

PAPERS LAID ON THE TABLE
OF THE RAJYA SABHA

26 OCT 1999

11

**AVOIDABLE EXTRA EXPENDITURE
ON IMPORT OF SUGAR**

**MINISTRY OF FOOD AND CONSUMER
AFFAIRS
(DEPARTMENT OF SUGAR AND
EDIBLE OILS)**

AUTHENTICATED

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**PUBLIC ACCOUNTS
COMMITTEE
1998-99**

TWELFTH LOK SABHA

**LOK SABHA SECRETARIAT
NEW DELHI**

ELEVENTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1998-99)

(TWELFTH LOK SABHA)

AVOIDABLE EXTRA EXPENDITURE ON IMPORT OF SUGAR

MINISTRY OF FOOD AND CONSUMER
AFFAIRS
(DEPARTMENT OF SUGAR AND EDIBLE OILS)

*Action Taken on 45th Report of Public Accounts Committee
(10th Lok Sabha)*



LOK SABHA SECRETARIAT
NEW DELHI

April, 1999/Vaisakha, 1921 (Saka)

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CONTENTS

	PAGE
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (1998-99)	(iii)
INTRODUCTION	(v)
CHAPTER I Report	1
CHAPTER II Recommendations or observations which have been accepted by Government.	11
CHAPTER III Recommendations or observations which the Committee do not desire to pursue in view of the replies received from Government.	18
CHAPTER IV Recommendations or observations replies to which have not been accepted by the Committee and which require reiteration.	19
CHAPTER V Recommendations or observations in respect of which Government have furnished interim replies/no replies. .	33
APPENDIX	
Conclusions and Recommendations	34
PART II	
Minutes of the sitting of Public Accounts Committee held on 26.04.1999	40

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(1998-99)

Shri Manoranjan Bhakta — *Chairman*

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3. Shri Ram Tahal Chaudhary
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3. Shri Devender Singh — *Deputy Secretary*
4. Shri Rajeev Sharma — *Under Secretary*
5. Shri B.S. Dahiya — *Assistant Director*

INTRODUCTION

I, the Chairman, Public Accounts Committee having been authorised by the Committee present the Report on their behalf, do present this Eleventh Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 45th Report (10th Lok Sabha) on "Avoidable Extra Expenditure on Import of Sugar".

2. This Report was considered and adopted by the Public Accounts Committee at their sitting held on 26 April, 1999. Minutes of the sitting form Part-II of the Report.

3. For facility of reference and convenience, the recommendations of the Committee have been printed in thick type in the body of the report and have also been reproduced in a consolidated form in the Appendix to the Report.

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

NEW DELHI;
26 April, 1999

6 Vaisakha, 1921 (Saka)

MANORANJAN BHAKTA,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

1. This Report of the Committee deals with the action taken by Government on the Committee's recommendations/observations contained in their Forty-fifth Report (10th Lok Sabha) relating to Avoidable Extra Expenditure on Import of Sugar based on paragraph 13.3 of the Report of the Comptroller and Auditor General of India for the year ended 31 March, 1991, Union Government (Civil) No. 1 of 1992.

2. The Forty-fifth Report, presented to Lok Sabha on 27th April, 1993, contains 14 recommendations/observations. Action taken notes have been received in respect of all the recommendations/observations and these have been categorised as follows:—

- (i) Recommendations/observations which have been accepted by the Government;

Sl. Nos. 1, 2, 5, 6, 7, 8, 9, 10, 11, 12

- (ii) Recommendations/observations which the Committee do not desire to pursue in the light of the replies received from Government;

— NIL —

- (iii) Recommendations/observations replies to which have not been accepted by the Committee and which require reiteration;

Sl. Nos. 3, 4, 13, 14

- (iv) Recommendations and observations in respect of which Government have furnished interim replies;

— NIL —

Avoidable Extra Expenditure on Import of Sugar

3. The Committee's examination contained in their Forty-fifth Report, 10th Lok Sabha, revealed that it had taken more than three months for the Government to accord approval for import of two lakh tonnes of sugar in August 1989 and additional quantity of one lakh tonnes in two instalments in September and October, 1989 despite the fact that the Chief Director (Sugar) on account of the very precarious stock position had stressed in his note dated 19th May, 1989 the need for import of sugar for arrival from the month of July/August, 1989. Keeping in view the then prevailing very difficult stock position of sugar, the Committee could not find any reason for the lack of urgency shown in the matter of according approval for sugar import by the concerned authorities. The Committee were surprised to note that STC, the canalising agency, expressed its inability to undertake the import in question and that the Ministry of Commerce opined that the STC should not be entrusted with the transaction.

4. The Ministry of Food had floated a tender inquiry on 23 August, 1989 which, according to them, proved infructuous because of the failure of the telex machine belonging to the Food Corporation of India during the crucial hour by which the offers were to be received. The second tender inquiry had, therefore, to be floated on 29 August, 1989. In spite of the fact that STC had no dealings with the unregistered suppliers in the past, quotations were invited both from the registered as well as unregistered parties stipulating delivery by 10th October, 1989. The Purchase Committee recommended placement of orders for the import of 2.02 lakh tonnes of sugar on seven registered tenderers, whose offers were valid till 31 August, 1989. Despite the fact that the offers of the registered parties were valid only upto 31 August, 1989, the Ministry of Food, under specific orders of the then Food Minister decided on that date to call the unregistered suppliers for discussion on 1st September, 1989, ostensibly, in view of the substantial difference in rates offered by the registered suppliers and the unregistered suppliers. The Committee had deemed it very unfortunate that the offers of the registered suppliers valid till 31st August, 1989 were allowed to expire due to opening of unfruitful negotiations, though ordinarily not permissible which eventually made the second tender enquiry infructuous. A third tender inquiry was floated inviting the offers by 19 September, 1989 for delivery of sugar by 20 October, 1989. Finally, orders were placed in September, 1989 for import of 2.18 lakh tonnes of sugar on six registered parties at rates ranging between US \$517.80 and \$520 per tonne. The Committee were further surprised to note that inadequate planning on the part of the Ministry of Food compelled them to float the fourth tender for procurement of an additional quantity of merely 24,000 tonnes of sugar in early October, 1989. As a result of this inquiry, separate orders for delivery of 24,000 tonnes of sugar were placed in October, 1989 at the rates of US \$519 per tonne for delivery by 20 October, 1989.

5. The Committee had noted that the average rates for which the orders were placed against third and fourth enquiries were higher by US \$11.74 per tonne over the average rates quoted in the second tender inquiry. The Committee had taken a very serious view of the extra avoidable expenditure of Rs. 4.61 crores incurred in the procurement of 2.42 lakh tonnes of sugar as a result of the third and fourth inquiries which could have been avoided by timely, careful and judicious action on the part of the Ministry of Food. The Committee were constrained to observe that if earnest steps had been taken for import of sugar immediately after 19.5.1989 when the need for such import was emphasized by the Chief Director (Sugar), the enormous extra expenditure incurred on the import of 2.42 lakh tonnes of sugar, which appeared to be virtually a blind purchase, could have been avoided altogether.

6. The Committee had deprecated the casual approach of the Ministry of Food in importing sugar after declaring the sugar availability position to be precarious. The Committee were of the definite view that if proper precautions had been taken by the concerned authorities in the Ministry of Food at all stages of the import deals, the huge resultant extra expenditure could have been avoided. The Committee had strongly disapproved and deprecated the lack of planning and concerted and coordinated approach by the Ministry of Food in the import in question. The

Committee had therefore, emphasised the need for a high level probe by an independent agency into the entire question of delayed import of sugar and the financial loss that occurred with a view to fixing responsibility.

7. The observations/recommendations made by the Committee and the Action Taken Notes furnished by the Government thereon have been reproduced appropriately in the subsequent Chapters of this Report.

The Committee will now deal with the action taken by the Government on some of their recommendations.

Failure of STC in Discharging their Responsibility (Sl. Nos. 3&4—Paragraph Nos. 1.59 and 1.60)

8. The Committee in their Report had noted that the State Trading Corporation (STC) was the canalising agency for import of sugar. The sugar was required to be imported by 10 October, 1989 and the STC was informed about this decision of the Government. Despite availability of more than two months' time between July end and 10 October, 1989, the STC had expressed their inability to import the sugar within the stipulated time taking the plea of their set procedures. The Committee found that the STC had failed to convince the Committee as to why they could not undertake, being the canalising agency, the import of sugar considered urgent in view of the precarious stock position. The more disturbing element noticed by the Committee was the view taken by the Ministry of Commerce in support of the STC. The Committee had, therefore, found that both the Ministry of Commerce and STC had failed to discharge their responsibility of effecting import of sugar in a difficult domestic situation.

9. In their Action taken note, the Ministry of Commerce has stated that the Ministry of Commerce had received on 3 August, 1989 a copy of STC's letter addressed to the Department of Economic Affairs regarding the information given to it by Food Secretary about Government's decision in principle to import 4,50,000 tonnes of refined sugar and 50,000 tonnes of raw sugar to arrive in India by the end of October, 1989 in which STC had indicated that it might not be possible to get the entire quantity within the stipulated period. Based on the position explained in the STC's letter, the matter was considered in the Ministry of Commerce at the appropriate level and a conscious view was taken that STC should not be entrusted with this transaction. A formal letter in this regard was sent to the Secretary, Department of Food on 7th August, 1989. Narrating further developments, the Ministry has *inter alia* stated that in a meeting held on 21st August, 1989 and attended, among others, by Food Secretary; Chairman, FCI; and Executive Director, STC, it was indicated by the Food Secretary that the Government had decided to import 2 lakh tonnes of sugar to be received in India in October, 1989. The Ministry has further stated that as the STC had provided the requisite expertise and advice as asked for by the Department of Food in pursuance of a decision taken in a meeting on 21 August, 1989, neither the Ministry of Commerce nor STC had failed to discharge their assigned responsibilities in the matter.

10. The Committee note that the Ministry of Commerce have simply enumerated the processing of the matter at different stages without indicating the impediments which compelled the STC to shy away from undertaking the responsibility of import of sugar. The Ministry have stated that the STC had indicated that it might not be possible to get the entire quantity within the stipulated period. It follows, therefore, that a lesser quantity, if not the entire quantity, possibly could have been imported by the STC within the time limit fixed by the Ministry of Food. The Committee notice that neither the STC nor the Ministry of Commerce made any attempt to work out the actual quantity which could have been imported by the STC within the time fixed by the Government. The STC did not respond favourably even when the quantity of import was substantially reduced by the Ministry from 5 lakh tonnes to 2 lakh tonnes in the meeting held on 21 August, 1989 in which the Executive Director, STC was present. The Committee are of the view that the STC being the canalising agency for import of sugar, and being equipped with requisite infrastructure, should have taken all positive steps so as to help ease the critical position of availability of sugar during those days in the country. The Committee have no doubt that all the subsequent developments leading to enormous loss to the public exchequer and hardship caused to the public at large due to non-availability of adequate quantity of sugar during the peak season of festivals could have been averted had STC not refused to import the sugar. The Committee, therefore, come to the inescapable conclusion that not only the STC, being the canalising agency, but also the Ministry of Commerce, being the Administrative Ministry of CTC, miserably failed even in a distress situation when the gap between demand and supply of sugar in the domestic market could be bridged through import with the intervention of STC. While deploring lack of concern on the part of the STC and the Ministry of Commerce in a critical situation like the one arising out of shortage of an essential commodity like sugar, the Committee hope and trust that Government would devise suitable and effective mechanisms to tackle such national problems so that with concerted efforts all the available resources, infrastructure and expertise are pooled together to tide over the crisis arising out of scarcity of essential commodities.

Loss of the Government in Arbitration Award (Sl. No. 13—Paragraph No. 1.69)

11. The Committee had noted that the total discount of US \$8.05 lakh claimed by the Ministry from 4 suppliers on account of late arrival of 8 vessels carrying 99,550 MT. of sugar. Bank guarantees from these 4 parties had been encashed but 3 of them had gone for arbitration before the Refined Sugar Association as per provisions in the contract. Award relating to one party had been received according to which as against the US \$343549.41 of this party, the Ministry had to pay by way of refund to this party US \$309442.92 alongwith interest from 23.8.1990 besides the cost of arbitration. The Committee had desired to know the reasons for this award having gone against the Government and also the details of the arbitrations awards relating to the other two parties.

12. In the Action Taken Note, the Ministry of Food have stated that the awards relating to all the three parties have been received. The Food Corporation of India as the assignee of the contract handled and operated the contract of import of sugar and recovered certain amounts by encashment of performance of bank guarantee to the extent of claims on account of discount or delay, despatch and demurrage, tally charges, cost of nets and slings, surveyors fees, custom and court overtime, sticher's fees, removal of dunnage, transit dues, shortage on account of insurance claim etc. The Ministry have further stated that the entire claim had not gone against them. Part of their claims have been accepted in the awards and balance amount awarded in favour of the sellers as indicated in column 6 of the tables given below in respect of each of the three firms:

M/s. S.A. Sucre Export

(in US \$)

Sl. No.	Nature of claims of FCI	Amount recovered out of PGB by FCI	Claims accepted in award	Amounts of claims rejected in award	Net amount awarded in favour of seller
1.	Discount	2,51,000.00	-	2,51,000.00	2,51,000.00
2.	Despatch/Demurrage	63,056.94	33,428.80	29,628.14	29,628.14
3.	Sling Rope Charges	530.03	530.03	-	-
4.	Customs Overtime	147.59	147.59	-	-
5.	Shortage on account of insurance claim	28,814.85	-	28,814.85	28,814.85
	Total	3,43,549.41	34,106.42	3,09,442.99	3,09,442.99

M/s. Anglo Chemical Commodities

(in US \$)

Sl. No.	Nature of claims of FCI	Amount recovered out of PGB by FCI	Claims accepted in award	Amounts of claims rejected in award	Net amount awarded in favour of seller
1.	Discount for Delay	1,21,350.00	-	1,21,350.00	1,21,350.00
2.	Despatch	1,44,580.13	43,996.11	1,00,584.02	1,00,584.02
3.	Net Sling/rope charges	10,651.48	1,847.51	8,803.97	8,803.97
4.	Surveyors fees	1,242.76	1,240.25	2.51	2.51
5.	Tally Charges	13,991.56	-	13,991.56	13,991.56
6.	Customs Overtime	1,162.76	-	1,162.76	1,162.76
7.	Port Overtime	3,337.43	-	3,337.43	3,337.43
8.	Sellers claim for demurrage	-	-	-	78,560.24
9.	Transit Dues	25,376.10	-	25,376.10	25,376.10
	Total	3,21,692.22	47,083.87	2,74,608.35	3,53,168.59

M/s. Sucden Kerry S.A.

(in US \$)

Sl. No.	Nature of claims of FCI	Amount recovered out of PGB by FCI	Claims accepted in award	Amounts of claims rejected in award	Net amount awarded in favour of seller
1.	Discount for delay	1,21,000.00	-	1,21,000.00	1,21,000.00
2.	Despatch	92,581.95	24,225.00	68,356.95	68,356.95
3.	Net Sling hire charges	8,178.24	615.85	7,562.39	7,562.39
4.	Surveyors fees	4,898.36	4,892.59	5.77	5.77
5.	Tally Charges	15,089.90	-	15,089.90	15,089.90
6.	Customs Overtime	203.88	-	203.88	203.88
7.	Port Overtime	3,571.52	-	3,571.52	3,571.52
8.	Stitchers fees	2,638.59	-	2,638.59	2,638.59
9.	Removal of Dunnage	358.93	-	358.93	358.93
10.	Sellers claim for demurrage	-	-	-	1,763.89
Total		2,48,521.37	29,733.44	2,18,787.93	2,20,551.82
Difference in W		0.50	(-) 0.01		(+) 0.51
Award		2,48,521.87	29,733.43		2,20,552.33

13. The Ministry have also submitted in brief the grounds advanced by the parties and the reasons for rejection or acceptance of the claims in arbitration. In regard to the claim against the item "discount for delay" which was the substantial claim in the entire transaction, the Ministry have stated as under:

"The sellers argued that as per clause 3 of the contract, the buyer could either cancel any vessel which arrived late or they could extend the delivery period at a "discount as may be mutually agreed to between the buyer and the seller". The Buyers chose to accept the cargoes without a discount having been agreed, either at the time or subsequently. It followed, the sellers contended, that if the Buyers were at that stage to advance a claim at all in respect of late arrival, they had to do so on the basis of a claim for proven damages. The Buyers had failed to produce any evidence that they had suffered any form of recoverable loss, and the claim against the bond was therefore wrongful.

The Buyers responded that they were entitled to impose a reasonable discount (which they contended this was); and that they had, in any event, suffered, *inter-alia*, loss of "good will, faith, image and reputation" as a result of the late arrival(s). They stressed the importance of the arrival dates, and the inconvenience which had been caused to them.

The arbitrators concluded that they were satisfied on the evidence that no discount was ever agreed between Sellers and Buyers; they were also satisfied that no evidence of any recoverable financial loss was submitted by the Buyers in respect of their alleged losses. In particular, the allegations of loss of goodwill etc. were unsubstantiated and unquantifiable. They, therefore, considered that the Sellers' submissions were correct. In the circumstances, they found this point in favour of the Sellers and held that the Buyers' demand on the bond(s) in respect of this head of claim was, as between Sellers and Buyers, unjustified. The awards concluded, as follows:—

- I. The Buyers were unable to substantiate a claim for a discount or damages and therefore the claims against the bond in the sum of US \$ 121,000 and US \$ 130,000 were not justified (in respect of *M/s. S.A. Sucre*).
- II. The Buyers were unable to substantiate a claim for a discount or damages and the claims against the bond in the sum of US \$ 121,350 was not justified (in respect of *M/s. Anglo Chemical commodities*).
- III. The Buyers were unable to substantiate a claim for a discount or damages and the claims against the bond in the sum of US \$ 121,000 was not justified. (in respect of *M/s. Sucden Kerry S.A.*)"

14. The Committee observe that 8 vessels carrying 99,550 MT of sugar arrived by 3 to 16 days behind the scheduled date of delivery. The information furnished by the Ministry indicates that as per clause 3 of the contract, the buyer *i.e.* the Government of India, in the case of delayed delivery, could either cancel any vessel or extend the delivery period at a "discount as may be mutually agreed to between the buyer and the seller". The Committee notice that the claim of the buyers *i.e.* Government of India in regard to the item "discount for delay" was rejected in arbitration for the failure of buyers to take requisite steps as per clause 3 of the contract and their inability to substantiate the claim for proven discount or damages before the Arbitrators. The Committee view it as a grave lapse on the part of the Ministry and a reflection on their style of functioning and professional competence, leading to substantial outflow of precious foreign exchange at a critical juncture.

15. The Committee cannot accept the submission of the Ministry that the entire claim had not gone against them. On the contrary, the Committee view it as a statement of complacency, and a belated attempt to cover up their inefficiency and incompetence. The hollowness of the claim of the Ministry becomes apparent from the table given below which indicates the difference between the amount recovered by the FCI and the amount to be paid to the seller in addition to other charges in compliance of the award of arbitration.

(in US \$)

Sl. No.	Name of the Company	Amount recovered by FCI	Amount awarded in favour of seller	Difference
1.	M/s. S.A. Sucre Export	3,43,549.41	3,09,442.99	+34,106.42
2.	M/s. Anglo Chemical Commodities	3,21,692.22	3,53,168.59	-31,476.37
3.	M/s. Sucden Kerry SA	2,48,521.87	2,20,552.33	+27,969.54
				+30,599.59

16. From the above figures, the Committee find it apparently clear that while the Ministry lost entirely its claim in respect of one firm, it succeeded to substantiate its claim only for a meagre amount against the remaining two firms. Against the favourable claims to the tune of quite negligible amount of US \$ 30,599.59 taken together from all firms, the Ministry have to pay to the sellers quite heavy amount in regard to the expenses and charges on account of the following heads as per the award of arbitration:—

- (i) Interest on the amounts of the awards @ of 6 per cent per annum from the date of draw drawn under the bonds to the date of award *i.e.* 30.12.1992;
- (ii) Cost of the arbitration assessed on standard basis; and
- (iii) Additional costs of the sellers incurred in pursuing the arbitration against FCI.

17. The Committee observe that though the Ministry have not indicated the total amount payable by them to the sellers, undoubtedly the amounts to be paid on all the above heads by the Ministry to the sellers are many times more than those payable by the seller firms to the Ministry. The Committee are saddened to note that the concerned agencies responsible for making claims and pursuing the matter in the arbitration process miserably failed in discharging their duties. The Committee deplore the negligence, incompetence and insensitivity of the Ministry which stood exposed at all stages of the transactions right from inviting of tenders to lodging of claims against contractual violations. The Committee, therefore, desire to know the precise reasons for the award having gone against the Government of India and recommend for fixing responsibility and initiation of deterrent action against the officers whose lapses, incompetence or complicity led to substantial loss to the public exchequer.

Probe by an Independent Agency
(Sl. No. 14—Paragraph No. 1.70)

18. The Committee had noticed lack of planning and concerted approach on the part of the Ministry as was evident from initial delay of about three months, inability

expressed by the STC to import sugar even while being the canalising agency, first and second tender inquiries proving infructuous and failure to study the London Sugar Market. While strongly disapproving and deprecating the irresponsible role played by the Ministry, the Committee had recommended for a high level probe by an independent agency and also for thorough examination of the matter by the Ministry of Food with a view to devising remedial steps to ensure cost effective and timely imports in future.

19. The Ministry in their Action taken note have stated that a high level probe has already been made by the CBI. The Ministry have submitted a copy of the detailed strategy to be implemented by the Ministry of Food while resorting to import of sugar in future.

20. The Committee note that the CBI was entrusted with the enquiry in January, 1990 while the Committee had recommended a probe in their Report presented to Lok Sabha on 27.4.1993. The Committee are dismayed to find that though certain aspects of the matter were inquired into by the CBI long back in 1990 but the Ministry of Food did not consider it their duty to share such a vital information with the Committee even till the presentation of the Committee's Report to Parliament in April, 1993. While expressing their strong displeasure, the Committee would like to caution the Ministry that withholding/suppression of relevant information, or nonsharing of information with the Committee when there is a duty to share, may tantamount to contempt of the Committee. The Committee would however, in the first instance, like to be apprised of the precise reasons and circumstances which prevented the Ministry from sharing the information with the Committee before taking a final view in the matter.

21. The Committee further observe that the recommendation of the Committee was for a probe into the entire question of delay in the import of sugar and the financial loss with a view to fixing responsibility and taking suitable preventive measures. The investigation report of the CBI submitted by the Ministry to the Committee alongwith Action Taken Notes indicates that the investigation made by the CBI in 1990 centered around the role played by the then Minister of Food in the transaction relating to import of sugar. The Committee note that the Ministry have not mentioned whether the CBI report was examined by them from all possible angles with a view to assuring themselves about the possibility of prosecution under the Prevention of Corruption Act, 1988 or under any other law having regard to the findings of the CBI pointing the needle of suspicion to certain public servant(s) for their role in the whole affair. The Committee view with serious concern that the vital question of pinpointing the lapses on the part of the people concerned in the Ministry of Food, STC and Ministry of Commerce and also other agencies/departments concerned was not touched upon by the CBI and as such the question of identification of the culpable officials/departments responsible for the wrongful financial loss has been left unattended by the Ministry. From the

material placed before them, the Committee come to the conclusion that the then Minister of State for Food and Civil Supplies misused his position and caused pecuniary loss to the Government. The Committee therefore reiterate their earlier recommendation asking the Government to have a thorough probe into the entire transaction and also to take stringent punitive action against the officers found responsible for various acts of omissions and commissions leading not only to delay in the import of sugar but also enormous financial loss to the nation and the immense hardship caused to the people. The slackness on the part of the Ministry only reinforces the apprehension of the Committee about the dithering attitude of the Government in the matter of fixing individual responsibility as they believe that accountability without responsibility is redundant.

22. The Committee are unable to comprehend as to why the report of the CBI in the matter should be shrouded in secrecy as no national interest is likely to be jeopardised. While admonishing the Government for using pall of secrecy for concealing abuse of office by public servant, the Committee hope and trust that Government would invoke the plea of secrecy sparingly only when disclosure of information impinges on or jeopardises national interest or security.

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS THAT HAVE BEEN ACCEPTED BY THE GOVERNMENT

Recommendation/Observation

According to the note dated 19.5.1989 prepared by the Chief Director (Sugar), Department of Food, against the estimated production of 88.68 lakh tonnes of sugar during the year 1988-89, the estimated total requirement of the commodity during the year was of the order of 99.84 lakh tonnes. The carry over stocks of sugar maintained in the past for meeting the requirements of initial months have been of the order of 20.6 lakh tonnes, 27.12 lakh tonnes and 25.32 lakh tonnes as on 1st October 1986-87, 1987-88 and 1988-89 respectively. It was indicated in the same note that due to the shortfall of 9.82 lakh tonnes of sugar during the year 1988-89, the effective carry over stock for the new year would only be 10.88 lakh tonnes. The note clearly stated that the stock position at the beginning of 1989-90 season would be very precarious. With a view to maintain the releases during the remaining period of 1988-89 season and also to improve the availability of sugar during the initial months of the next season (1989-90), the Chief Director (Sugar) in his above referred note had emphasized the need for import of a minimum quantity of 10 lakh tonnes of sugar for arrival from the months of July/August, 1989 onwards. The facts narrated in the succeeding paragraphs clearly establish lack of a serious and concerted approach on the part of the Government in effecting the necessary import of sugar which had been then visualised for meeting the country's urgent requirement.

[Para 1.57 of the Forty Fifth Report of PAC (10th Lok Sabha)]

Action Taken

The observations made by the Committee have been noted for future guidance. We have taken steps to devise a detailed strategy to be followed in the matter of future imports which may be undertaken by the Ministry so as to ensure that such imports are made in the most cost effective and timely manner.

[Ministry of Food, Directorate of Sugar O.M. No. 9-6/86-ES.Vol. III dt. 26.11.93]

Recommendation/Observation

In spite of the fact that the Chief Director (Sugar) on account of the very precarious stock position had stressed in his note dated 19th May, 1989 the need for import of sugar for arrival from the months of July/August, 1989, it took more than three months for the Government to accord approval for import of two lakh tonnes of sugar in August, 1989 and an additional quantity of one lakh tonnes in two

instalments in September and October, 1989. Keeping in view the prevailing very difficult stock position, the committee cannot find any explanation for the lack of urgency displayed in the matter of according approval by the concerned authorities. The Committee trust that if timely approval was accorded apart from taken advantage of the prevailing prices of sugar in the international market the import of sugar could have been effected with greater planning and better co-ordinated with the domestic availability.

[Para 1.58 of the Forty Fifth Report of PAC (10th Lok Sabha)]

Action Taken

The observations made by the Committee have been noted for future guidance. We have taken steps to devise a detailed strategy to be followed in the matter of future imports which may be undertaken by the Ministry so as to ensure that such imports are made in the most cost effective and timely manner.

[Ministry of Food, Directorate of Sugar O.M. No. 9-6/86-ES. Vol. III dt. 26.11.93]

Recommendation/Observation

The Ministry of Food floated a tender inquiry on 23rd August, 1989. It is disquieting to note that this inquiry proved infructuous because of the failure of the telex machine belonging to the Food Corporation of India during the crucial hour by which the offers were to be received. The Committee are not at all satisfied with the reply of the Ministry that they had put a sealed lock to ensure that nobody tampered with the received messages and in the morning of 25th August when they opened the seal they found that the roll of paper had got exhausted sometime during the night. The Committee are of the opinion that this clearly reflective of negligent handling of a crucial situation if not worse.

[Para 1.61 of the Forty Fifth Report of PAC (10th Lok Sabha)]

Action Taken

The observations made by the Committee have been noted for future guidance. We have taken steps to devise a detailed strategy to be followed in the matter of future imports which may be undertaken by the Ministry so as to ensure that such imports are made in the most cost effective and timely manner.

[Ministry of food, Directorate of Sugar O.M. No. 9-6/86-ES. Vol. III Dt. 26.11.93.]

Recommendation/Observation

The second tender inquiry had, therefore, to be floated on 29th August, 1989. In spite of the fact that STC had no dealings with the unregistered suppliers in the past, quotations were invited both from the parties registered with STC as well as

those who are unregistered stipulating delivery by 10th October, 1989. The rates offered by registered parties ranged between US \$ 504 and 515 per tonne whereas those offered by unregistered parties ranged between US \$ 445 and 480 per tonne.

- ♦ As per tender inquiry, the unregistered parties were required to submit bid bond of 3 per cent of the value of the contract and since no old bonds were received from the unregistered parties the Purchase Committee, specifically constituted for the purpose and chaired by the then Secretary (Food) at its meeting held on 31 August, 1989 decided to ignore the offers received from the unregistered parties. The Purchase Committee recommended placement of orders for the import of 2.02 lakh tonnes of Sugar on seven registered tenders, whose offers were valid till 31 August, 1989. Despite the fact that the offers of the registered parties were valid only upto 31 August, 1989, the Ministry of Food, under specific orders of the then Food
- ✓ Minister decided on that date to call the unregistered suppliers for discussions on 1st September, 1989 in view of the substantial difference in rates between the tenders from the registered and unregistered suppliers. During negotiations, the unregistered suppliers were asked to furnish bid-bond at 3 per cent of the value of their offer, but they did not agree. On a query from the Committee during evidence as to whether in the normal course offers from the unregistered parties in the absence of bid bonds could be considered, Secretary (Food) specifically stated "They should have been thrown in waste paper basket but this was not done in this case". The Ministry of Food also did not take steps to seek extension of time from the registered parties so as to keep their offers valid for some more days. The Committee are deeply concerned to note that inspite of the fact that STC, the canalising agency for such imports had never dealt with the unregistered parties in the past, the unusual decision of negotiating with such parties and that too when their offers were not accompanied with the requisite bid bond, was taken on 31 August, 1989, the day on which the offers from the registered parties were also to expire. The Committee deem it very unfortunate that under the aforesaid circumstances the offers of the registered suppliers valid till 31st August, 1989 expired thus rendering the second tender inquiry also futile.

[Para 1.62 of the Forty Fifth Report of PAC (10th Lok Sabha)]

Action Taken

The observations made by the Committee have been noted for future guidance. We have taken steps to devise a detailed strategy to be followed in the matter of future imports which may be undertaken by the Ministry so as to ensure that such imports are made in the most cost effective and timely manner.

[Ministry of Food, Directorate of Sugar O.M. No. 9-6/86-ES. Vol. III dt. 26.11.93]

Recommendation/Observation

According to the Ministry of Food, the total availability of sugar during the year 1988-89 was 112.84 lakh tonnes, out of which 99.19 lakh tonnes of sugar had been

consumed during that year. Thus as on 1st October, 1989 there was a stock of only 13.65 lakh tonnes of sugar, which according to the Ministry was just sufficient to meet the required release of 10.32 lakh tonnes during that month making the sugar position very precarious. Against such a difficult situation both the tender inquiries floated on 23 and 29th August, 1989 proved infructuous due to lack of perception and proper planning. The Committee cannot but strongly condemn the role of the Ministry in meeting the urgent domestic requirement of sugar.

[Para 1.63 of the Forty Fifth Report of PAC (10th Lok Sabha)]

Action Taken

The observations made by the Committee have been noted for future guidance. We have taken steps to devise a detailed strategy to be followed in the matter of future imports which may be undertaken by the Ministry so as to ensure that such imports are made in the most cost effective and timely manner.

[Ministry of Food, Directorate of Sugar O.M. No. 9-6/86-ES. Vol. III dt. 26.11.93]

Recommendation/Observation

A third tender inquiry was floated inviting the offers by 19 September, 1989 for delivery of sugar by 20 October, 1989, offers received from seven registered suppliers ranged between US \$ 517.80 and 526 per tonnes as against such offers ranged between US \$ 504 and 515 made in response to the second tender inquiry. Finally, orders were placed in September, 1989 for import of 2.18 lakh tonnes of sugar on six registered parties at rates ranging between US \$ 517.80 and 520 per tonne.

[Para 1.64 of the Forty Fifth Report of PAC (10th Lok Sabha)]

Action Taken

The observations made by the Committee have been noted for future guidance. We have taken steps to devise a detailed strategy to be followed in the matter of future imports which may be undertaken by the Ministry so as to ensure that such imports are made in the most cost effective and timely manner.

[Ministry of Food, Directorate of Sugar O.M. No. 9-6/86-ES, Vol. III dt. 26.11.93]

Recommendation/Observation

It is further disquieting to note that the inadequate planning on the part of the Ministry of Food compelled them to float the fourth tender for procurement of an additional quantity of merely 24,000 tonnes of sugar in early October, 1989. As a result of this inquiry separate orders for delivery of 24,000 tonnes of sugar were placed in October, 1989 at the rate of US \$ 519 per tonne for delivery by 20 October, 1989. According to the Ministry of Food, when the quantity of sugar, on order, was

not considered sufficient, separate case was made out and permission of the Ministry of Finance was obtained. The Committee cannot but express their strong displeasure over the inadequate planning and disjointed approach on the part of the Ministry to meet urgent requirements.

[Para 1.65 of the Forty Fifth Report of PAC (10th Lok Sabha)]

Action Taken

The observations made by the Committee have been noted for future guidance. We have taken steps to devise a detailed strategy to be followed in the matter of future imports which may be undertaken by the Ministry so as to ensure that such imports are made in the most cost effective and timely manner.

[Ministry of Food, Directorate of Sugar O.M. No. 9-6/86-ES, Vol. III dt. 26.11.93]

Recommendation/Observation

The Committee note that the average rates for which the orders were placed against third and fourth inquiries were higher by U.S. \$ 11.74 per tonne over the average rates quoted in the second tender inquiry. As the Ministry of Food failed to execute orders in pursuance of the second tender inquiry, according to audit paragraph an infructuous and avoidable extra expenditure of Rs. 3.85 crores was thereby incurred on the import of 2.02 lakh tonnes of sugar. As the sugar actually procured on the basis of the orders placed as a result of the third and fourth inquiries was of the order of 2.42 lakh tonnes, this infructuous and avoidable expenditure would be of the order of about Rs. 4.61 crores. The Committee take a very serious view of this extra avoidable expenditure of Rs. 4.61 crores which could have been avoided by timely, careful and judicious action on the part of the Ministry of Food.

[Para 1.66 of the Forty Fifth Report of PAC (10th Lok Sabha)]

Action Taken

The observations made by the Committee have been noted for future guidance. We have taken steps to devise a detailed strategy to be followed in the matter of future imports which may be undertaken by the Ministry so as to ensure that such imports are made in the most cost effective and timely manner.

[Ministry of Food, Directorate of Sugar O.M. No. 9-6/86-ES, Vol. III dt. 26.11.93]

Recommendation/Observation

The orders placed in September and October, 1989 for the procurement of 2.18 lakh tonnes and 24,000 tonnes of sugar, give an average cost of US \$ 519.92 (Rs. 8667) and US \$ 519 (Rs. 8652) per tonnes, of sugar during September, 1989 and October, 1989 respectively. As against this the average London Daily Price

(spot price) in September, 1989 and October, 1989 was US \$ 436.24 (Rs. 7272.12) & US \$ 396.93 (Rs. 6616.82) per tonne, respectively. According to the Ministry of Food the difference between the FOB and CIF prices in 1989 was about 45 US dollars to which one more dollar could be added for insurance etc. Recalculating the price taking into account 46 dollars as the CIF cost to the average London Daily price in September and October, 1989, the avoidable extra expenditure which had to be incurred on the procurement of 2.42 lakh tonnes of sugar would actually be many fold more than Rs. 4.61 crores indicated in the preceding paragraph. The Ministry of Food have conceded that keeping in view the overall time available and the formalities to be completed, no detailed study could be carried out in respect of the London Sugar market. The Secretary, Ministry of Food further conceded during evidence that "My personal view was that this gap was too wide and probably it may not have been that imperative to go in for the purchase at that time frame. We were just going to start the new sugar season in October". Asked about the sugarcane forecast at that time, the Committee were informed by the Chief Director (Sugar), Ministry of Food that it was a good crop. Keeping all the facts in view, the Committee are constrained to observe that if earnest steps were taken for import of sugar immediately after 19.5.1989 when the need for such import was emphasized by the Chief Director (Sugar), the colossal extra expenditure incurred in the import of 2.42 lakh tonnes of sugar which seems to be virtually a blind purchase could have been avoided.

[Para 1.67 of the Forty Fifth Report of PAC (10th Lok Sabha)]

Action Taken

The observations made by the Committee have been noted for further guidance. We have taken steps to devise a detailed strategy to be followed in the matter of future imports which may be undertaken by the Ministry so as to ensure that such imports are made in the most cost effective and timely manner.

[Ministry of Food, Directorate of Sugar O.M. No. 9-6/86-ES, Vol. III dt. 26.11.93]

Recommendation/Observation

The Committee find that while considering the proposal of the Ministry of Food for the import of sugar, the Committee of Secretaries at their meeting held on 9th August, 1989 had felt that the best alternative in the then prevailing circumstances was to place sugar on Open General Licence (OGL) list with a reasonably low level of duty. The Ministry of Food were, however, then of the view that allowing import of sugar on OGL by private trade with reduction of custom duty was not likely to solve the problem. The Committee feel that if the import had been made through OGL, it would definitely have been both cheaper and quicker. The Committee feel that the better course at that time would have been to permit import through OGL with overall control.

[Para 1.68 of the Forty Fifth Report of PAC (10th Lok Sabha)]

Action Taken

The observations made by the Committee have been noted for future guidance. We have taken steps to devise a detailed strategy to be followed in the matter of future imports which may be undertaken by the Ministry so as to ensure that such imports are made in the most cost effective and timely manner.

[Ministry of Food, Directorate of Sugar O.M. No. 9-6/86-ES, Vol. III dt. 26.11.93]

CHAPTER III

**RECOMMENDATIONS AND OBSERVATIONS WHICH THE COMMITTEE
DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES RECEIVED
FROM THE GOVERNMENT**

—NIL—

CHAPTER IV

RECOMMENDATIONS AND OBSERVATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation

The Committee note that the State Trading Corporation (STC) was the canalising agency for import of sugar and accordingly all imports of sugar during the period 1984-85 to 1988-89 were effected through it. They are surprised to note that STC being the canalising agency had expressed its inability to make the import in question and the Ministry of Commerce were of the view that STC should not be entrusted with the transaction. The sugar was required to be imported by 10 October, 1989 and the STC was informed about the decision of the Government.

[Para 1.59 of the Forty Fifth Report of PAC (10th Lok Sabha)]

Action Taken

On 3rd August, 1989, Ministry of Commerce received a copy of STC's letter addressed to the Deptt. of Economic Affairs regarding the information given to it by Food Secretary about Government's decision in principle to import 4,50,000 tonnes of refined sugar and 50,000 tonnes of raw sugar to arrive in India by the end of Oct. '89, in which STC had indicated that it might not be possible to get the entire qty. within the stipulated period. Based on the position explained in the STC's letter, the matter was considered in the Ministry of Commerce at the appropriate level and a conscious view was taken that STC should not be entrusted with this transaction, if and when it materialises and as in the case of purchase of rice, these transactions could best be handled by the Deptt. of Food/Deptt. of Civil Supplies themselves. A formal letter in this regard was sent to the Secretary, Deptt. of Food on 7th Aug. '89. The Committee of Secretaries in its meeting held on 9th Aug. '89 discussed the question of import of sugar and recommended that no sugar should be imported on Govt. account and the better course would be to place sugar on OGL with an appropriate duty. In order to issue the requisite notification to place sugar imports on OGL, the Ministry of Commerce kept itself in readiness, but no orders to that effect were received in the Ministry. On 21st Aug. '89, Secretary, Deptt. of Food spoke to the Commerce Secretary on phone to request him to take a meeting regarding import of sugar. A meeting was accordingly convened on the same date (21st Aug. '89) which was attended among others by Food Secretary, Chairman, Food Corporation of India and Executive Director, STC. In this meeting, Food Secretary indicated that the Government had decided to import 2 lakh tonnes of sugar to be received in India in Oct. '89. In view of the difficulties expressed by the STC in getting the material by October, it was concluded that it would be more appropriate if the proposed imports were handled by the Deptt. of Food and its

agencies. It would be relevant to mention that no allocation of foreign exchange had been made to STC nor had any instructions been given to STC either by the Deptt. of Food or the Deptt. of Economic Affairs about import of sugar until then.

[Ministry of Commerce O.M. No. 1(16)/92-FT(ST) dated: 25.4.94]

Recommendation

The Chief General Manager, STC, informed the Committee that in view of their set procedures, STC could not import sugar within the stipulated time. Apparently as between end July, 1989 and 10th October, 1989, clearly more than 2 months were available, the Committee could get no convincing explanation from the STC which till then had been the canalising agency to undertake the import considered urgent in view of the precarious stock position. What is even more disturbing to the Committee is the view taken by Ministry of Commerce is support of this move. The Committee clearly believe that both the Ministry of Commerce and the STC had failed to discharge their responsibility of effecting import of sugar in a difficult domestic situation.

[Para 1.60 of the 45th Report of PAC (10th Lok Sabha)]

Action Taken

On 3rd Aug. '89, Ministry of Commerce received a copy of STC's letter addressed to the Deptt. of Economic Affairs regarding the information given to it by Food Secretary about Government's decision in principle to import 4,50,000 tonnes of refined sugar and 50,000 tonnes of raw sugar to arrive in India by the end of Oct., '89, in which STC had indicated that it might not be possible to get the entire quantity within the stipulated period. Based on the position explained in the STC's letter, the matter was considered in the Ministry of Commerce at the appropriate level and a conscious view was taken that STC should not be entrusted with this transaction, if and when it materialises and as in the case of purchase of rice these transactions could best be handled by the Deptt. of Food/Deptt. of Civil Supplies themselves. A formal letter in this regard was sent to the Secretary, Deptt. of Food on 7th Aug., '89. The Committee of Secretaries in its meeting held on 9th Aug. '89 discussed the question of import of sugar and recommended that no sugar should be imported on Government account and the better course would be to place sugar on OGL with an appropriate duty. In order to issue the requisite notification to place sugar imports on OGL, the Ministry of Commerce kept itself in readiness, but no orders to that effect were received in the Ministry. On 21st Aug. '89, Secretary, Deptt. of Food spoke to the Commerce Secretary on phone to request him to take a meeting regarding import of sugar. A meeting was accordingly convened on the same date (21st Aug. '89) which was attended among others by Food Secretary, Chairman, Food Corporation of India and Executive Director, STC. In this meeting, Food Secretary indicated that the Government had decided to import 2 lakh tonnes of sugar to be received in India in Oct. '89. In view of the difficulties expressed by the STC in getting the material by October, it was concluded that it would be more

appropriate, if the proposed imports were handled by the Deptt. of Food and its agencies. It would be relevant to mention that no allocation of foreign exchange had been made to STC nor had any instructions been given to STC either by the Deptt. of Food or the Deptt. of Economic Affairs about import of sugar until then.

It was also decided that whatever expertise/market intelligence available with STC would be made available to Deptt. of Food and STC would also be invited to the meetings of the Committee to be set up by the Deptt. of Food for this purpose. STC did provide such expertise advice as asked for by the Deptt. of Food in regard to import of sugar.

As STC had provided the requisite expertise and advice as asked for by the Deptt. of Food in pursuance to a decision taken in a formal meeting on 21.8.89 convened at the competent levels neither MoC nor STC failed to discharge their assigned responsibilities in the matter.

[Ministry of Commerce O.M. No. 1(16)/92-FT(ST) dated: 25.4.94]

Recommendation/Observation

The sugar on orders in question was required to be supplied by 20 October, 1989. 8 vessels carrying 99,550 MT of sugar arrived later by 3 to 16 days than the scheduled date of delivery. The Ministry claimed discount totalling US \$ 8.05 lakhs from four suppliers. Force majeure was invoked by suppliers on supplies received by 6 vessels. Bank guarantees from four parties from whom discount for delayed supplies was recoverable had been encashed but three of the four parties had gone for arbitration before the Refined Sugar Association as per provision in the contract. Award relating to one party has been received according to which as against the US \$ 343549.41 of this party, the Ministry have to pay by way of refund to this party US \$ 309442.92 alongwith interest from 23.8.1990 besides cost of arbitration. The Committee would like to know the reasons for this award having gone against the Government. The Committee would also like to know the details of the arbitration awards relating to the other two parties.

[Para 1.69 of the Forty Fifth Report of PAC (10th Lok Sabha)]

Action Taken

Awards relating to all 3 parties have been received. The Food Corporation of India as the assignee of the contract handled and operated the contract of import of sugar and recovered certain amounts by encashment of Performance Bank Guarantee to the extent of claims on account of discount for delay, despatch and demurrage, tally charges, cost of nets and slings, surveyors fees, custom and port overtime, sticher's fees, removal of dunnage, transit dues, shortage on account of insurance claim etc. as per party-wise details given in Annexure-I, II and III. The entire claim has not gone against us. Part of our claims have been accepted in the awards and the balance amounts awarded in favour of the sellers as indicated in column 6 of Annexures I, II and III. Besides the amounts of the awards, we have to pay to

sellers interest on the amounts of the awards @ 6.4% per annum from the dates of draw down under the bonds to the date of the awards *i.e.* 30.12.1992, cost of the arbitration assessed on standard basis and the additional costs of the sellers incurred in pursuing the arbitrations against FCI. The reasons for rejection of our claims as brought out in all the three awards are more or less the same as indicated in the extracts from the awards brought out below with slight modifications wherever necessary:—

1. Discount for delay

The sellers argued that as per clause 3 of the contract, the buyer could either cancel any vessel which arrived late, or they could extend the delivery period at a "discount as may be mutually agreed to between the buyer and the seller". The Buyers chose to accept the cargoes without a discount having been agreed, either at the time or subsequently. If followed, the sellers contended, that if the Buyers were at that stage to advance a claim at all in respect of late arrival, they had to do so on the basis of a claim for proven damages. The Buyers had failed to produce any evidence that they had suffered any form of recoverable loss, and the claim against the bond was therefore wrongful.

The Buyers responded that they were entitled to impose a reasonable discount (which they contended this was); and that they had, in any event, suffered, *inter alia*, loss of "good will, faith, image and reputation" as a result of the late arrival(s). They stressed the importance of the arrival dates, and the inconvenience which had been caused to them.

The Arbitrators concluded that they were satisfied on the evidence that no discount was ever agreed between Sellers and Buyers; they were also satisfied that no evidence of any recoverable financial loss was submitted by the Buyers in respect of their alleged losses. In particular, the allegations of loss of goodwill etc. were unsubstantiated and unquantifiable. They, therefore, considered that the Sellers' submissions were correct. In the circumstances, they found this point in favour of the Sellers and held that the Buyers' demand on the bond(s) in respect of this head of claim was, as between Sellers and Buyers, unjustified. The awards concluded as follows:—

- I. The Buyers were unable to substantiate a claim for a discount or damages and therefore the claims against the bond in the sum of US \$ 121,000 and US \$ 130,000 were not justified (in respect of M/s. S.A. Sucre).
- II. The Buyers were unable to substantiate a claim for a discount or damages and the claims against the bond in the sum of US \$ 121,350 was not justified. (in respect of M/s. Anglo Chemical Commodities)'.
- III. The Buyers were unable to substantiate a claim for a discount or damages and the claims against the bond in the sum of US \$ 121,000 was not justified. (in respect of M/s. Sudden Kerry S.A.).

2. Demurrage/Despatch Calculations

- (a) Clause 13 (IX) provides for the ship(s) to discharge "at the average rate of 1,000 metric tons calculated on the gross weight as per bill of lading, per weather working day of 24 consecutive hours, based on a minimum of 5 hatches being made available at the commencement of discharge; if less than 5 hatches are available, discharging rate to be reduced pro rata. Vessels having less than 5 hatches but with any hatch exceeding 15 metres in length and able to work two gangs...shall have such hatch counted as two hatches."

The Sellers contended that this provision provided for an overall discharging rate calculated by reference to the number of hatches available at the commencement of discharge. The Buyers contended that, if the average rate was 1,000 M.T. per hatch on a 5 hatch vessel, this equated to a rate per hatch of 200 M.T. If a hatch became empty during the course of discharge, this then ceased to be an available hatch and the loading rate should be correspondingly reduced. In effect, therefore, they contended that the allowed laytime should be calculated by reference to the time taken to discharge 200 M.T. per day from the hatch containing the greatest quantity of cargo. The Arbitrators, however, felt that the Buyers' formula ignores the very precise wording of the clause and, in particular, the words "at the commencement of discharge". The Arbitrators concluded that they had no doubt that the Sellers construction of this clause was correct.

- (b) The Buyers sought, in computing used laytime to deduct certain non working periods which occurred during the course of a working day. The Sellers challenged these deductions on the basis that they were not contemplated or provided for in the "weather working days of 24 consecutive hours" formula and that there were no other relevant laytime or demurrage exceptions which applied to these deductions. The Arbitrators agreed with the sellers' arguments on this point, and did not consider that the deductions for which the Buyers contended were provided for by clause 13 or any other provision of the contract(s).
- (c) The Buyers also sought to challenge the time at which notice of readiness was given in respect of certain vessels, on the basis that these vessels had not been finally entered with the customs authorities at the time notice was tendered. Sellers pointed out that having regard to the specific provisions of the contract(s) (in particular clause 13 (vii) and the addenda thereto), final entry was not a pre-requisite to the tendering of NOR. Again, having regard to the very specific wording of the contract(s), the Arbitrators held that the Sellers' contentions on this point were correct.

3. The cost of nets and slings

As per awards, these items were accepted in principle by the Sellers' subject to substantiation. The Arbitrator, however, found that the vouchers submitted by the President of India in support of the claims substantiated only for a part amount against the claims and no more.

4. Surveyors fees

The same reasons have been assigned in support of surveyors fees as applicable in the case of nets and slings charges.

5. Tally charges

There are no provisions of the contract themselves which specifically address this question. Clause 15 of the Sugar charter-party, which is incorporated by reference does however make reference to tally charges. The Arbitrator viewed that this clause could not assist the Buyers. Firstly, Clause 15 was intended to deal only with tallying at the load port. Secondly, it only provided for the apportionment of expenses as between ship owners and charterers. It did not purport to allocate liability for expenses as between Sellers and Buyers. Further more, much of the tallying was undertaken by the stevedores who were employed by the Buyers to discharge the cargo.

6. Customs overtime and port overtime

The cost of customs or port overtime is generally for the account of the party ordering the same. Thus, in respect of overtime ordered by the Buyers, there is no basis on which these sums can be recovered from the Sellers. The contracts were on "free out" terms and there is no basis on which these expenses could be recovered from the Sellers as per Awards.

7. Stitches fees

Stitches fees were incurred by the Buyers in sewing up bags which had torn. There was, however, no evidence as to the cause of the damage to the bags and in the absence of such evidence there was no basis on which these claims could be recovered from the Sellers as per Awards.

8. Removal of Dunnage

There is no basis on which this claim could be recovered from the Sellers as per Awards.

9. Shortage on account of Insurance Claim

This claim arose in respect of the "CHI FENG KOU" and Buyers contended that they were entitled to this sum because, as it appeared to the Arbitrators that a claim for cargo shortage had been submitted to the cargo insurers settling agent, and had been rejected by them. The Sellers responded firstly that no evidence what so ever had been submitted in respect of this claim, but that in any event, there was no basis on which such a claim could be advanced against the Sellers. The Sellers were not the insurers of the cargo and were not responsible for the insurers' refusal

to pay the Buyers' claim. After thoroughly reviewing the documents, the arbitrators found no evidence whatsoever in support of the Buyers' claim.

10. Transit Dues

This claim related to the "HUA YIN". The Buyers contended that the vessel's local agents failed to make available the bill of lading or delivery orders against an indemnity so that the goods could not be cleared from the port between 23rd October, and 16th November, 1989. This resulted in transit dues being payable. The Sellers responded that the basis of Buyers' claim was obscure, but that there was in any event no provision of the contracts under which this item could be held to be for sellers' account. Arbitrators considered that there was no evidence before them as to how or why these expenses were incurred, or why they should be for Sellers' account and that there was certainly no evidence of breach by the Sellers in this respect and they therefore held that this claim fails.

[Ministry of Food, Directorate of Sugar O.M. No. 9-6/86-ES. (Vol. III),
dated 28.1.1994.]

M/s. S.A. Sucre Export

*Statement showing various claims of FCI recovered out of
PGB, the amount accepted and rejected in the Award*

(In US \$)

S.No.	Nature of claims of FCI	Amount recovered out of PGB by FCI	Claims accepted in Award	Amounts of claims rejected in Award	Net Amount awarded in favour of seller
1.	Discount	2,51,000.00	--	2,51,000.00	2,51,000.00
2.	Despatch/Demurrage	63,056.94	33,428.80	29,628.14	29,628.14
3.	Sling Rope Charges	530.03	530.03	--	--
4.	Customs Overtime	147.59	147.59	--	--
5.	Shortage on account of insurance claim	28,814.85	--	28,814.85	28,814.85
TOTAL		3,43,549.41	34,106.42	3,09,442.99	3,09,442.99

M/s. Anglo Chemical Commodities

Statement showing various claims of FCI recovered out of PGB, the amount accepted and rejected in the Award

(In US \$)

S.No.	Nature of claims of FCI	Amount recovered out of PGB by FCI	Claims accepted in Award	Amounts of claims rejected in Award	Net Amount awarded in favour of seller
1.	Discount for Delay	1,21,350.00	-	1,21,350.00	1,21,350.00
2.	Despatch	1,44,580.13	43,996.11	1,00,584.02	1,00,584.02
3.	Net Sling/rope charges	10,651.48	1,847.51	8,803.97	8,803.97
4.	Surveyors fees	1,242.76	1,240.25	2.51	2.51
5.	Tally Charges	13,991.56	-	13,991.56	13,991.56
6.	Customs Overtime	1,162.76	-	1,162.76	1,162.76
7.	Port Overtime	3,337.43	-	3,337.43	3,337.43
8.	Sellers claim for demurrage	-	-	-	78,560.24
9.	Transit Dues	25,376.10	-	25,376.10	25,376.10
TOTAL		3,21,692.22	47,083.87	2,74,608.35	3,53,168.59

M/s. Sudden Kerry S.A.

Statement showing various claims of FCI recovered out of
PGB, the amount accepted and rejected in the Award

(In US \$)

S.No.	Nature of claims of FCI	Amount recovered out of PGB by FCI	Claims accepted in Award	Amounts of claims rejected in Award	Net Amount awarded in favour of seller
1.	Discount for Delay	1,21,000.00	-	1,21,000.00	1,21,000.00
2.	Despatch	92,581.95	24,225.00	68,356.95	68,356.95
3.	Net Sling hire charges	8,178.24	615.85	7,562.39	7,562.39
4.	Surveyors fees	4,898.36	4,892.59	5.77	5.77
5.	Tally charges	15,089.90	-	15,089.90	15,089.90
6.	Customs Overtime	203.88	-	203.88	203.88
7.	Port Overtime	3,571.52	-	3,571.52	3,571.52
8.	Stitchers fees	2,638.59	-	2,638.59	2,638.59
9.	Removal of Dunnage	358.93	-	358.93	358.93
10.	Sellers claim for demurrage	-	-	-	1,763.89
Total		2,48,521.37	29,733.44	2,18,787.93	2,20,551.82
Defference in W		0.50	(-) 0.01		(+) 0.51
Award		2,48,521.87	29,733.43		2,20,552.33

Recommendation/Observation

The casual approach adopted by the Ministry of Food after declaring the sugar availability position as precarious and deciding to go in for import is evident from the following:—

- (i) Initial delay of about three months in according approval to the import of sugar.
- (ii) Inability expressed by the S.T.C., the canalising agency for import of sugar to undertake the import in question.
- (iii) The first tender inquiry floated on 23 August, 1989 proved infructuous due to the failure of the telex machine.
- (iv) The second tender inquiry floated on 29th August, 1989 proved infructuous due to the taking of the decision for negotiating with the unregistered parties on 31st August, 1989 the day on which the offers of the registered parties were to expire.
- (v) Failure to study the London Sugar Market.

The Committee are of the definite view that if proper precautions had been taken by the concerned authorities in the Ministry of Food at all stages of the import deals, the huge resultant extra infructuous expenditure could have been safely avoided. The Committee cannot but strongly disapprove and deprecate the lack of planning, concerted and coordinated approach displayed by the Ministry of Food in the import in question. The Committee would emphasise that in view of the seriousness of the matter, a high level probe by an independent agency may be made into the entire question of delayed import of sugar and the financial loss that has occurred with a view to fix responsibility. The Committee would also emphasize that the matter should be thoroughly examined by the Ministry of Food with a view to devise the detailed remedial steps required to be taken in the matter of any future imports undertaken by the Ministry so as to ensure that such imports are made in the most cost effective and timely manner. The Committee would like to know the detailed strategy proposed to be implemented by the Ministry in the future in this regard.

[Para 1.70 of the Forty Fifth Report of PAC (10th Lok Sabha)]

Action Taken

A high level probe has already been made by CBI which is the highest independent agency of investigation.

[Ministry of Food, Directorate of Sugar O.N.No. 9-6/86-ES, Vol. III dt. 26.11.93]

Recommendation/Observation

The casual approach adopted by the Ministry of Food after declaring the sugar availability position as precarious and deciding to go in for import is evident from the following:—

- (i) Initial delay of about three months in according approval to the import of sugar.
- (ii) Inability expressed by the STC, the canalising agency for import of sugar to undertake the import in question.
- (iii) The first tender inquiry floated on 23 August, 1989 proved infructuous due to the failure of the telex machine.
- (iv) The second tender inquiry floated on 29 August, 1989 proved infructuous due to the taking of the decision for negotiating with the unregistered parties on 31 August, 1989 the day on which the offers of the registered parties were to expire.
- (v) Failure to study the London Sugar Market.

The Committee are of the definite view that if proper precautions had been taken by the concerned authorities in the Ministry of Food at all stages of the import deals, the huge resultant extra infructuous expenditure could have been safely avoided. The Committee cannot but strongly disapprove and deprecate the lack of planning, concerted and coordinated approach displayed by the Ministry of Food in the import in question. The Committee would emphasize that in view of the seriousness of the matter, a high level probe by an independent agency may be made into the entire question of delayed import of sugar and the financial loss that has occurred with a view to fix responsibility. The Committee would also emphasize that the matter should be thoroughly examined by the Ministry of Food with a view to devise the detailed remedial steps required to be taken in the matter of any future imports undertaken by the Ministry so as to ensure that such imports are made in the most cost effective and timely manner. The Committee would like to know the detailed strategy proposed to be implemented by the Ministry in future in this regard.

[Para 1.70 of the Forty Fifth Report of PAC (10th Lok Sabha)]

Action Taken

Proposed Detailed strategy to be implemented by Food Ministry while resorting to imports of Sugar in future

1. Directorate of Sugar will prepare the sugar budget for coming season commencing from 1st October taking into account the actual carry over stock as on 30th September, estimated production as intimated by State Governments and our likely requirements for domestic consumption.

2. On the basis of the above data, Directorate of Sugar will project likely level of imports and the approximate period by when the sugar would be needed. The requirements will continue to be monitored on a month to month basis to assess the specific time by which sugar would be imported.
3. The Ministry of Food would examine the requirement of sugar for domestic consumption, *vis-a-vis* the availability in the country and will take a decision to import of sugar after obtaining necessary concurrence, if necessary, of all other Ministries as also of the appropriate sanctioning authority.
4. The decision regarding quantum, made and timing of import will be decided by the Ministry.
5. The quantum of sugar to be imported will be based on the actual requirement for domestic consumption including the requirement for the initial period of the next season.
6. The mode of import will be decided by the Ministry from among the following options:—
 - (i) Import of white sugar for direct consumption in the country through STC.
 - (ii) Import of raw sugar through STC/ISGIEIC for reprocessing by the sugar factories in the country and thereafter utilising the same for domestic consumption.
 - (iii) Permitting the import of sugar under Open General Licence (OGL) and allowing the industry/trade to import requisite quantity in the country.
7. The timing of import would be decided keeping in view the option under which the sugar is likely to be imported.
8. The distribution of imported sugar would also be decided by the Ministry based on the mode of import to be decided in this regard, for example.
 - (a) if import of sugar made through STC, the Food Corporation of India would be require to arrange movement of sugar from ports to the consuming destinations and distribution thereof.
 - (b) if the raw sugar is imported and reprocessed by the factories, the sugar so obtained would be released from the factories as per the decision to be taken in this regard.
 - (c) if the trade is permitted to bring sugar under OGL, then it would be the responsibility of such traders to make further movement of sugar to the consuming destination as per their best commercial judgement.

9. In case the sugar is imported through STC and the Food Corporation of India is required to make movement and distribution thereof, the following decisions would require to be taken:—

- (i) As soon as a decision is taken in this regard, the Ministry will take steps to sound the Ministry of Commerce and the STC for initiating the import process. This would be done at least 4 months in advance of the time by which the imported sugar would be required in the domestic market. However, as our domestic stock generally comes down only when the season closes, it is very likely that imported sugar may be required in the months of October, November and December. We have, therefore, to so arrange the import of Sugar that the imported stock is made available at our ports in the beginning of September itself. To achieve this, we may have to sound the importing agency, viz. STC, by May itself.
- (ii) The graph of the LDP sugar for the last 5 years has shown that the prices start declining from July/August to December. Accordingly, STC will have to determine the most opportune time for floating of tenders, STC should take necessary action to monitor world prices of sugar so that tenders can be floated at the most opportune moment for import of sugar.
- (iii) Since the STC is familiar with all the technicalities of sugar imports, our import should be made through STC only.
- (iv) STC should be asked to maintain a list of registered sugar dealers in the international market on the basis of their track record and financial standing. STC should address all enquiries only to such dealers.
- (v) The delivery schedule should be so fixed that the last delivery should be one month before the cut-off date by which imported sugar would be required for consumption in the internal market.
- (vi) In the case of disputes, STC through the Ministry of Commerce has indicated that efforts are being made to incorporate in the standard contract of STC provisions regarding settlement of disputes, if any, as per the rules of Indian Council of Arbitration/Indian Courts.
- (vii) The destination ports in India should be so decided as to achieve a fair distribution of imported sugar to all the regions from three ports.

10. If the raw sugar is imported through ISGIEIC, the Ministry would require to examine the proposal and take a view in this regard including the decision to obtain raw sugar for PDS etc. or reimbursement of cost to the factory/ISGIEIC.

[Ministry of Food, Directorate of Sugar O.M. No. 9-6/86-ES (Vol. III)
Dated 14.2.94]

CHAPTER V
RECOMMENDATIONS AND OBSERVATIONS TO WHICH THE
GOVERNMENT HAVE FURNISHED INTERIM REPLIES

— NIL —

NEW DELHI;
26 April, 1999

6 Vaisakha, 1921 (Saka)

MANORANJAN BHAKTA,
Chairman,
Public Accounts Committee.

APPENDIX

CONCLUSIONS AND RECOMMENDATIONS

Sl. No.	Para No.	Ministry/ Deptt. concerned	Conclusions and Recommendations
1	2	3	4
1.	10	Ministry of Food & Ministry of Commerce	<p>The Committee note that the Ministry of Commerce have simply enumerated the processing of the matter at different stages without indicating the impediments which compelled the STC to shy away from undertaking the responsibility of import of sugar. The Ministry have stated that the STC had indicated that it might not be possible to get the entire quantity within the stipulated period. It follows, therefore, that a lesser quantity, if not the entire quantity, possibly could have been imported by the STC within the time limit fixed by the Ministry of Food. The Committee notice that neither the STC nor the Ministry of Commerce made any attempt to work out the actual quantity which could have been imported by the STC within the time fixed by the Government. The STC did not respond favourably even when the quantity of import was substantially reduced by the Ministry from 5 lakh tonnes to 2 lakh tonnes in the meeting held on 21 August, 1989 in which the Executive Director, STC was present. The Committee are of the view that the STC being the canalising agency for import of sugar, and being equipped with requisite infrastructure, should have taken all positive steps so as to help ease the critical position of availability of sugar during those days in the country. The Committee have no doubt that all the subsequent developments leading to enormous loss to the public exchequer and hardship caused to the public at large due to non-availability of adequate quantity of sugar during the peak season of festivals could have been averted had STC not refused to import the sugar. The Committee, therefore, come to the</p>

1	2	3	4
			<p>inescapable conclusion that not only the STC, being the canalising agency, but also the Ministry of Commerce, being the Administrative Ministry of STC, miserably failed even in a distress situation when the gap between demand and supply of sugar in the domestic market could be bridged through import with the intervention of STC. While deploring lack of concern on the part of the STC and the Ministry of Commerce in a critical situation like the one arising out of shortage of an essential commodity like sugar, the Committee hope and trust that Government would devise suitable and effective mechanisms to tackle such national problems so that with concerted efforts all the available resources, infrastructure and expertise are pooled together to tide over the crisis arising out of scarcity of essential commodities.</p>
2.	14	Ministry of Food	<p>The Committee observe that 8 vessels carrying 99,550 MT of sugar arrived by 3 to 16 days behind the scheduled date of delivery. The information furnished by the Ministry indicates that as per clause 3 of the contract, the buyer <i>i.e.</i> the Government of India, in the case of delayed delivery, could either cancel any vessel or extend the delivery period at a "discount as may be mutually agreed to between the buyer and the seller." The Committee notice that the claim of the buyers <i>i.e.</i> Government of India in regard to the item "discount for delay" was rejected in arbitration for the failure of buyers to take requisite steps as per clause 3 of the contract and their inability to substantiate the claim for proven discount or damages before the Arbitrators. The Committee view it as a grave lapse on the part of the Ministry and a reflection on their style of functioning and professional competence, leading to substantial outflow of precious foreign exchange at a critical juncture.</p>
3.	15	-do-	<p>The Committee cannot accept the submission of the Ministry that the entire claim had not gone against them. On the contrary, the Committee</p>

1	2	3	4	
			view it as a statement of complacency, and a belated attempt to cover up their inefficiency and incompetence. The hollowness of the claim of the Ministry becomes apparent from the table given below which indicates the difference between the amount recovered by the FCI and the amount to be paid to the seller in addition to other charges in compliance of the award of arbitration.	
			(In US \$)	
Sl. No.	Name of the Company	Amount recovered by FCI	Amount awarded in favour of seller	Difference
1.	M/s. S.A. Sucre Export	3,43,549.41	3,09,442.99	+ 34,106.42
2.	M/s. Anglo Chemical Commodities	3,21,692.22	3,53,168.59	— 31,476.37
3.	M/s. Sucden Kerry SA	2,48,521.87	2,20,552.33	+ 27,969.54
				+ 30,599.59
4.	16. Ministry of Food	<p>From the above figures, the Committee find it apparently clear that while the Ministry lost entirely its claim in respect of one firm, it succeeded to substantiate its claim only for a meagre amount against the remaining two firms. Against the favourable claims to the tune of quite negligible amount of US\$ 30,599.59 taken together from all firms, the Ministry have to pay to the sellers quite heavy amount in regard to the expenses and charges on account of the following heads as per the award of arbitration:—</p> <ul style="list-style-type: none"> (i) Interest on the amounts of the awards @ of 6 per cent per annum from the date of draw drawn under the bonds to the date of award <i>i.e.</i> 30.12.1992; (ii) Cost of the arbitration assessed on standard basis; and (iii) Additional costs of the sellers incurred in pursuing the arbitration against FCI. 		

1	2	3	4
5.	17	Ministry of Food	<p>The Committee observe that though the Ministry have not indicated the total amount payable by them to the sellers, undoubtedly the amounts to be paid on all the above heads by the Ministry to the sellers are many times more than those payable by the seller firms to the Ministry. The Committee are saddened to note that the concerned agencies responsible for making claims and pursuing the matter in the arbitration process miserably failed in discharging their duties. The Committee deplore the negligence, incompetence and insensitivity of the Ministry which stood exposed at all stages of the transactions right from inviting of tenders to lodging of claims against contractual violations. The Committee, therefore, desire to know the precise reasons for the award having gone against the Government of India and recommend for fixing responsibility and initiation of deterrent action against the officers whose lapses, incompetence or complicity led to substantial loss to the public exchequer.</p>
6.	20	- do -	<p>The Committee note that the CBI was entrusted with the enquiry in January, 1990 while the Committee had recommended a probe in their Report presented to Lok Sabha on 27.4.1993. The Committee are dismayed to find that though certain aspects of the matter were inquired into by the CBI long back in 1990 but the Ministry of Food did not consider it their duty to share such a vital information with the Committee even till the presentation of the Committee's Report to Parliament in April, 1993. While expressing their strong displeasure, the Committee would like to caution the Ministry that withholding/suppression of relevant information, or nonsharing of information with the Committee when there is a duty to share, may tantamount to contempt of the Committee. The Committee would however, in the first instance, like to be apprised of the precise reasons and circumstances which prevented the</p>

1	2	3	4
			Ministry from sharing the information with the Committee before taking a final view in the matter.
7.	21	Ministry of Food	<p>The Committee further observe that the recommendation of the Committee was for a probe into the entire question of delay in the import of sugar and the financial loss with a view to fixing responsibility and taking suitable preventive measures. The investigation report of the CBI submitted by the Ministry to the Committee alongwith Action Taken Notes indicates that the investigation made by the CBI in 1990 Centred around the role played by the then Minister of Food in the transaction relating to import of sugar. The Committee note that the Ministry have not mentioned whether the CBI report was examined by them from all possible angles with a view to assuring themselves about the possibility of prosecution under the Prevention of Corruption Act, 1988 or under any other law having regard to the findings of the CBI pointing the needle of suspicion to certain public servant(s) for their role in the whole affair. The Committee view with serious concern that the vital question of pinpointing the lapses on the part of the people concerned in the Ministry of Food, STC and Ministry of Commerce and also other agencies/departments concerned was not touched upon by the CBI and as such the question of identification of the culpable officials/departments responsible for the wrongful financial loss has been left unattended by the Ministry. From the material placed before them, the Committee come to the conclusion that the then Minister of State for Food and Civil Supplies misused his position and caused pecuniary loss to the Government. The Committee therefore reiterate their earlier recommendation asking the Government to have a thorough probe into the entire transaction and also to take stringent punitive action against the officers found responsible for various acts of</p>

1	2	3	4
8.	22	Ministry of Food	<p>omissions and commissions leading not only to delay in the import of sugar but also enormous financial loss to the nation and the immense hardship caused to the people. The slackness on the part of the Ministry only reinforces the apprehension of the Committee about the dithering attitude of the Government in the matter of fixing individual responsibility is redundant.</p> <p>The Committee are unable to comprehend as to why the report of the CBI in the matter should be shrouded in secrecy as no national interest is likely to be jeopardised. While admonishing the Government for using pail of secrecy for concealing abuse of office by public servant, the Committee hope and trust that Government would invoke the plea of secrecy sparingly only when disclosure of information impinges on or jeopardises national interest or security.</p>

PART-II

MINUTES OF THE TWENTY-FIFTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (1998-99) HELD ON 26 APRIL, 1999

The Committee sat from 1500 hrs. to 1545 hrs. on 26 April, 1999 in Committee Room "B", Parliament House Annexe, New Delhi.

PRESENT

Shri Manoranjan Bhakta — *Chairman*

MEMBERS

Lok Sabha

2. Shri Prithviraj D. Chavan
3. Shri Ram Tahal Choudhary
4. Smt. Bhavna Chikhaliya
5. Prof. Ajit Kumar Mehta
6. Shri Prabhat Kumar Samantaray
7. Prof. Saifuddin Soz

Rajya Sabha

8. Shri J. Chitharanjan
9. Shri Jayant Kumar Malhoutra
10. Shri Vayalar Ravi

SECRETARIAT

1. Shri P.D.T. Achary — *Joint Secretary*
2. Shri Devender Singh — *Deputy Secretary*
3. Shri Rajeev Sharma — *Under Secretary*
4. Shri B.S. Dahiya — *Assistant Director*

OFFICERS OF THE OFFICE OF C & AG OF INDIA

1. Shri S.K. Bahari, Pr. Director of Audit
2. Shri Jayanti Prasad, Director of Audit

2. The Committee took up for consideration the following draft Reports on:—

(i) ***

(ii) Action taken on 45th Report of PAC (10th Lok Sabha) on "Avoidable extra expenditure on import of sugar."

3. The Committee deliberated on the subject matter of the above mentioned draft Reports and adopted the same without any modification/amendment.

4. The Committee authorised the Chairman to finalise the draft Reports in the light of verbal and consequential changes arising out of factual verification by Audit and present the same to Hon'ble Speaker.

5. The Chairman then thanked the Members for their active participation and whole hearted cooperation in the functioning of the Committee. He also thanked the officers of the C&AG for their sincere cooperation. He expressed his appreciation of the hard work done by the Secretariat in rendering assistance to the Committee. The Members agreed with the observations made by the Chairman and praised the Chairman for his contribution and role in the functioning of the Committee.

The Committee then adjourned.