informed that a team of the representatives of MMTC visited Switzerland in January 1987 to hold discussions with UBS and thereafter MMTC informed the Ministry of Commerce in March 1987 that the proposal of UBS was the most attractive one. Subsequently, the contract with UBS was finalised in August 1988 with the approval of Ministry of Commerce and also the Ministry of Finance. When the Audit demanded the details of the analysis of the various offers leading to the selection of the UBS as the successful bidder, the relevant papers were not available in the records produced to the Audit. However, the Audit examined only some papers indicating the comparative position of the offers received. On an examination of the comparative terms quoted by UBS and the Bank of Nova Scotia, the Audit found that the Bank of Nova Scotia had a clear edge over UBS in respect of the interest rate offered. The Audit found that the contract was awarded to UBS which had quoted an interest rate at 2.5 per cent per annum, although the Bank of Nova Scotia had offered a rate of interest at 1.75 per cent per annum. According to the Audit, the contract awarded to UBS without any manifest effort to negotiate with the Bank of Nova Scotia to get the best of the terms of trade. The offer of Bank of Nova Scotia stipulated that a rate of 1.75 per cent per annum will be charged for a period of 90 days only and interest on gold loaned beyond the period of 90 days would be charged at rates higher than 1.75 per cent per annum. The Audit found that the UBS had actually charged rates of interest which exceeded 2.5 per cent on several occasions, although they had quoted a flat interest rate of 2.5 per cent per annum. MMTC had tried to explain to the Committee stating that the UBS was selected in view of the consideration that the consignment facility offered by Bank of Nova Scotia did not compare favourably with that of Union Bank of Switzerland. It was further explained that the consignment period was restricted to only 60 days by Bank of Nova Scotia, while the Union Bank of Switzerland had offered consignment facility without any restriction on that period.

The requirement of furnishing the guarantee was also dropped by Union Bank of Switzerland. MMTC tried to justify the agreement stating that the exporters under the Exim Policy could keep the gold on loan for a period of 120 days and beyond in respect of certain schemes which would have necessitated payment to Bank of Nova Scotia at rates higher than 1.75 per cent per annum beyond the period of 90 days. MMTC also stated that the Union Bank of Switzerland offered a flat rate of 2.5 per cent per annum irrespective of the loan period. Therefore, MMTC stated that the offer of Bank of Nova Scotia both in respect of consignment facility as well as loan facility was found by them not better than the offer of UBS.

The Committee note that the acceptance of the rate of interest at 2.5 per cent stipulated by UBS had made the company pay interest at the higher rate of 2.5 per cent for the first 90 days as most of the jewellery units in the normal course would have to export the jewellery within a period of three months from the date of issue of gold to them. Since Bank of Nova Scotia stipulated only 1.75 per cent rate of interest for the first 90 days, which is the normal period for exporting the gold back, the Committee feel that the consideration shown to this clause was completely irrelevant for the purpose of making comparative evaluation of bids. Again the Committee feel that MMTC had accepted an unreasonable condition from UBS that the rate of interest could be modified at any point of time, as this implies that there was no upper/outer limit on the rate of interest that could be imposed, whereas in the offer of Bank of Nova Scotia the maximum limit itself was a definite 2.5 per cent per annum. The Committee wish to point out that even this rate of interest could have been negotiated with the Bank of Nova Scotia as it had earlier offered in 1984 a rate of interest of only 1.5 per cent in August 1984 which they sought to retain till the end of December, 1985 through an extension. Had the earlier offer of Bank of Nova Scotia been kept alive or had MMTC negotiated with the Bank of Nova Scotia citing their earlier offer, the Committee feel that MMTC could have obtained a better deal. The Committee also wish to point out that on 30 October, 1984, even Republic National Bank of New York, Hongkong quoted a rate of interest of one per cent per annum, which could have been used to negotiate favourably with the Bank of Nova Scotia.

The Committee, therefore, do not approve of accepting any term of unlimited interest liability which had been incorporated in the agreement executed with UBS. The Committee wish to point out that there has been no consistency about the approach in deciding the source of supply of gold, as they found that the Company visited London Bullion Market in the year 1984, while in the year 1987 they visited only Switzerland to negotiate with only one bank, and further, in August, 1994, they addressed only those banks which were the members of London Bullion Market Association.

The Committee, therefore, came to the conclusion that special favours have been shown to the Union Bank of Switzerland who was obviously recommended by Shattaff Trading Company, putting our interest to a great

disadvantage in the matter of payment of interest in this deal. The Committee recommend that the circumstances under which the UBS was selected should be thoroughly probed by an independent authority, preferably by the CVC/CBI and they desire that a statement should be submitted to the Committee about the action taken in this matter within three months of presentation of this Report.

Reply of the Government:

1) It has already been pointed out by the Ministry that the final evaluation of offers from various banks was to be decided by MMTC on commercial considerations and the Ministry had no role to play. However, as recommended by COPU for a thorough probe by an independent agency preferably by CBI and CVC, the Department immediately referred the matter to CVC for probe on 29/10/2001. The CVC, however, informed that it does not have an in-house investigating machinery and suggested that the matter may be referred to CBI. Accordingly the matter was referred to CBI on 8/2/2002. The CBI, in turn, suggested on 12/6/2002 to the department that the matter may be entrusted to Economic Offences Wing (EOW) of Delhi Police as CBI was saddled with investigations of a large number of cases relating to import of gold by MMTC Limited. This was examined in the Department and the CBI was advised on 23/7/2002 to commence investigations nevertheless, as this would rather facilitate the earlier investigations relating to import of gold already entrusted to it by CVC on the basis of recommendation of Task Force Report.

2) CBI has concluded that not only the delayed response of UBS was entertained but all other delayed offers were also considered. Thus from the consideration of the delayed offer of UBS the inference that it was shown favour cannot be drawn.

3) CBI has also concluded that the offer of Bank of Nova Scotia and that of UBS were non-comparable in the sense that while the UBS had offered unlimited period during which the gold consigned to MMTC could be drawn, the Bank of Nova Scotia had stipulated a condition in its offer that the entire consignment shall have to be drawn by MMTC within 60 days and in case of failure to do so, an additional consignment fee of 0.625% of rate of gold per annum over the above the consignment fee will be charged. Subsequently, when the UBS agreed to withdraw the guarantee clause, its offer became most attractive. This withdrawal of guarantee clause clinched the issue in its favour as according to officials of MMTC no other prospective supplier including the Bank of Nova Scotia agreed to drop this clause. Hence, the decision of MMTC to enter into a contract with UBS was proper and no inference that favour had been shown to the UBS can be drawn from the said decision.

4) In view of the above, no action on the part of this Department is required to be taken.

(Ministry of Commerce & Industry (Department of Commerce)
O.M. No. 12/23/97-EP(LSG)/FT(M&O) dated 14th March, 2005)

Para-wise remarks of Office of C&AG on the Reply of the Government:

1) Factual. No further comments.

2) & 3) In the absence of complete documents (as only comparative statement of offers received was shown to audit), comparison of the offers was not possible as has been observed by the Technical examiner/CVC also. Hence the reply that offer of UBS was attractive is not acceptable and cannot suffice.

Further reply of the Government

In view of the findings in the CBI report as summarised in para 2) & 3) above, no further comments of this Department are called for.

(Ministry of Commerce & Industry (Department of Commerce)
O.M. No. 12/23/97-EP(LSG)/FT(M&O) dated 19th April, 2005)

RECOMMENDATION SL. NO. 4 RESTRICTIVE CLAUSE IN THE AGREEMENT WITH UBS

The Committee note that MMTC accepted a peculiar condition of unspecified significance in their agreement with UBS according to which, the company was prevented from executing any contract for obtaining gold further from any other party without making full disclosure to UBS and if it is to be done, it should be done only after taking prior permission from UBS. Besides this, there was no penal clause provided to take care of delays in effecting supplies with UBS, which later on became quite erratic. The Committee further note that the restrictive clause regarding not entering into loan agreement with any other banks/parties had been dropped by UBS in December 1997. The Ministry of Commerce when asked to explain as to why such a clause was included, stated that File No. 10/22/86-EP(LSG) dealing with this matter, being an old file was not traceable and the Ministry of Commerce, however, had given their approval for the proposal of MMTC only in principle, leaving out all matters of commercial consideration purely to the discretion of MMTC. When asked about the action taken for fixing responsibility in the matter of loss of file, the Ministry stated that the file being an old one could have most probably been weeded out and attempts were made to trace the file in the Section concerned and in the record room of the Ministry, which did not produce any positive results. The Committee have been further informed by MMTC that the clause in question did exit in the initial draft agreement itself and had been accepted on the ground that a lender has to necessarily exercise control on the increase of liabilities on the borrower and the RBI and the Dept. of Economic Affairs had already examined the agreement clause-by-clause and only after their approval, it was signed by MMTC.

The Committee wish to point out that the very fact that this restrictive clause was dropped by the Bank in December, 1997 amply shows that there was

no compulsive reason in including this kind of restrictive clause in the agreement initially, as commercial considerations do not drastically change in such deals. The Committee are of the opinion that there was complete lack of transparency in the manner in which the entire agreement with UBS was executed, compromising the interests of the company for some possible unexplained extraneous considerations and therefore a thorough probe is recommended by an independent authority in this matter.

Reply of the Government:

1) As recommended by Committee on Public Undertakings for a thorough probe by an independent agency preferably by CBI and CVC, the Department immediately referred the matter to CVC for probe on 29/10/2001. The CVC, however, informed that it does not have an in-house investigating machinery and suggested that the matter may be referred to CBI. Accordingly the matter was referred to CBI on 8/2/2002. The CBI, in turn, suggested on 12/6/2002 to the department that the matter may be entrusted to Economic Offences Wing (EOW) of Delhi Police as CBI was saddled with investigations of a large number of cases relating to import of gold by MMTC Limited. This was examined in the Department and CBI was advised on 23/7/2002 to commence investigations nevertheless, as this would rather facilitate the earlier investigations relating to import of gold already entrusted to it by CVC on the basis of recommendation of Task Force Report.

2) CBI has mentioned that the original restrictive clause forwarded by UBS was examined by RBI and modified to make it less stringent and the clause so modified was ultimately included in the final agreement with the approval of RBI and Ministry of Commerce. Inquiry also revealed that the restrictive clause as available in the signed agreement was further toned down in favour of MMTC as compared to the one suggested/ reworded by MMTC in its communication to Ministry of Commerce and agreed upon by RBI. Further, it has also been revealed that it is a common practice to demand such clause in these types of agreements by the suppliers to safeguard their interest since their exposure is quite high in such cases. CBI has concluded that this allegation had not been substantiated on the basis of the instant inquiry.

3) In view of the above, no action on the part of this Department is required to be taken.

(Ministry of Commerce & Industry (Department of Commerce)
O.M. No. 12/23/97-EP(LSG)/FT(M&O) dated 14th March, 2005)

Para-wise remarks of Office of C&AG on the Reply of the Government:

- 1) Factual. No further comments.
- 2) As already pointed out in para, a peculiar clause was accepted for which there was no compulsion for inclusion as also observed by COPU. As such, reply of the Ministry (based on CBI enquiry) is not tenable as acceptance of the clause comprised the standard of transparency in awarding contracts.

Further reply of the Government

In view of the findings in the CBI report as summarised in para 2) above, no further comments of this Department are called for.

(Ministry of Commerce & Industry (Department of Commerce)
O.M. No. 12/23/97-EP(LSG)/FT(M&O) dated 19th April, 2005)

CHAPTER III

RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF GOVERNMENT REPLIES

RECOMMENDATION SL. NO. 2 INVOLVEMENT OF UNSOLICITED INTERMEDIARY IN GOLD IMPORTS:

The Committee find that in 1986, MMTC invited fresh offers for supply of gold from five foreign banks, namely, Bank of Nova Scotia, Credit Suisse, Republic Bank of New York (Hong Kong), Mat Dist. Limited (London) and Mase Ag (London). The Committee further find that another bank, namely, M/s Union Bank of Switzerland (UBS) was not at all addressed by MMTC in the matter. Despite no communication sent to UBS, the Bank sent its offer uninvited four days after the receipt of other offers. The Audit have observed that the offer of UBS was on the initiative of M/s. Shattaff Trading Company, Dubai (Shattaff) – who was initially involved in the bid, as the message calling for offers were communicated to one of the five banks mentioned above through Shattaff. The circumstances in which the services of Shattaff were solicited were not on record. Since Shattaff had no formal business relationship with MMTC and was not working for any overt consideration, their involvement in the process leading to the finalisation of agreement with 'UBS for the import of gold was unusual'. Besides this, the firm Shattaff was also kept informed by MMTC of its plans to visit Switzerland in January 1987 to finalise the arrangements for import of gold into India. In July, 1997, MMTC informed Audit that Shattaff was involved in the matter, as the firm was 'perhaps' buying gold from various banks. The Ministry of Commerce informed the Audit that the offers were received by MMTC directly and not through Shattaff.

The Ministry further added that since Shattaff was aware of the MMTC's entry into gold import, they had voluntarily recommended the name of Union Bank of Switzerland to MMTC based on their own experience. The Committee fail to understand as to why the message calling for the offers to one of the five banks should be routed through M/s. Shattaff of Dubai, as though the bank had never had any postal address of its own. The Committee further note that on an earlier occasion when the offer from Bank of Nova Scotia was processed, MMTC visited London, to discuss matters with the leading bullion firms in London whereas in the present case they sought to visit Switzerland and had intimated this fact to M/s. Shattaff. The Committee wonders as to why M/s. Shattaff should be involved in the matter when the management of MMTC was unsure of the status of M/s. Shattaff and have made a statement that Shattaff was 'perhaps' buying gold from the banks referred to above. The Committee are also at a loss to know as to why similar firms who have the like standing of Shattaff in Dubai and else where were not approached in the matter to facilitate the trade enquiries. The most surprising thing in the whole episode is that M/s. Shattaff Trading Co. did not seem to have received any fee or payment for their services and the services were obviously had been rendered 'free of cost'. The Committee have every reason to believe

under these circumstances that M/s Shattaff Trading Company had some pecuniary interest in the matter and their link with M/s. Inter Gold (India) Ltd. in which a senior officer of MMTC was also a Director definitely indicates that apart from M/s. Shattaff, there were many others whose interest have been looked after by this deal. The involvement of M/s Shattaff trading company in Dubai in the whole matter excites suspicion in the mind of the Committee and to their utter surprise they find that the Ministry of Commerce have never bothered to question the involvement of M/s. Shattaff in the whole deal. It is also a matter for consideration as to why initially UBS bank was not addressed at all in the matter, although later on the MMTC maintained during evidence that Union Bank of Switzerland was a renowned name. The Committee are convinced that M/s Shattaff trading company, which was engaged by MMTC to communicate a message about gold import, did not maintain any commercial confidentiality and had committed breach of trust by leaking out the details of the offer to UBS. The Committee, therefore, find no substance in the statement of MMTC that 'Shattaff is nobody so far as we are concerned' made during evidence. The Committee condemn the way the company has sought to explain the arrangement away stating that Shattaff had just made a reference to MMTC to help them tap another source with whom M/s. Shattaff had been having dealings. In this connection, the Committee wish to point out that it is not an accepted practice in any trading/dealing by governmental organizations to accept uninvited offers, especially, where the mode of transaction was not through a public tender. The Ministry of Commerce, when asked to explain their role in the matter, had sought to wriggle out of the situation stating that the basic function of the Ministry was to frame policies and procedures, while the commercial aspects of the trade proposals are examined by the agency concerned and accordingly the Ministry had nothing to say about the decision taken by MMTC at its own level. Besides, the Ministry had stated that the file relating to this matter in the Ministry was untraceable, it being an old document. Although an enquiry was instituted in the Ministry about the loss of the file it could not be still located. The Committee find that the involvement of M/s. Shattaff trading company in the matter of import of gold has remained an unexplained mystery and no positive action was taken to find out the real motive of their involvement by any authority in the Ministry. The Committee, therefore, recommend that a thorough probe into the matter should be undertaken to find out the circumstances under which this firm came to be engaged and to find out if their involvement was a *bona fide* business requirement. The Committee further recommend that responsibility should be fixed for the loss of file concerned in the Ministry and efforts should be made to reconstruct the file in order to get the total picture.

Reply of the Government:

1) The Ministry had already clarified that the offers received by several banks for supply of gold to MMTC on loan or consignment basis were evaluated by MMTC on commercial considerations for final selection of the competitive bid. The basic function of the Ministry was to frame policies and procedures keeping in view the overall export policies of the Government of India, while the commercial aspects of trade proposals are examined by the agency concerned, in this

instance, by MMTC. The three member Task Force set up by the Ministry of Commerce to go into various aspects of C&AG's report, has examined the reconstructed file when made available to them by the Ministry and come to the conclusion that right through the process of finalizing the scheme, the concerned authorities viz. Ministry of Commerce, Ministry of Finance and RBI were not only informed, but that necessary approvals were taken in the final selection of the Union Bank of Switzerland as a supplier of gold.

2) As recommended by Committee on Public Undertakings for a thorough probe by an independent agency preferably by CBI and CVC, the Department immediately referred the matter to CVC for probe on 29/10/2001. The CVC, however, informed that it does not have an in-house investigating machinery and suggested that the matter may be referred to CBI. Accordingly the matter was referred to CBI on 8/2/2002. The CBI, in turn, suggested to the department that the matter may be entrusted to Economic Offences Wing of Delhi Police as CBI was saddled with investigations of a large number of cases relating to import of gold by MMTC Limited. This was examined in the Department and the CBI was advised on 23/7/2002 to commence investigations nevertheless, as this would rather facilitate the earlier investigations relating to import of gold already entrusted to it by CVC on the basis of recommendation of Task Force Report.

3) In their report CBI have established that MMTC was in touch with M/s Shattaf Trading Co. and had been dealing with the Company in the matter of supply of gold on behalf of Credit Suisse. Inquiry has shown that there were defects in the process followed for selection of supplier of gold. For instance, Technical Examiner, CVC had also opined that the offers were received through telex instead of sealed bid system and the whole process seems to be quite arbitrary, ad-hoc and non transparent. However, these were essentially procedural irregularities and were not sufficient to impute criminality to the conduct of the officials who dealt with the matter. The procedural irregularities were attributable partly to systematic inadequacies and partly to the concerned officials of MMTC viz. Mrs. Girija Bhan, then Divisional Manager and Mr. I.P. Hazarika, then Director (Finance). However, no action is possible against them at this stage since both of them have retired from the services of MMTC long back.

4) In order to see that irregularities do not re-occur in future, the following system/procedure has since been put in place:

- a) The scheme of import of Gold by the nominated agencies has been revised w.e.f 01.04.1998 where exporters are required to submit a separate Bank guarantee towards cost of gold and concessional import duty to the nominated agency. Immediately on default, the bank guarantees are to be encashed and customs duty element deposited with Customs.
- b) The Scheme for extending financial assistance in the form of Packing Credit has been discontinued by MMTC since September, 1995.
- c) As directed by Ministry of Commerce, MMTC sources its gold from suppliers accredited with London Bullion Manufacturers Association. For

the past few years, MMTC has been inviting tender for supply of gold supplier from LBMA members.

(Ministry of Commerce & Industry (Department of Commerce)
O.M. No. 12/23/97-EP(LSG)/FT(M&O) dated 14th March, 2005)

Para-wise remarks of Office of C&AG on the Reply of the Government:

- 1) Factual. No further comments.
- 2) Factual. No further comments.
- 3) The contention of Audit in para has been confirmed by the enquiry conducted by CBI. Besides CVC's Technical examiner has also pointed out procedural irregularities and system deficiencies.
- 4) No further comments as company has taken action so as that these irregularities/ system deficiencies do not occur.

Further reply of the Government

In view of the findings in the CBI report as summarised in para 3) above, no further comments of this Department are called for.

(Ministry of Commerce & Industry (Department of Commerce)
O.M. No. 12/23/97-EP(LSG)/FT(M&O) dated 19th April, 2005)

Comments of the Committee

Please see para 6 of Chapter I

RECOMMENDATION SL. NO. 5 CONTINUED IMPORTS FROM UBS EVEN AFTER SIGNING CONTRACT WITH CREDIT SUISSE BANK:

The Committee have been informed that the supply of gold by UBS became erratic and many a times they could not supply the full quantity that was indented. Therefore, in August 1994, MMTC felt that total dependence on UBS would not be in the interest of MMTC. Since MMTC believed that better terms could be obtained from other banks, if they diversify the source of gold supplies for the same premium as was being paid to UBS, in October, 1994. It invited offers from six banks which were members of London Bullion Market Association.

The Committee have been informed that out of the six offers received, the offer from Credit Suisse Bank was found to be better than that of the others and it was broadly on the same lines as that of the other existing arrangements with the UBS. The only difference was that the Credit Suisse Bank did not offer loan facility

and the gold was to be imported from them on outright purchase basis. However, the Committee find that the premium charged by UBS was higher than the premium charged by Credit Suisse Bank, entailing payment of additional amounts to UBS, if MMTC were to continue their imports from them. The Committee have been informed that MMTC continued to import gold from UBS at a higher premium, although they had entered into a fresh agreement with Credit Suisse Bank for supplies at a lower premium. A test check conducted by Audit of the records of only one sub-regional office at Jhandewalan and that too only for one year, (i.e. 1995-96) revealed that out of 4348 Kgs of gold imported, only 2150 kgs were supplied by Credit Suisse Bank, leaving a balance of 2198 kgs of gold imported from UBS.

The Audit had observed that continued gold import from UBS in this case resulted in payment of additional premium of Rs.10.04 lakhs under one scheme for one office for one year alone. Had the entire gold been purchased from Credit Suisse Bank instead of UBS for all other schemes for all other units for the entire period after entering into contract from October 1984 onwards, MMTC could have avoided payment of a significantly very high sums by way of additional premium, which right now the Committee are unable to hazard a guess. The Committee also note with concern the attempts by MMTC to evade the question of supply of details about the number of times the supply of gold was delayed by UBS and the extent to which the supply was short of the indented quantity. The only way the MMTC sought to justify the continued purchase was by stating that ready availability from stock for longer consignment period was the deciding financial factor for obtaining gold from UBS. The Committee wish to point out that this argument of ready availability from stock contradicts the earlier stand taken by MMTC that the supply from UBS became erratic in October, 1994 to justify their steps to diversify the source of supply.

The Committee also note another argument of MMTC that the demand for gold was increasing year after year and it would not have been possible for any single bank to cater to the increasing demands for gold under various schemes. The Committee wonder as to why more than one alternate sources of supply could not be identified, if the entire quantity of gold could not have been procured from a single source. If MMTC could have arrangements with Credit Suisse Bank apart from UBS for supply of gold, nothing prevented them from negotiating with other banks as well to obtain, appropriate terms, as MMTC admittedly held a view that for the same premium as was being paid to UBS better terms could be obtained from other sources. The Committee wish to point out that further in the year 1996-97 and also in 1997-98, MMTC continued to import significant quantities (1115 kgs and 1782 kgs respectively) from UBS which clearly reveals the continued patronage of the bank by MMTC for certain unexplained reasons. The Committee are unable to view this continued purchase from UBS as an independent happening and they are inclined to consider it only as an episode in a continuing plot, which was conceived mainly with a view to favour a particular foreign bank continuously from the year 1988 onwards despite bad track records and, even after finding other sources of supply in October, 1994. The Committee wonder that alternate sources of supply may have been found out only to

demonstrate to UBS that they should feel obliged to MMTC management who kept alive their agreement, despite having other sources and the Committee here feel that there is something more than what meets the eye in the entire deal. The Committee, therefore, are convinced that this is a fit case for a thorough inquiry by an independent authority and recommend to the Government that appropriate action should be initiated by them to satisfy themselves that there was no ulterior motive in securing continued supplies of gold from UBS.

Reply of the Government:

1) As recommended by Committee on Public Undertakings for a thorough probe by an independent agency preferably by CBI and CVC, the Department immediately referred the matter to CVC for probe on 29/10/2001. The CVC, however, informed that it does not have an in-house investigating machinery and suggested that the matter may be referred to CBI. Accordingly the matter was referred to CBI on 8/2/2002. The CBI, in turn, suggested on 12/6/2002 to the department that the matter may be entrusted to Economic Offences Wing (EOW) of Delhi Police as CBI was saddled with investigations of a large number of cases relating to import of gold by MMTC Limited. This was examined in the Department and the CBI was advised on 23/7/2002 to commence investigations nevertheless, as this would rather facilitate the earlier investigations relating to import of gold already entrusted to it by CVC on the basis of recommendation of Task Force Report.

2) CBI have concluded that Credit Suisse was selected by MMTC in 1994 as an alternative source of supply of gold due to increased requirement and erratic supply from UBS. UBS was not replaced by Credit Suisse as a supplier of gold to MMTC. The comparison of quantities of gold imported from UBS and Credit Suisse during 1994-97 has reinforced the fact that higher quantities of gold were imported from UBS because it had agreed to provide gold on loan basis as also on outright sale basis whereas Credit Suisse was supplying only on outright sale basis. Gold on loan scheme was far more popular with the exporters.

3) Enquiry has also revealed that no monetary loss had been caused to MMTC on account of payment of higher premium to UBS since the premium charges were borne by the exporters/ domestic manufacturers.

4) In view of the above, no action on the part of this Department is required to be taken.

(Ministry of Commerce & Industry (Department of Commerce)
O.M. No. 12/23/97-EP(LSG)/FT(M&O) dated 14th March, 2005)

Para-wise remarks of Office of C&AG on the Reply of the Government:

1) Factual. No further comments.

2) & 3) The fact remains that additional premium was paid to UBS even if there was no impact on MMTC. Further the very rationale of calling for quotations to procure gold on best terms was forfeited.

Further reply of the Government

In view of the findings in the CBI report as summarized in para 2) & 3) above, no further comments of this Department are called for.

(Ministry of Commerce & Industry (Department of Commerce)
O.M. No. 12/23/97-EP(LSG)/FT(M&O) dated 19th April, 2005)

Comments of the Committee

Please see para 6 of Chapter I

CHAPTER IV

RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE.

RECOMMENDATION SL. NO. 6 THE MISSING FILE:

“The Committee have been informed that necessary papers regarding import of gold could not be made available to the Audit for examination due to the fact that the relevant file was untraceable in the Ministry of Commerce. The Committee have been informed that the file still remained untraceable and nobody could be held responsible for the missing of the file. The Ministry are also not sure whether the file had been weeded out at all as they had stated in their reply that it could have most probably been weeded out. The Committee have been further informed by the Ministry that attempts were made to trace the file in the Section and the Record Room which did not produce any positive results. The Committee wonder as to how such sensitive files involving important decisions taken by the Government could have been classified as files that could be weeded out, especially, when such transactions are subjected to detailed scrutiny by the Audit. The Committee also wonder as to how the Ministry could launch its search efforts when they felt that the file could have been weeded out. It is an established practice of office management that every file in the Section is properly entered in the file register and when action is complete, its fate about its retention is decided and proper entries are made in the file registers, if they are to be weeded out. It is obvious from this episode that the Ministry of Commerce does not have a proper system of records management and there have been no regular system of checks through inspections by senior officers about the status of record management, despite government orders existing on the subject and there was complete abdication of responsibility on the part of officers in senior supervisory capacities in the Ministries which had been taken advantage of by unscrupulous elements to ensure their escape from many wrong doings. The Committee take a very serious note of the manner in which the Ministry of Commerce is being managed in respect of affairs of record management and in the observance of office procedure and desire that appropriate action should be initiated to fix responsibility on the senior-most officer who dealt with the subject at a level not below the level of Joint Secretary and also to initiate remedial measures in the Ministry at least from now on so that such unfortunate incidences do not recur which could be taken advantage of by wrong doers. “

Reply of the Government:

It has already been reported to COPU vide O.M. No.12/23/97-EP(LSG)/FT(M&O) dated 29/10/2001 that the file relating to the issue bearing No.10/22/86 EP(LSG) was not traceable despite several efforts both in the section as well as in the Record Room. The Vigilance Section of the Ministry of

Commerce which probed this issue has stated that the enquiry could not make much headway due to the following:

- i) The section concerned reported that file movement registers were only available from 1993 onwards and no movement records were available for the period 1987-88.
- ii) Though the file movement records of Commerce Secretary's office indicated the relevant dates on which the file had been submitted to CS, backward tracing of the file was not possible as the movement registers for the relevant period were not available with the office of Joint Secretary (Surjit Mitra) and in the EP(Gem&Jewellery) Section.
- iii) As per Retention Schedule, the file registers are required to be maintained for 15 years while file movement registers are required to be maintained for one year. The Manual of Office Procedure is silent about any other method to help in tracing the movement of a file after a lapse of 10 years or so.
- iv) Shri P.N. Gopalkrishna, PS and Shri H.R.Sharma, P.A. who were posted with the then Joint Secretary(R.Dayal) have retired from Government service on 30.9.91 and 30.1.93.

Subsequently, therefore, the vigilance file was closed with the approval of Commerce Secretary. However, to prevent loss of files, detailed guidelines were issued by O&M Section vide their O.M.No.1-34(9)/98-O&M dated 25.3.1998 (copy enclosed).

The Gem & Jewellery Division of the Department of Commerce have since reconstructed the missing file by getting the necessary papers available with MMTC, Ministry of Finance and RBI. Efforts are also being made to maintain the records henceforth in a systematic manner and in accordance with Office Procedure guidelines.

(Ministry of Commerce & Industry (Department of Commerce)
O.M. No. 12/23/97-EP(LSG)/FT(M&O) dated 14th March, 2005)

Remarks of Audit

As detailed guidelines have now been issued for proper maintenance of files, we have no further comments.

Further reply of the Government

No comments.

(Ministry of Commerce & Industry (Department of Commerce)
O.M. No. 12/23/97-EP(LSG)/FT(M&O) dated 19th April, 2005)

Comments of the Committee

Please see para 13 and 14 of Chapter I

CHAPTER V

RECOMMENDATIONS / OBSERVATIONS IN RESPECT OF WHICH FINAL
REPLIES OF THE GOVERNMENT ARE STILL AWAITED

- NIL -

New Delhi
17, August, 2005
26, Shravana, 1927(S)

RUPCHAND PAL
CHAIRMAN
COMMITTEE ON PUBLIC UNDERTAKINGS

**MINUTES OF THE 6th SITTING OF THE COMMITTEE ON PUBLIC
UNDERTAKINGS HELD ON 17th AUGUST, 2005**

The Committee sat from 1500 hrs to 1540 hrs.

CHAIRMAN

Shri Rupchand Pal

**MEMBERS
LOK SABHA**

2. Shri P. S. Gadhavi
3. Shri Suresh Kalmadi
4. Dr. Vallabhabhai Kathiria
5. Smt. Preneet Kaur
6. Shri Shriniwas Patil
7. Shri Kashiram Rana
8. Shri Mohan Rawale
9. Shri Bagun Sumbrui

**MEMBERS
RAJYA SABHA**

10. Shri Ajay Maroo

SECRETARIAT

- | | | |
|----|---------------------|--------------------|
| 1. | Shri S. Bal Shekar, | Joint Secretary |
| 2. | Shri J. P. Sharma, | Director |
| 3. | Shri S. B. Arora, | Under Secretary |
| 4. | Shri Ajay Kumar, | Assistant Director |

OFFICE OF THE COMPTROLLER & AUDITOR GENERAL OF INDIA

Shri Gulzari Lal,	Director
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2. The Committee considered and adopted the following Action Taken Reports without any modification :-

(i) Action Taken Report on action taken by the Government on the recommendations contained in the Sixth Report (13th Lok Sabha) of the Committee on Public Undertakings on MMTC – Trade in Gold (Import of Gold by MMTC).

(ii) XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX

3. The Committee also authorised the Chairman to finalise the Reports for presentation.

4. XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX

APPENDIX II**(Vide para 3 of the Introduction)**

Analysis of the Action Taken by Government on the recommendations/observations contained in the Sixth Report of the Committee on Public Undertakings (Thirteenth Lok Sabha) on “MMTC Limited – Trade in Gold (Import of Gold by MMTC)”

I.	Total number of recommendations	6
II	Recommendations that have been accepted by the Government (vide recommendations at Sl. Nos 1,3 and 4)	3
	Percentage of total	50%
III	Recommendation which the Committee do not desire to pursue in view of Government's replies (vide recommendations at Sl. Nos. 2 and 5)	2
	Percentage of total	33.33%
IV	Recommendations in respect of which replies of the Government have not been accepted by the Committee...(vide recommendations at Sl. No IV)	1
	Percentage of total	16.67 %
V	Recommendations in respect of which final replies of Government are still awaited	NIL