

**STEEL AUTHORITY OF INDIA
LIMITED—
import of defective billets**

**MINISTRY OF STEEL & MINES
(Department of Steel)**

**COMMITTEE ON
PUBLIC UNDERTAKINGS
1991-92**

TENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

FIRST REPORT

COMMITTEE ON PUBLIC UNDERTAKINGS (1991-92)

(TENTH LOK SABHA)

STEEL AUTHORITY OF INDIA LIMITED— IMPORT OF DEFECTIVE BILLETS

MINISTRY OF STEEL AND MINES
(DEPARTMENT OF STEEL)



सत्यमेव जयते

Presented to Lok Sabha on 10.12.1991

Laid in Rajya Sabha on 10.12.1991

LOK SABHA SECRETARIAT
NEW DELHI

November, 1991 / Agrahayana, 1913 (Saka)

Price: Rs. ₹.00

© 1991 By Lok Sabha Secretariat

PUBLISHED UNDER RULE 382 OF THE RULES OF PROCEDURE AND CONDUCT OF BUSINESS IN LOK SABHA (SEVENTH EDITION) AND PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, PHOTO LITHO UNIT, MINTO ROAD, NEW DELHI.

C O N T E N T S

	PAGE
COMPOSITION OF THE COMMITTEE	(iii)
INTRODUCTION	(v)
PART I	
Background Analysis	1
PART II	
Conclusions/Recommendations of the Committee	35

**COMMITTEE ON PUBLIC UNDERTAKINGS
(1991-92)**

CHAIRMAN

Shri A.R. Antulay

MEMBERS

Lok Sabha

2. Shri Basudeb Acharia
3. Shri Chandulal Chandrakar
4. Shri Rudrasen Choudhary
5. Shri. Madan Lal Khurana
6. Shri Peter G. Marbaniang
7. Shri M.V. Chandrashekara Murthy
8. Dr. P. Vallal Peruman
9. Shri Piyus Tiraky
10. Shri K.P. Unnikrishnan
11. Shri B. Raja Ravi Verma
12. Shrimati Rita Verma
13. Shri Sushil Chandra Verma
14. Shri V.S. Vijayaraghavan
15. Shri Devendra Prasad Yadav

Rajya Sabha

16. Shri Ashwani Kumar
17. Shri Ajit P.K. Jogi
18. Shri Mohinder Singh Lather
19. Shri Syed Sibtey Razi
20. Dr. G. Vijaya Mohan Reddy
21. Shrimati Kamla Sinha
22. Prof. Chandresh P. Thakur

Secretariat

1. Shri G.L. Batra — *Joint Secretary*
2. Smt. Revathi Bedi—*Under Secretary*

INTRODUCTION

1. The Chairman, Committee on Public Undertakings having been authorised by the Committee to present the Report on their behalf, present this First Report on Steel Authority of India Limited—Import of defective billets.

2. The Committee's examination of the subject was mainly based on an Audit Para XL. (1) contained in the Report of the Comptroller & Auditor General of India, 1986 Union Government (Commercial) Part VIII.

3. The subject was examined by the Committee on Public Undertakings (1989-90) and (1990-91). The Committee took evidence of the representatives of the Steel Authority of India Limited on 8 August, 1989 and also of the representatives of the Minerals and Metals Trading Corporation of India Limited on 20 September, 1989. The Committee also took evidence of the representatives of Ministry of Steel and Mines (Department of Steel) on 26 July, 1990 and Ministry of Finance (Department of Economic Affairs—Banking Division) on 18 September, 1990. The Committee however, could not finalise their Report due to the dissolution of Ninth Lok Sabha on 13th March, 1991.

4. The Committee on Public Undertakings (1991-92) considered and adopted the Report at their sitting held on 21 October, 1991.

5. The Committee feel obliged to the Members of the Committee on Public Undertakings (1989-90) and (1990-91) for the useful work done by them in taking evidence and sifting information which forms the basis of this Report. They would also like to thank the officials of the Lok Sabha Secretariat attached to the Committee on Public Undertakings for their excellent work and assistance rendered to the Committee.

6. The Committee wish to express their thanks to the Ministry of Steel and Mines (Department of Steel), Ministry of Finance (Department of Economic Affairs—Banking Division), Steel Authority of India Limited and Minerals and Metals Trading Corporation of India Limited for placing before them the Material and information they wanted in connection with examination of the subject. They also wish to thank in particular the representatives of the Department of Steel, Department of Economic Affairs (Banking Division), O.N.G.C. and MMTC who appeared for evidence and assisted the Committee by placing their considered views before the Committee.

7. The Committee also place on record their appreciation of the assistance rendered by the Comptroller and Auditor General of India.

NEW DELHI;
November 26, 1991

Agrahayana 5, 1913 (Saka)

A.R. ANTULAY,
Chairman,
Committee on Public Undertakings.

**STEEL AUTHORITY OF INDIA LIMITED—IMPORT OF
DEFECTIVE BILLETS**

PART-I

Background Analysis

1.1 It has been reported by Audit that against and indent of SAIL, the Minerals and Metals Trading Corporation of India Limited (MMTC) acting as canalising agency, placed a purchase order in March, 1986 on firm 'A' of France for import of 35,000 tonnes of billets to be manufactured and supplied from Turkey. The specifications of the billets required for rolling at the Bhilai Steel Plant were detailed in the purchase order. On the basis of letter of authority issued by MMTC, SAIL established a letter of credit with State Bank of India on 24th March, 1986 in favour of firm 'A'. The cargo containing entire quantity of 35,000 tonnes billets arrived at Visakhapatnam by mid June, 1986. The firm presented the shipping documents to SBI, Paris, which released the payment to the firm and debited SAIL's Account on 19.6.1986 for full value of the materials amounting to Rs. 9.74 crores. On receipt of the shipping documents from SBI, Calcutta on 17.6.1986, SAIL noticed that the billets did not conform to the contracted specifications according to the accompanying certificates of analysis.

1.2 The Customs Authorities at Visakhapatnam treated the billets as containing alloy elements and charged higher customs duty which was paid under protest. The Customs Authorities on being convinced by SAIL that on the basis of analysis, the material could not be classified as forging quality, refunded the excess duty charged except an amount of Rs. 23 lakhs. The entire quantity of billets costing about Rs. 18.27 crores including customs duty etc. was found totally unsuitable for rolling at Bhilai Steel Plant and was, therefore, rejected.

1.3 The Committee enquired about the total amount of customs duty paid by SAIL on these billets. The Executive Director (Commercial), SAIL' Stated during evidence:—

“Initially the duty was Rs. 11.12 crores. We subsequently obtained a refund from the Customs Department after appropriate representation about the Chemistry of the material and the correct tariff that should be invoked. We obtained a refund of Rs. 4.29 crores. The net duty paid was about 6.8 crores.”

When asked about the reasons for not refunding the balance of excess duty charged by the Customs authorities, the witness informed:—

“When the initial impost was made by the Customs that impost was on

account of two factors. One factor was that customs felt that the percentage of silicon, called for classifying the billets as forging quality billets. The second factor was dependent on the percentage level of copper. Copper was an element which we did not stipulate in the contractual specification. According to customs classifications, if the copper percentage is 0.4 percentage or more, then the billet is classified as alloy steel and additional duty is levied. On our representations the customs agreed to our first plea that the billets were not forging quality billets but they stick to their classifications as alloy steel, a quantity of 1477 tonnes, which contained copper 0.4 percent. On this tonnage SAIL had to pay an avoidable duty of Rs. 22.68 lakhs. That was not a factor which we had wanted in our specifications which were given to MMTC for contracting purposes. It was an extraneous element leading to rejection of the consignment. We have claimed compensation from MMTC on this factor also.”

1.4 As regards selection of Firm 'A' of France for supply of billets, the Committee wanted to know whether SAIL was involved in the selection process. In reply, the Executive Director (Commercial) during evidence stated:—

“MMTC as the canalising agency did consult SAIL regarding material specification, price, dimension tolerances, delivery schedule and allied matters. But, in regard to supply sources, they have not ascertained our opinion.”

1.5 On a further query as to why SAIL being consumer did not enquire about the source of supply, the witness added:—

“I think, it is a question of the perception of roles of the organisations involved. It is very correct that under ideal conditions, it is better that we, as the end user involve ourselves in the selection process. But the canalising agency is supposed to do that function of importing on behalf of the consumers/end-users. That is the practice, and the tradition, and the role of the canalising agency envisaged in the import policy of the country. We were not very much worried about the sources which were to make the supplies, as long as we were assured of the right quality of materials, at the right price. On these points we were very definite in our communication to MMTC. We asked them to ensure that these aspects are protected.”

1.6 When pointed out that it would have been desirable for SAIL to be involved in the selection process and should have also known the name of the firm on which the order was placed by MMTC, when such a huge quantity of material was to be imported, the Chairman, SAIL stated:—

“I submit that the hon. Member is right and particularly when we deal

with an organisation like SAIL, which is expected to know more about steel than anyone else, SAIL should have been totally involved in the process of selecting the supply organisations. Be that as it may, that the canalisation process, that is adopted now the canalising agency has the final decision in regard to whom and on what commercial terms they place the orders."

1.7 During evidence of the representatives of MMTC, the Committee enquired about the procedure adopted by them to select the Firm 'A' for the supply of billets. The Executive Director, MMTC stated:

"...as per the procedure adopted by us, we float a tender. But in this case, because SAIL wanted a quantity of 2,35,000 tonnes arrival commencing within six weeks, we floated a telex enquiry and we asked for offers."

1.8 Asked about the reasons for not floating a global tender, the witness stated:—

"This was not done because SAIL was in a great urgency and they wanted some quantity to be brought to the Indian shores within six weeks time. They placed the demand on us on 31st January, 1986 and wanted the material from the middle of March. Keeping in view the urgency, we floated a telex enquiry to 48 different parties. Against that enquiry, we received 15 offers, out of which the offers relevant to SAIL were eight in number. Out of these eight, we tried to locate the lowest bidders and identified five firms. But out of five, only four agreed to supply the quantity. Order on Firm 'A' was for a quantity of 35,000 tonnes... They were the lowest bidder."

1.9 On an enquiry whether MMTC consulted SAIL before selecting firm 'A' in view of the special type of billets ordered by SAIL, the Chairman & Managing Director, MMTC added:—

"Based on these tenders, orders were placed not on this firm alone but on four companies for supply of a total quantity of 97,000 tonnes of billets for SAIL. This company was one of those four companies. It is one of the leading steel producing companies. It is owned by a company which is partly owned by the Government of France. This is a highly reputed company and in the past also we have imported other items, not billets from this company. The tender results were shown to the SAIL and all these parties' names, their prices, quantities, deliveries and everything was discussed with them. No objection was raised by the SAIL to the placement of orders on any of the four parties including Firm 'A'."

1.10 When pointed out that, during evidence of the representatives of SAIL, they had informed the Committee that SAIL was not consulted in

regard to source of supply, the witness added:—

“Whenever an offer is made, the tender indicates the sources from which supplies would be made. If they had some negative preferences, then they should have intimated to us. But they did not do it. They also did not specify any preference either negative or positive.”

1.11 The Committee wanted to know under what circumstances the billets not conforming to the contracted specification were supplied by the foreign supplier. In a post evidence note, the MMTC stated that MMTC issued tender, place letter of intent, issued letter of authority to SAIL to enable them establish direct L/C in favour of foreign supplier and issued purchase order, all incorporated specifications given by SAIL. The supplier, however, shipped the material having copper content which was not specified in the contract and L/C.

1.12 Asked as to whether the specifications given by SAIL envisaged presence of copper in the Steel billets max. 0.4% MMTC in a note stated that specifications given by SAIL did not envisage presence of copper in the steel billets (maximum 0.4%) nor did the tender, letter of credit and purchase order indicated copper content in the billets. Billets actually received containing copper upto 0.4% maximum as made by the supplier were not in conformity with the contractual specifications.

1.13 In this connection, the Committee also enquired whether any probe had been made in this matter and responsibility fixed. The MMTC in a note stated that the supplier who had violated the contractual obligations was immediately put on notice. Their performance Guarantee had already been invoked and an amount of Rs. 29.62 lakhs already realised. Further claim as received from SAIL had been filed with the arbitrators and arbitration proceedings were stated to be still pending. According to MMTC, responsibility was fixed on the supplier for having shipped the material outside the contractual specifications. The documents furnished by the supplier to the negotiating foreign bank had specifications, over and above the specifications specified in the L/C. Despite this, the foreign bank released the money against the L/C. An advance set of document was also made available to SAIL on 11th June, 86 and the negotiated documents by SAIL's bankers (SBI Calcutta) were also understood to have been handed over to SAIL on 17th June, 86. SAIL's account was understood to have been debited on 19th June, 86. MMTC was informed vide SAIL's telex dated 20th June, 1986 that the customs authorities were demanding higher customs duty on some quantity of billets categorising same as forging quality alloy steel billets due to presence of copper beyond permissible limits. Immediately on this intimation by SAIL, besides putting supplier on notice MMTC vide their letter dated 24th June, 1986 had also cautioned SAIL and had stated that 'presumably payment has been released under reserve'. They were

not aware whether SAIL took up the matter with their bankers for calling back payment because of the discrepancy in the documents with regard to the specifications.

1.14 According to Audit the purchase order placed by MMTC provided for Mill's analysis and test certificates for each lot as well as certificates of an independent inspection agency for inspection to be carried out before the despatch from the manufacturing Mills. Although SAIL had paid an amount of Rs. 6.67 lakhs towards inspection charges, the inspection was done on behalf of the firm 'A' and not on behalf of MMTC. The circumstances under which the materials were not got inspected independently on behalf of MMTC/SAIL etc. are not known.

1.15 It has also been stated by Audit that as per clause 45.5 of the purchase order, the buyer had the right to have the material inspected before shipment. The Committee enquired as to why the inspection was not got done on behalf of SAIL/MMTC. The Executive Director (Commercial) SAIL during evidence stated:—

“The buyer MMTC had entered into a contract with supplier 'A' of France and placed the purchase order on this firm. Firm 'A' of France, in turn was to buy billets from a manufacturer in Turkey and supply the same to MMTC. This is the chain of relationships. What happened was that when the MMTC issued the purchase order document, which is the contract between MMTC as a buyer, and firm 'A' of France, as the seller to MMTC a copy of the P.O. was endorsed to us. That document had stipulated the role of the inspection agency correctly. Ultimately, when the inspection was done and the copies of inspection certificates were sent to us, we found that the material did not conform to the specifications, with the purchase order. If during the process of manufacture, MMTC had exercised their right and caution to ensure proper inspection of billets as per P.O., we would not have ended up like this. When the purchase order was released we found that the inspection clause was satisfactorily embodied in the document and thought that our interest would be protected. However, in actual practice the course of events took a different turn.”

1.16 Asked whether it was a lapse on the part of MMTC, the witness replied, “It is obvious.”

1.17 Audit have pointed out that the inspecting agency's certificate indicated that he had inspected the goods on behalf of the supplier and not the purchaser. The Committee desired to know the reasons for SAIL making a payment of Rs. 6.67 lakhs as inspection charges in spite of the fact that the inspection had been done on behalf of the supplier. The witness during evidence stated:—

“The inspection fee was part of the invoice itself, and when the documents were negotiated through the bank, the money (inspection

fee) was released. All that we could do thereafter was to add that sum as a part of our claim on MMTC with a demand to make good the same to us."

1.18 In this connection, during evidence of the representatives of MMTC, the Committee enquired under what circumstances the inspection agency carried out inspection only on behalf of firm 'A'. The Chairman and Managing Director, MMTC stated:

"In the purchase order, we indicated that SGS should be appointed as an independent inspection agency. They are called as third party inspection agency, an independent agency, independent of both the supplier and the buyer. That is the contractual provision. Based on that, we indicated that SGS should be appointed and as per our direction the suppliers appointed SGS. As per the contract, payment was to be made by us and we have made the payment. He carried out the inspection. In that inspection, he had made a reference to the purchase order, to the contract number of MMTC and all that. It is in pursuance of that contract, the inspection was made, as indicated in the inspection report."

In view of this statement, the Committee enquired whether Audit was wrong in concluding that the inspection was done on behalf of Firm 'A'. The witness stated:—

"Sir, there is another point for clarification. Audit is also correct here because at that time two transactions took place simultaneously M/s. Daval bought from the Turkish Mill. At that point of time M/s. Daval was the buyer and Turkey was the seller and simultaneously MMTC bought from M/s. Daval. So at the time of inspection, in a way, M/s. Daval was also a buyer. But as a procedural practice, inspection should be done by an independent agency. They do not specify on whose behalf and all that. That is the system."

1.19 When enquired about the reasons for not appointing the inspection agency directly, the Chairman, MMTC stated:—

"If we appoint the inspection agency, we have to pay directly, out of the letter of credit, then, we have to get all kinds of clearances from RBI as per their procedures. As a result, payment will get delayed by one or two years... we directed the supplier to appoint so that money can be paid out of the letter of credit. We directed M/s. Daval to complete the technical formality of appointment but we will decide the inspection agency. It is as per our direction and according to our wish that this inspection agency was appointed by the supplier. It is our appointment indirectly."

1.20 When enquired as to whether such a procedure was normal in such type of contracts, the witness stated:—

“In all international contracts inspection is to be done by an independent agency. That is the universal procedure. If they cheat or do things not in accordance with the procedure, then they will lose the reputation and lose their business.”

1.21 During the evidence of the representatives of Department of Steel, the Committee wanted to have the reaction of the Department on the statement of CMD, MMTC made in this regard that, “In the purchase order, we indicated that SGS should be appointed as an independent inspection agency. They are called as third party inspection agency, independent of both the supplier and the buyer... as per our directives, the supplier appointed SGS... it is in pursuance of that contract the inspection was made, as indicated in the inspection report”, the Secretary, Department of Steel stated:—

“I am surprised to listen to this, MMTC is the buyer in this case, and Daval is the seller. From where Daval buys is nobody's concern down the line. Daval was the buyer and Turkey was the seller; and the appointment of the agent of the buyer was made by Daval, and not MMTC. We find from earlier documents that SGS had written a letter in September 1986 to SAIL saying that Turkey received instructions for inspection from the buyer viz. Daval, France. They did not receive any instruction from MMTC. It is on this basis that SAIL has been taking the stand that MMTC did not discharge its essential function of appointing the agent on behalf of MMTC. When MMTC appoints an agent it is on behalf of MMTC. But here, Daval appoints an agent on behalf of Daval...”

1.22 In this connection, the Committee enquired as to when the inspection certificate was received by MMTC. The Chairman & Managing Director, MMTC stated:—

“The inspection certificate was received by us along with the set of documents which were submitted by negotiating bank.”

1.23 Asked whether the inspection certificate was received by MMTC before the payment was released by SBI, the witness stated:—

“There are two points of payment, one is payment released to the supplier by the foreign bank and the second point of payment is payment by India SAIL or MMTC. When money is remitted in foreign exchange then only the documents are received.”

1.24 The Audit have brought out the following points regarding this dispute:

- (i) No formal contracts are entered into between MMTC and SAIL. MMTC sent a copy of the cyclostyled letter dated 1.4.1986 filling in *inter-alia*, the particulars of purchase order dated 18.3.1986

according to which the liability of MMTC was restricted to the extent of compensation received from foreign supplier in the event of any complaint in regard to shortage, damage and quality of material.

- (ii) Payment was released by SBI although the specifications declared in the shipping documents differed from those given in the annexure to the letter of credit. When this matter was taken up with the SBI, the bank contended that the discrepancies were purely of technical nature and did not fall within the purview of the bank for consideration.

1.25 In this connection, the Committee enquired from the MMTC in regard to general rules and procedures adopted for import of Steel through them (canalising agency). The CMD, MMTC explaining about the rules and procedures *inter-alia* stated during evidence:

“.....the other aspect which distinguishes steel from other imports is the financial arrangement. In case of most of the major end-users like TELCO and SAIL, they want to make their own financial arrangements in the matter of imports which means that the MMTC does the contracting in accordance with its own rules and procedures and thereafter the whole thing is handed over to the end-users who open their own letters of credit based on a letter of authority given by MMTC to the bank authorising the end-users to open the letter of credit out of the foreign exchange sanctioned to MMTC.”

1.26 As regards the stand taken by SBI that the discrepancies in the documents were purely of technical nature and did not fall within the purview of the bank for consideration, the Committee enquired from the representatives of MMTC as to whether they agree with the stand taken by SBI. The CMD, MMTC during evidence stated:

“The certificate of the inspecting agency very clearly indicated that the chemistry of the goods actually supplied was quite different from the chemistry as prescribed under the contract, SAIL has opened a Letter of Credit and the Letter of Credit contained detailed specifications. International trading is operated through the mechanism of Letter of Credit. The Bank is the custodian, the bank is expected to exercise all caution to safeguard the interest of the customer or the client. If the goods are found to be in conformity with the contract, then only the payment would be released and in this case, SAIL opened the Letter of Credit in the State Bank of India branch at Calcutta. The State Bank of India has a correspondent branch of State Bank of India in Paris. The documents were possibly presented to the State Bank of India, Paris, after the goods were shipped. The Letter of Credit very clearly lays down that all the documents would have to be

produced. One of the documents specified is the certificate of the inspecting agency and that certificate makes it very clear that the goods did not conform to specifications. Therefore, the State Bank of India, Paris, should not have released the payment to the party at all. First, they should have made a reference to us or to SAIL to verify whether all these goods are conforming to the specifications and whether money can be released. Therefore, it was the responsibility of the State Bank of India, Paris to release the payment only after ascertaining from us. But, without verifying the acceptability of specifications, the State Bank of India, Paris, had released the payment to the suppliers in Paris.”

Elaborating, the witness added:

“The Letter of Credit indicated the specifications. If these had no relevance for the bank, then we would not have burdened it with so many technical specifications. It is incumbent on bank to ensure that all the papers and documents are correctly done. No great technical expertise was required to find out whether the goods were in conformity with the specification because the copper element and other elements were clearly laid down and inspection certificate is presented to the bank, to make sure that goods conform to specifications and it is on this basis that the bank can release payment.”

1.27 In this connection, the Secretary, Department of Steel also stated during evidence:

“As far as the banker’s responsibility is concerned, it is incorrect for the bank, in my view as well as in the view of the Department to say that it is a technical matter. The bank releases the payment on comparison of documents. It is not a technical matter. It is a matter of comparing two documents.

Secondly, in retrospect I find when I go into the papers that on behalf of the State Bank of India, a false statement had been made. It says, “The documents do not show any discrepancy. We have made the payment we are right.” That statement was made in 1986 when these people opposed by saying that “Please stop the payment, etc., etc. The comparison was not made by the bank as far as the SBI is concerned..... The banker has the obligation and responsibility to check conformity of the documents which come to him, the documents with the Letter of Credit, see whether the specifications are properly followed and then only he can make payment. In the present case what seems to have happened is on a particular date the message is sent to India and on the same date the payment was already made in Paris. The payment was made without prior clearance. Now, the banker can

normally pay in the international purchase without prior clearance provided he has satisfied himself that everything is in order. But in this case my view is that the State Bank of India at Paris had made a major error."

1.28 The Committee wanted to know the views of the Department of Economic Affairs (Banking Division) on the above statement of the Secretary, Department of Steel. The Additional Secretary of the Department stated in his evidence as follows:—

"My view is that the bank had acted in accordance with the normal banking practices and there has been no error in negotiating the L. C. The inspecting agency of the SAIL, some French people named Society Generala De-Surveilence (SGS), which is the technical agency appointed by MMTC gave a certificate specifically stating that the quality and quantity of goods have been found to be in conformity with the L. C. terms.....I would also submit that banks are governed and guided by normal banking practices laid down by RBI or International Chamber of Commerce. For international dealings all our banks are members of the International Chamber of Commerce. That body has issued "Uniform Customs and Practices for Documentary Credit."

There also it is clearly stated that the description of the goods in commercial invoice must correspond with the description in the credit. In all other documents, the goods may be described in general terms, but not inconsistent with the description of the goods in the credit.

In the invoice, it is clearly stated about the billets to a specification, size, quality, quantity, price per size, as per Annexure-IV. That is what the order says, namely MMTC/Steel/Billets/014 etc., dated 18-3-1986. It is tested quality mild steel billets conforming to IS 2830/75-SB-2. This is all mentioned there. The bank not being a technical organisation would go by the report of the inspecting agency. As I submitted, this is in conformity with the Uniform Custom and Practices for Documentary Credit."

1.29 When asked as to how the Bank satisfied itself about the documents being in order without comparing them with the Annexure to the L/C giving details of specification of billets ordered by SAIL, the Chief General Manager, SBI Calcutta stated during evidence:

"10 documents were listed in this case. Bill of lading is there. It was inspected. Agency certificate is also there and it was analysed. There are various customs formalities too. There is bundle of paper. It takes us two or three hours to see whether the documents are in order or not. As I said, in this case, the documents were presented. But we are not coming into the picture. We only go by what has been instructed to us while opening a Letter of Credit.

The inspection agency was appointed by MMTC on payment of 70,000 dollars. The clear stipulation was that this should be as per the Indian standard specification. They should have a composition of carbon, manganese, sulphur and phosphorus. These four things are listed. The Inspection Agency has inspected the goods. They have stated that the carbon content is same; the sulphur content is same; phosphorus is same and then there is the silicon. It has then got copper and chromium. The whole body of chemistry has been analysed. They gave the certificate containing these items. When we get the documents, we see the Bill of Lading, that has been designated. The date is there and it is designated. Inspection is done. It has a mill analysis. All these things are done. Technically we are not supposed to know it. We rely on the inspection agency. It is said that this chemical analysis with seven items do conform to the specifications."

1.30 When the Committee pointed out that in case of variation in the specifications of the materials i.e. billets, the bank should have referred the matter either to SAIL or MMTC before releasing the payment, the witness said:

".....so far as the documents are concerned when they are presented, either they are accepted or rejected. It is like a cheque. When we say that these are not in conformity with the Letter of Credit, the decision is taken on the spot. In this case the documents were presented and as it was said in the LC, each one was listed therein. One is inspecting agency's certificate and the other is what is called the mill certificate of analysis of the documents. It does not contain only three, but it contains seven or eight items. This mill analysis was presented to the certifying agency, which is an expert agency. On seeing all this, they certified that these are in accordance with the prescribed standard specifications. Then, they concluded by saying that they are in conformity with the terms of Letter of Credit. With the whole papers being before us and also the certification by the agency the decision was that these conform to the requirements or conditions of the credit. Therefore, the decision that was taken was considered to be appropriate."

1.31 Asked as to why a thorough comparison was not done by the bank between L/C and the inspection certificate given by SGS, the witness stated:

"There about 7-8 items are listed, so, it was probably. I am only saying with hind-sight—that the person who took the decision might have thought that steel also contains so many other items. But, he did not take a decision on his own."

1.32 The Committee desired to know from the representatives of Department of Economic Affairs (Banking Division) as to whether any

action was taken by SBI to recall the payment or explanation sought from the banker who made the payment after it was brought to their notice by SAIL that the billets did not conform to the specifications mentioned in the annexure to letter of Credit. The Additional Secretary, Department of Economic Affairs (Banking Division) during evidence stated:

“I do not have the information. I will obtain the information and submit the same to the Committee. We had checked up with the SBI. But we do not know whether SBI in turn, checked up onwards.”

1.33 Asked whether the Ministry will ask for recall of payment now, the witness stated:

“We will try, we will certainly issue a notice”.

1.34 When the Committee enquired from the Department of Economic Affairs (Banking Division) as to whether it was not proper for them to ask for an explanation from SBI in view of the contention of SAIL, MMTC and Department of Steel that it was a lapse on the part of the Bank, the witness stated:

“I thought this was a matter of interpretation. Kindly let me have sometime. I would request the SBI to have this entire matter looked into immediately in accordance with the banking practices.”

1.35 Subsequently, in a note, Department of Economic Affairs (Banking Division) have stated that indepth examination of the matter has since been carried out by the Reserve Bank of India and a report was submitted by them. ‘Reserve Bank of India have found that the State Bank of India had complied with the relevant provisions of Uniform Customs and Practices for Documentary Credits (UCPDC) while negotiating the documents relating to the transactions under reference. They are, therefore, of the opinion that no irregularities/error or haste on the part of the Bank in honouring the commitment under the letter of Credit would be attributable. In the covering letter dated 5th November, 1990 enclosing the scrutiny note of the officer from the Regional office of RBI, DBOD, Calcutta sent to SBI, RBI have *inter-alia* stated that, “SAIL in their letter dated 15 October, 1990 had admitted that the advance set of documents were received by them from MMTC on 11 June, 1986. Another set of documents was delivered to them by State Bank of India (Overseas Branch) on 17 June, 1986”. Although there was reasonable time at the disposal of SAIL and MMTC they had neither pointed out any discrepancy in the documents nor the presence of additional elements mentioned in the inspection certificate, but taken delivery of the consignment. Subsequent to the taking delivery of the goods, SAIL in its letter dated 20 June, 1986 advised State Bank of India that the percentage of copper is beyond the permissible limit as per the test certificate. This implies that the presence of additional element such as copper is inherent in the material. It is observed that Annexure 4(a) to the purchase order prohibited only

physical features such as fins, cracks, seams, etc., and did not prohibit completely presence of other elements such as Cu, Ni, Cr. etc. and/or lay down acceptable limit of these elements if they were inherent in the type of material being imported. Further, it is observed from the letter dated 20 June, 1986, that SAIL had informally requested State Bank of India (Overseas Branch) during discussion not to convey the contents of the letter to the Paris Branch. The other contentions of SAIL viz.

- (i) the SGS certificate relates to some other goods,
- (ii) it had not scrutinized the documents as it presumed that SBI would have negotiated documents after careful examination, and
- (iii) it had cleared the consignments to avoid incurrence of avoidable port charges, demurrages, etc., have no force and are not maintainable."

1.36 Reserve Bank of India in their above mentioned scrutiny note while describing the mechanism of opening of letter of credit etc. have mentioned about procedure for examination of documents by the negotiating banks as follows:

"Since in a documentary credit banks deal in documents as distinct from goods represented by the documents, particular care is to be taken to scrutinize the document to ensure that they conform to the documents stipulated in the credit by the Applicant. In this connection provisions of Article 15 of UCPDC (Uniform Customs and Practices for Documentary Credits) is relevant. This Article lays down "Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in accordance with the terms and conditions of the credit".

The other relevant articles of UCPDC which deal with such documents mentioned therein are 23 and 41 C:

Article 23

"When documents other than transport documents, insurance documents and commercial invoices are called for, the credit should stipulate by whom such documents are to be issued and their wording or data content. If the credit does not so stipulate, banks will accept such documents as presented provided their data content makes it possible to relate the goods and/or services referred to therein to those referred to in commercial invoices presented or those referred to in the credit if the credit does not stipulate presentation of a commercial invoice."

Article 41

"The description of the goods in the commercial invoice must

correspond with the description in the credit. In all other documents, the goods may be described in general terms not inconsistent with the description of the goods in the credit.”

Verification of the documents generally implies ensuring:—

- (i) Completeness, *i.e.* whether all the documents as stipulated by the Applicant have been submitted.
- (ii) Conformity with all terms and conditions.
- (iii) Consistency of the documents with each other *i.e.* documents should not be mutually inconsistent.
- (iv) Compliance with provisions of UCPDC.

1.37 On the Bank's compliance with Article 15 of UCPDC, it has been stated in the report that this Article while casting obligation on the banks to examine all documents with reasonable care also lays down what can be construed as inconsistency in documents. If there is *inter-se* disparity in the documents, the documents cannot be treated as “appearing on their face to be in accordance with terms and conditions of the credit”. In determining the obligation under this article, the provisions of Articles 23 & 41C (reproduced in paragraph 1.36) appear to be relevant. While specifying SGS as the inspecting agency, the wording or data content of the certificate to be issued by them was not stipulated by SAIL. Accordingly, the certificate as presented became acceptable as the data content despite mention of additional information about chemical composition of the billets made it possible to relate the goods referred to in the commercial invoice and in the credit (*vide* Article 23). Besides, the description of goods in the certificate which was needed in general terms was not inconsistent with the description of the goods in the credit (*vide* Article 41C). Thus, the bank's action in accepting the documents was in conformity with the provisions of Article 15 of UCPDC. The other important point in taking a view to conform to IS-2830/75 SB-2 quality (Fe 410) as laid down in Annexure 4(a) to the purchase order. The certificate presented to the banks clearly mentioned that the billets conformed to this specification.

1.38 It has been stated that in taking a view on the question, the following aspects of the transaction also appear to be relevant:

(i) As per stipulation of LC, a set of documents was required to be sent by the beneficiary to Visakhapatnam Office of MMTC (the canalising agency under whose authority SAIL was effecting the import) within 5 days from the date of shipment, which was 27th May, 1986. The foreign sellers certified having complied with the stipulation as per certificate. This certificate was presented to the negotiating bank (Paris Branch of SBI) as one of the documents evidencing compliance with the terms of the LC. Thus, the advance set of documents would have been received by the concerned office of MMTC latest by 6th June, 1986 (taking 10 days as

transit time). Since the payment was made to the sellers by Paris branch of SBI on 11th June, 1986, the MMTC got enough time to notice the non-conformity of the material to its specification so as to issue instruction to stop payment. Records do not reveal that MMTC on its own or through SAIL had drawn attention of SBI to this before the date of actual payment to the sellers.

(ii) Bank's records reveal that it took initiative through its Paris Branch to exert pressure on the foreign suppliers to sort out the matter. As per telex message dated 28.10.1986 (from their Paris branch), a representative of M/s Daval alongwith two representatives of the Turkish supplier visited India in July, 1986 and held discussions with the officials of Bhilai Steel Plant where the billets were intended to be re-rolled. They were stated to have not been able to have any first hand proof of impurities in the billets as no trial rolling could be arranged at the plant during their stay. SBI, Calcutta continued to pursue the matter with its Paris branch and as per telex message received from the latter on 12.1.1987, Mr. Patrick Vidal, a representative of M/s Daval visited India in November, 1986 and after discussions with officials of MMTC in New Delhi, advised the bank's Paris branch that there would be no difficulty in sorting out the matter. In telex messages dated 2.2.1987 and 11.3.1987, Paris branch advised after discussions with M/s Daval that the billets were distributed among Bhilai and other steel plants of SAIL and Railways. The confirmation of the above developments is not, however, available from the banks records through communications from SAIL/MMTC. Nevertheless, it demonstrates that SBI desired to be of help in sorting out the problems in view of the large amount involved in the transactions. The summary of findings of the scrutiny by Reserve Bank of India are stated to be as follows:

- (i) Since the documents did not appear to be discrepant *vis-a-vis* LC the payment made by SBI was in accordance with the terms and condition of LC and fully conformed to normal banking practice. It was, therefore, not necessary for the Bank to seek clarification from SAIL (Purchaser) as in such cases (*i.e.*, in cases where payment), no confirmation from the purchaser is obtained.
- (ii) In their application for LC, SAIL had stipulated that negotiation of the documents must be made within 15 days from each Shipment. In the instant case, date of shipment being 27th May, 1986, the last date of negotiation was 11th June, 1986 on which date Paris branch of SBI made payment to the beneficiary after negotiation of the document. No haste, is therefore, attributable to the bank.
- (iii) The bank had taken up the matter with the foreign suppliers through its Paris branch. The representatives of the suppliers had visited India and advised Paris branch of SBI that the problems would be sorted out.

- (iv) The documents did not appear to be inconsistent with one another, particularly when the form of the last certificate to be issued by SGS, its wording and data contents were not specified in the LC by SAIL. There was, thus, *prima-facie*, no error on the part of the bank in not treating the document as discrepant and as such, no fault appears to be attributable to the bank in the light of the provisions of Article 15 of the UCPDC (1983 edition).
- (v) Calcutta (overseas) branch of SBI had taken up the matter with the Paris branch of the bank which maintained that no error was committed in negotiating the documents.
- (vi) Records available at the Calcutta (Overseas) branch did not indicate that any inspection/investigation was carried out by deputing officials from the bank's Central Office. However, authorities of the bank's Central Office had duly obtained clarifications/observations of the officials of the bank's concerned branch in the light of objections raised by SAIL.

1.39 In this connection, the Committee desired to know whether any claim has been lodged by MMTC against SBI for wrongly releasing the payment to the foreign party. The CMD, MMTC during evidence stated:

“Import of steel is different from other items. For other items, MMTC has total responsibility. In the case of import of steel, end users want the right to make their own financial arrangement and it is not left to us. Therefore, we take a letter of indemnity from the end user, in this case from SAIL, that you want to make a financial arrangement and Government Policy requires us to permit you to make the financial arrangement but you will do so while indemnifying us from all responsibilities and you will engage your own bank and you take the responsibility of ensuring that the banks do their job properly and correctly. There was a check point when State Bank of India, Paris released the payment. That was one point. The other check point was, when State Bank of India, Calcutta had remitted the payment to SBI, Paris. They had at the time the documents before them which showed very clearly that the goods did not conform to specifications. At that point of time also, they could have stopped the payment because they are supposed to reimburse the foreign bank, in this case the State Bank of India Paris. They did not do so.”

The witness added:

“In this case, there is contractual relationship between MMTC and State Bank of India. It is between SAIL and State Bank of India and we told them in the course of discussions that they must hold

SBI responsible for first releasing the payment in Paris, then for not stopping payment in Calcutta. But we have no *locus standi* so far as SBI is concerned in this particular transaction."

1.40 When the Committee enquired whether in case of import of steel the responsibility of MMTC ends as soon as the endusers give their indemnity to make their own financial arrangements, the CMD, MMTC during evidence stated:

"Upto the part of contracting, MMTC had everything to do with the transaction. After the contracting till the payments are made, that is the portion taken away. Again, as a primary contracting party, MMTC is very much involved. Now, for example, we have taken the supplier to arbitration proceedings. It is not SAIL. We are a party to arbitration. We are making claim on the supplier. So, it is at the point of payment only that we were not involved."

1.41 Asked to give his opinion about the above statements of CMD, MMTC, the Secretary, Department of Steel during evidence stated:

"I would react with some hesitation because he has made the statements in his own wisdom and responsibility. But, as the Ministry to which SAIL is responsible, I must submit that the letter of credit clearly lays down what are the commodities to be purchased. If MMTC wants to absolve itself of responsibility of buying the right commodity and still be the canalising agency, it is really a matter for question. That is one aspect. The other aspect is financial arrangement. As far as the opening of the letter of credit is concerned, SBI and MMTC advises SAIL and SAIL opened a letter of credit. Opening the letter of credit was nothing wrong. The question is buying the right material. It is the responsibility of MMTC to buy the right material. The documents must have reached the hands of MMTC/SAIL within five days of the ship leaving. The ship left on 27th May, (1986). The documents are delivered on 11th June (1986) and the ship is arriving on 14th and 15th. Why were the documents not given to SAIL earlier? MMTC failed in this agreement... The agreement says that within five days, the advance copy of the non-negotiable document should reach the hands of the buyer... MMTC is likely to have the document. It should have checked it and it is its responsibility. It cannot say that SAIL should check or Bank should check. They should have checked it. They had plenty of time. We do not know why they did not do it. Did they give documents earlier? No. They delivered the documents on 11th June, 1986."

1.42 In this connection, the Committee enquired whether the condition of documents reaching the buyer (MMTC) within five days of

sailing of ship was mutually agreed stipulation. The Secretary, Department of Steel during evidence stated:

“The binding nature of the irrevocable letter of credit on MMTC is the question. Let me check on that. Our understanding is five days is binding on MMTC.

1.43 In a note furnished after evidence, the Department of Steel have stated that the L/CS opened by MMTC are issued subject to “Uniform Customs and Practice for Documentary Credits, 1983”. In the instant case there were 5 parties:

- i) Opener of the L/C (MMTC)
- ii) L/C issuing bank (SBI, Calcutta)
- iii) L/C advising bank (SBI, Paris)
- iv) L/C negotiating bank (Credit Lyen see)
- v) Beneficiary (Firm ‘A’)

In the instant case, the L/C was opened by MMTC on SAIL’s account and the beginning para of the L/C reads as follows “You are hereby authorised to draw on MMTC. (A/C M/s. SAIL) for a sum not exceeding...” which clearly shows that the L/C was opened by MMTC on SAIL’s account and as such MMTC had full control in the opening and operation of the L/C because

- i) L/C was opened strictly as per performa prescribed by MMTC.
- ii) Amendments to the L/C could not be carried out on the specific advice of SAIL.
- iii) L/C could be made operative only on the advice of MMTC.
- iv) MMTC had all the rights and privileges of the applicant/opener of the L/C.

In view of the above it appears that the L/C was binding on MMTC. It may also be noted that it is a normal practice for a commercial agency like MMTC to open the L/C directly in favour of the foreign supplier by the end user, where the quantum of imports for one end user is large. This is essentially done to save on 2% canalising agency service charges.

1.44 In this connection, when enquired as to what action was taken by MMTC immediately after documents were received by them, the witness stated:

“We immediately sent the document to the SAIL... I accept that at that point of time when the MMTC received the documents it could have found out that there is discrepancy and it could have drawn the attention of the SAIL.”

1.45 When pointed out that it was a lapse on the part of MMTC not to have pointed out the discrepancy, the witness during evidence admitted:

“Yes Sir, We hoped that the SAIL will see the discrepancy because in this case they are the paymaster. Therefore, it is their duty to see if there is any discrepancy. However, we agree that at that point of time it was possible for the MMTC to locate the discrepancy which it failed to do.”

1.46 The Committee wanted to know as to whether any omission was made by SAIL in not stopping the payment by SBI, after receiving the documents. The Secretary, Department of Steel stated:

“I will indicate what, in my view, was the omission on the part of SAIL. First SAIL received documents on 11th, and at Vizag notwithstanding the requirement that the document should have been received earlier. What happened between 11th and 19th is that we find that the document was received at about 4 p.m.; 14th and 15th were supposed to be holidays. Normally, documents come substantially earlier than the ship. There was an announcement that the ship was coming on 13th. So, the men on behalf of SAIL who were at VIZAG, they forgot their first duty. As soon as an advance copy of the document came, their first duty was to check whether it was in line with the original purchase order or not. They forgot that. On the other hand, they were more anxious to go to the ship and avoid demurrage. They deposited all the documents. The local SAIL officer did not know whether it was in conformity with the specifications. When they came to know about it, it was too late. I very closely examined the SAIL Officers on this subject. We had come to the conclusion that this period was crucial. The third opportunity that was available was to somehow retrace the steps. That was also lost. It is an omission on the part of SAIL. We find that, even though there are detailed guidelines do not specifically provide for several exceptions like the present one. Supposing a ship comes along with the documents, what will you do and so on? The duty of the man of the shipping Department was to save demurrage. These guidelines require a review and SAIL will have to re-write these guidelines. I suggested to them to do so. They have promised that they will look into them and re-write them. Exceptions must be provided for these guidelines. I have no hesitation in saying that SAIL committed an error at the third point. They should have done something about it since it involved money.”

1.47 In this connection, the Committee pointed out that there was sufficient time to stop the payment being released by SBI, Calcutta. The witness replied:

“Who should have stopped the payment? The Headquarters office,

SAIL Calcutta comes to know on 16th June. On 20th June, SAIL asked SBI to stop the payment. In those 4 days what happened we have to check the SAIL files. We can call for the files and see whether anybody could have given the stop-notice earlier, but it was actually reversal of the entry.

This, we will check up and we will report to you.”

1.48 Subsequently, in a note, the Department of Steel furnished the following sequence of event from 11th to 16th June, 1986 at SAIL Vizag and from 17th to 20th June, 1986 at SAIL office, Calcutta is as follows:

At SAIL, Vizag

- 11.6.86 SAIL Vizag office received intimation from M/s. Trident Services regarding arrival of Vessel at Vizag on 14.6.1986.
- 11.6.86 -4.30 Advance non-negotiable shipping document collected by P.M. SAIL, Vizag from MMTC Vizag.
- 12.6.86 MMTC and SAIL execute indemnity bond in favour of vessel's agent at Vizag to effect delivery to SAIL against non-negotiable copy of bill of lading.
- 12.6.86 SAIL Vizag files bill of entry with Vizag customs.
- 12.6.86 SAIL, Vizag advise customs that since there is variation in chemical composition, the matter is being taken up by SAIL Vizag, with foreign suppliers and that SAIL Vizag will pay duty under protest.
- 13.6.86 Vizag customs assess duty on billets after treating them as alloy steel billets and foregoing quality billets, keeping in view copper and silicon contents.
- 14.6.86 HOLIDAYS
- and 15.6.86
- 16.6.86 SAIL Vizag pays customs duty and writes to SAIL Calcutta about excess duty charged by Vizag customs.

At SAIL, Calcutta

- 17.6.86 State Bank of India (SBI) Overseas Branch (OB), Calcutta forwards to SAIL, Calcutta one set of negotiable documents pertaining to shipments of billets and further advise that payment to the suppliers has been released on 11.6.86.
- 17.6.86 Documents examined by E&I / Purchase Finance Section.
- 18.6.86 Documents examined by Import Division.
- 18.6.86 SAIL, Calcutta (E&I, Purchase Finance Section) forwards one set of original documents to Transport & Shipping Department, SAIL, Calcutta.
- 19.6.86 SBI, OB, Calcutta advise, SAIL, Calcutta regarding debit to SAIL's a/c with invoice value of the shipment alongwith transit interest from 11.6.86 to 18.6.86.

- 19.6.86 SAIL, Calcutta receives communication from SAIL, vizag regarding excess duty charged Vizag Customs treating the imported billets as of forging quality and alloy steel quality in view of copper content.
- 20.6.86 SAIL, Calcutta writes to SBI, OB, Calcutta that since the chemical composition was not in terms of the L/C the documents should be treated on collection basis and SAIL's a/c. should be credited with the value of the documents and transit interest.
- 20.6.86 SAIL, Calcutta advise MMTC, Delhi that chemical composition of part quantity of billets shipped was not as per ordered specification and asks MMTC, Delhi to put the suppliers on notice that all losses/consequences arising out of the above would be claimed by SAIL.

1.49 To another query as to whom the Ministry considers responsible for not taking timely action to avoid losses to SAIL on account of import of defective billets, the witness stated:

“The question is whether there is any administrative lapse on the part of the SAIL? As far as Vizag is concerned, we are convinced that the concerned man should have checked up. But we cannot do anything about it because that man is no longer in the organisation.

If you ask me to examine and report, I would say that the SBI was wrong in making the payment, they should not have made the/ payment. They should have cross-checked the document. They made an error. In between, MMTC has the sole responsibility to buy and give the material according to certification. MMTC should have appointed its own agent and should have assured that specification is satisfied and then only the shipment should have taken place. MMTC should have taken the responsibility to see that payment is not made. In administrative procedures, Administrative Secretaries hesitate very much before making adverse comments on other Ministries it is not within my jurisdiction to make any accusation against other Ministry.”

1.50 It has been stated by Audit that in an interministerial meeting of the representatives of the Ministry of Steel, Ministry of Commerce, MMTC, SAIL and Iron and Steel Controller held on 9.9.1986, MMTC was advised to take prompt action for arranging replacement supply and also for alternative disposal of the material.

1.51 In this connection the Ministry of Commerce informed audit that:

“As a follow up of the decision taken in Inter-Ministerial Meeting MMTC issued enquiries to various endusers having import clearances of 1000 tonnes and above offering material ex-vizag.

Simultaneously a meeting was organised with SAIL on 17.10.1986 to set up the modalities for disposal of the billets.

These actions were taken to arrange prompt disposal of stocks and organise replacement of the quantity so disposed. SAIL's agreement to the procedure suggested for delivery of material from Vizag to endusers located by MMTC was received on 15.12.1986. Almost simultaneously SAIL informed about their decision to take 9000 tonnes of these billets from stock for use in Durgapur Steel Plant. On 14th January, 1987 SAIL stated that 15,000 MT of the available billets are being moved to their plants.

MMTC finalised sale of 10,000 MT to Railway and efforts were afoot to sell the remaining quantity also to the Railways. Meanwhile, however, SAIL took a unilateral decision to lift bulk of the cargo. They informed us in January, 1987 that they had lifted 22,747 MT. The remaining quantity of approximately 2,300 MT was sold by MMTC to Railways for which L/C was established by Railways and Delivery Order was issued by MMTC to SAIL but SAIL decided to lift this quantity also themselves. As such, out of the total quantity of 35,000 MT, about 9,950 MT were delivered to Railways and remaining 25,050 MT were consumed by SAIL themselves. With regard to 10,000 tonnes already sold by MMTC to Railways, arrangements for procurement of 13,000 tonnes were made by MMTC in December, 1986. This included 8,000 tonnes for replacement against the quantity sold to Railway but MMTC was informed that SAIL was treating the offered quantity as a new purchase against allocation from Iron & Steel Controller for the subsequent fiscal year i.e. 1987-88. SAIL have, therefore established by their actions that their decision in the first place to reject the cargo and to demand replacement were both unjustified. On the material which was sold by MMTC to Railways, there was no loss as the sale realisation covered the cost of material.

Had SAIL not lifted the material and allowed MMTC to sell the remaining quantity also, it would have been possible for MMTC to recover the entire cost by sale proceeds."

1.52 The Committee desired to know the views of SAIL on the above observation of the Ministry of Commerce. The executive Director (Commercial) SAIL during evidence stated:

"I do not know how to put across our sense of grief about this matter. After having given MMTC an opportunity to prove themselves in action rather than words, nearly 6-7 months went by between the date of our claim on MMTC and their alternative disposal of part quantity. They say that they would have done the job better if we had not done the job of using the billets in Durgapur to say the least, this is an afterthought."

1.53 As regards rolling done by SAIL of 25,050 tonnes of billets out of 35,000 tonnes themselves despite these being not according to contracted specification, the Committee enquired about the reasons for rolling them in their Steel Plants thereby suffering losses. The Director (Operations), SAIL during evidence stated:

“It was meant for a specific end use and that end use was to make light structures in our Steel Plant, namely, the Bhilai Steel Plant. When we found that the billets composition is not suitable for rolling them in to light structurals, we did make an actual trial rolling with a small quantity and we found that these billets were not suitable to make light structurals...but it is all right to roll them into bars and rods. The Durgapur Plant also needed billets for which there was an order. Because MMTC could not replace these billets for Bhilai Steel plant for a period of more than six months, we decided to transfer these billets from Bhilai to Durgapur and rolled them into bars and rods.”

The Chairman, SAIL added:

“These billets which were supplied did not serve the purpose for which we had indented namely to convert them in to light structurals. Immediately, a claim was made on MMTC that these billets are not suitable for our end use. Without giving type of response that we expected MMTC allowed the billets to lie in our yard incurring loss to SAIL. Realising the fact that the country needed this type of billets for some other purpose, we diverted these billets to Durgapur from where it was converted into bars and rods. Otherwise it would have even today been lying with us. This would mean a greater loss to the nation and a greater inconvenience to the SAIL.”

1.54 When the above position brought out by SAIL was brought to the notice of MMTC by the Committee during their evidence, the CMD, MMTC reacted:—

“In the inter-ministerial meeting, it was decided that MMTC would replace the material and dispose whatever had been received, elsewhere. Already, MMTC had sold soon after arrival i.e. after this complaint was received — 10,000 tonnes out of 35,000 tonnes to Indian Railways. Indian Railways rolled these billets without any problem. They have also paid the right prices and there was no loss on this quantity. Indian Railways wanted to take over another 2300 tonnes, for which a letter of credit was opened by Railways on MMTC, but SAIL did not agree to make available the material to the Indian Railways. Similarly, we found other buyers, but all this took a little time because this imported billet can be sold only to parties having import licences for this purpose with clearance from Iron & Steel Controller. Therefore, it take time.

But we have shown that given the time, we could have disposed of the material without any loss. Railway have rolled, and SAIL have also rolled most of the material, may be not in Bhilai, but in Durgapur. Therefore, if SAIL had rejected the entire thing saying that they did not want any of them, we could have seen to it that our loss was minimised. But SAIL itself wanted it for rolling in Durgapur. Even when we found that buyers like Indian Railways wanted them. SAIL did not make these billets available when we were trying to sell them to other parties, SAIL put in many conditions. It delayed matter to some extent, but it would have been possible to dispose the material to other parties without loss."

1.55 When the Committee asked Department of Steel during evidence to state their views regarding the Ministry of Commerce and MMTC's statement that had SAIL not lifted the material and allowed MMTC to sell remaining quantity also, it would have been possible for MMTC to recover the entire cost by sale proceeds, the Secretary, Department of Steel stated:

"The departmental observation on that is that it took six months for disposing of the first consignment of 9000 tonnes (approx). The SAIL disposed of the remaining much faster from December to June. For the Commerce Ministry or for MMTC to say now that if that had not been disposed of by SAIL the losses would have been further reduced and all that, I can say, is a matter of conjecture."

When asked to elaborate further he added:

"... SAIL, in fact did a good thing to my mind, by assisting MMTC in disposing of that product which was lying there, by sending it to Durgapur and rolling it into bars and rods. The Copper content was unsuitable for rolling it into light structures and for bars and rods this material could be managed. So, instead of keeping that inventory unused and the money being lost, what they did was they transferred it to Durgapur, rolled it and sold out the product."

1.56 When asked to explain the loss suffered by SAIL as a result of this, he stated:—

"This has been a matter of correspondence and the claims of SAIL on 28.8.1986 was Rs. 18.27 crores but by 2.5.1988, the claim became Rs. 4.61 crores. This means there was reduction in loss from Rs. 18.27 crores to Rs. 4.61 crores. That means the loss was minimised by utilising this material. The claim has gone down substantially."

1.57 Subsequently, in a note furnished after evidence SAIL, giving details of their reaction to the Ministry of Commerce's statement have stated as follows:—

"(a) SAIL in their letter dated 26th June, 1986 itself addressed to

MMTC had informed them that the entire consignment of 35,000 tonnes was not acceptable to SAIL as the materials were not in conformity with the specification to which SAIL had placed the indent on MMTC, and in fact, the purchase order itself which MMTC issued thereafter. SAIL had requested MMTC to take back the billets and replace them, on the one hand and to compensate SAIL for losses and expenditure incurred as a result of this transaction.

(b) SAIL again reemphasised these requested in their letters dated 3.7.1986, 25.7.1986 and 5.8.1986. The details of the expenditure incurred by SAIL which had to be compensated were also intimated to MMTC by SAIL under SAIL's letter dated 28.8.1986.

(c) Department of Steel had also facilitated to pave way for a solution by agreeing to the diversion of the disputed billets in the domestic market and also a replacement import. No expeditious and concrete action was taken by MMTC against these requests and decisions which SAIL believes, are incumbent on them in terms of fair business. In fact MMTC started changing their stand from time to time as explain below.

(d) MMTC in their letter No. nil dated 12.8.1986, in reply to telex No. 285 dated 28.7.1986 from SAIL informed SAIL that they had earlier put the supplier on notice only in respect of the quantum of billets which had copper content of 0.4% and stated that they presumed that the telex message of SAIL issued on 28.7.1986 regarding the rejection of the consignment was only confined to 1406 MT (the quantity about which MMTC had put the supplier on the notice) and not the entire quantity of 35,000 MTs.

(e) SAIL in their reply telex dated 14.8.1986 informed MMTC that SAIL had rejected the entire quantity of 35,000 tonnes as they were found to be at variance from the contracted specification, and as such, would be requiring replacement of the entire quantity of 35,000 MTs.

(f) MMTC thereafter, in their letter dated 26.8.1986 stated *inter-alia* that they had put the supplier on notice for 1477 tonnes of Billets having copper 0.4% and that the supplier were being held responsible for the balance quantity also for 'non-conformity with the contractual specifications', though IS-2830/75 permits copper upto 0.35%.

(g) The stand of MMTC that IS 2830/75 permits copper upto 0.35% has been quoted out of context. Note 2 of para 5 of the said specification reads as under:

"When steel is required in copper bearing quality, the copper content shall be between 0.20 & 0.35%."

Para 1.1.11 of the specification also provides that in such cases the materials shall be designated as FE 410 CU SB-II. However, SAIL had not asked for the import of Billets with copper as above. Further, a certification of billets with copper 0.4% max as IS 2830/75 is also not tenable, as this particular specification stipulates that:

- (i) presence of copper is permitted only subject to mutual agreement, and
- (ii) even if mutually agreed to, the range of copper could only be 0.20 to 0.35%.

(h) In the above referred letter, MMTC also mentioned that there was initial reluctance on part of SAIL to take delegation to the plant and supplier's/mill's representatives were called by MMTC at SAIL's request. None of these statements are based on facts. It was MMTC who had informed in the letter of 30.6.1986 to SAIL that they (MMTC) had invited a delegation for discussing the matter. SAIL had not made any such request at any time. If there had been reluctance on the part of SAIL to participate in an open discussion, SAIL would not have allowed the visiting delegation to visit the Bhilai Steel Plant or discuss the matter with the senior officials of the Plant.

(i) The inter-ministerial meeting was held on 9.9.1986 as a result of the continuous demand raised by SAIL for the same. In this meeting which was taken by Joint Secretary, Department of Steel and attended by—

- (1) Iron & Steel Controller
- (2) Dy. Director, Ministry of Commerce
- (3) Four representatives of MMTC, and
- (4) Two representatives of SAIL

the following decisions were taken:

- (1) "MMTC should go in for the physical replacement of the quantity that has not been used by SAIL and is lying at Vizag Port as well as Bhilai Steel Plant" SAIL requested MMTC to expedite the settlement of claim.
- (2) "MMTC agreed to take prompt action for replacement of 35,000 tonnes and import additional quantities against import clearance accorded by Iron & Steel Controller".
- (3) "Claim of SAIL on MMTC should be settled by MMTC on priority basis".

(j) As a follow up of the inter-ministerial meeting and at the instance of SAIL, a meeting with MMTC was arranged at the

office of SAIL on 17.10.1986 for discussing the modalities of disposal of billets. SAIL confirmed promptly these discussion vide SAIL's letter dated 24.10.1986 itself.

(k) MMTC in their letter dated 28.11.1986 informed that "they had finalised arrangement with some end-users having clearance from Iron & Steel Controller for disposal of part of the materials lying at Vizag and that they were continuing their efforts to sell the remaining quantity". They also mentioned that they had communicated to the end-users the various arrangements made by SAIL for giving delivery of the consignment.

(l) It may thus be seen that even after a lapse of about six months from the receipt of the billets, MMTC intimated only about the possibility of diversion of part quantity of the Billets and not the settlement of SAIL's claim, or any replacement. In fact, more than anything else, SAIL wanted the replacement of the billets for its own use. Under these circumstances, with a view to mitigate the losses SAIL decided to utilise 9,000 tonnes of Billets at Durgapur Steel Plant instead of Bhilai Steel Plant and MMTC was advised to this effect on 12.12.1986.

(m) SAIL has, after discussions, accepted the procedure for disposal of the quantities in the domestic market, as proposed by MMTC. This proves our bonafide intentions. MMTC could finally give full despatch advice only on 19.1.1987 for a quantity of 10,000 MTs and SAIL delivered 9950 tonnes against this lot. Again, to mitigate the mounting losses, SAIL decided in the meanwhile to utilise further quantity of billets and advised MMTC vide letter dated 14.1.1987 that SAIL proposed to transfer to Plants for rolling in all about 15,000 tonnes. SAIL also requested MMTC to dispose off the balance quantity without further delay. However, in the absence of any further disposal by MMTC, some more quantities of billets were also utilised and in May, 1987 SAIL preferred a revised claim on MMTC showing a total transfer of 22,747 MT of Billets effected to SAIL plants.

(n) MMTC could not take any disposal action for the balance quantity of 2253 tonnes lying at Vizag and could only inform by end of October, 1987 that they wanted SAIL to divert this quantity also to Railways. However, due to the critical raw material position at SAIL plants arising out of the non-reimbursement of disputed billets and a foreign supplier backing out of a commitment to MMTC for shipping 24,000 tonnes of Billets subsequently ordered on account of SAIL, SAIL had to utilise the last residual stocks of about 2300 tonnes also by diverting them to Durgapur, under advice to MMTC.

(o) As regards arrangements made by MMTC in December, 1986

for procurement of 8,000 tonnes for replacement, it may be mentioned that this quantity was not offered by MMTC to SAIL as a free replacement which was due to us. The quantity was offered as a fresh purchase for which SAIL was required to open again an L/C and also to pay duties and other costs. With SAIL's money running into crores already blocked through the first faulty import and no refund or compensation made by MMTC, such an offer as was made in the case of the 8000 tonnes referred to herein, cannot be considered as a replacement offer under any circumstances.

(p) Thus, it can be seen that MMTC could not make timely arrangement for the disposal or replacement of the entire quantity of rejected billets even as per the Government of India's decision taken in the inter-ministerial meeting in Department of Steel, in the month of September, 1986. SAIL was left with no other option but to use these Billets in another steel plant for rolling sections other than what were envisaged as the original end-products, in order to mitigate its financial losses. The observation of Department of Commerce that the material was sold by MMTC to Railways with no losses, is also not correct. In fact, on a quantity of 9950 MT the import cost incurred by SAIL was Rs. 492.07 lakhs and amount credited to SAIL by MMTC comes to only Rs. 464.94 lakhs. The shortfall in realisation which SAIL had to suffer comes to Rs. 27.13 lakhs. Similarly, the freight paid by SAIL to book the consignment to the nominees of MMTC/Railways has also not been paid by MMTC to SAIL yet, even though Railways have paid this freight first into MMTC's account. These form part of SAIL's claim on MMTC.

(q) The statement of the Ministry of Commerce that SAIL's self-consumption of billets has weakened their efforts to find an alternate disposal, appears to be only an afterthought. Had MMTC's actions been more prompt and positively business-like, SAIL would have had no reason either to keep the disputed billets in stock, incurring huge financial losses, or eventually to roll them into products which were not envisaged as the finished output, at the time of planning for these imports."

1.58 As ascertained by Audit the following is latest position in this regard:—

- (a) MMTC invoked the performance guarantee bond on 10.11.1986 and realised Rs. 29,61,889.25. Besides, a claim has also been lodged on 18.9.1987 on firm for Rs. 598.74 lakhs which was the amount of earlier claim of M/s. SAIL on MMTC. M/s. SAIL have since revised their claim to Rs. 461.51 lakh.
- (b) Out of the total quantity of 35,000 tonnes of imported billets, the SAIL rolled 24300 tonnes in Durgapur Steel Plant and 750 tonnes in other Plant with a view to mitigating the losses. The SAIL

suffered a loss of Rs. 1.05 crores in rolling these billets for which the claim has been lodged with the MMTC. In addition, the SAIL has also claimed an amount of Rs. 50.21 lakhs being the difference between railway freight from Vizag to Durgapur and from Vizag to Bhilai (where the imported billets were meant to be rolled).

- (c) 9950 tonnes of billets were sold by MMTC to Railways for which an amount of Rs. 464.95 lakhs was passed on to SAIL.
- (d) 713 tonnes were rolled at Bhilai Steel Plant to verify their suitability and the SAIL suffered a loss of Rs. 34.45 lakhs.
- (e) The SAIL has lodged a total claim of Rs. 4.62 crores.

1.59 In this connection, the Committee enquired whether MMTC have received the revised claim of Rs. 4.62 crores from SAIL. The Director (Steel), MMTC during evidence stated that, "The claim has been received and it has to be decided by arbitrator." When asked about the latest position in regard to claim lodged by MMTC against firm 'A' as also the arbitration proceedings, a representative of MMTC during evidence stated:

"In fact, the arbitration proceedings were not initiated by us. They first appointed their arbitrator and asked us to nominate another arbitrator on our behalf. We appointed Justice Deshpande as our nominee arbitrator. The arbitrators fixed the dates for hearing, and also for filing of statement of claim of Daval, France and for the reply to be supplied by us. Daval, France had been taking adjournments and seeking time and again for the filing of statement of claims. Because they had failed to supply the material according to specification, we had invoked the P.G. Bond submitted by Daval France on account of their failure, which amounts to about Rs. 29 lakhs. So, when they did not file their statement of claim and subsequently they intimated—not Daval France but their legal advisors—that they were not interested in filing their statement of claim on the basis of the claim submitted by SAIL, we have already requested the arbitrators, in writing, to proceed with the arbitration proceedings, because the law says that if an arbitration proceeding has been initiated by any party, it does not mean that the other party cannot file its own statement of claim. So, we have filed our own statement of claim."

1.60 Asked whether the decision of the arbitrators would be binding on Firm 'A' (M/s. Daval, France), the CMD, MMTC stated:—

"Yes,... we have informed SAIL that whatever claim that could be recovered by us through arbitration would be passed on to SAIL."

1.61 The Committee wanted to know the present position of the claim lodged by SAIL against MMTC. In reply, the Executive Director (Commercial), SAIL during evidence stated that this issue has been referred to the Bureau of Public Enterprises for arbitration between two

agencies, SAIL and the other viz. MMTC and SBI. The BPE was yet to set up the arbitration machinery-Permanent Machinery of Arbitrators. The witness further informed the Committee that:

“Their claim has down from the original Rs. 18 crores to Rs. 4.6 crores as on 31.3.1988, notwithstanding the interest liability which was accruing. But it is so, partly because the Permanent Machinery for Arbitrators is yet to be set up by BPE....If, in place of this designated agency for going into this issue for resolving the disputes between MMTC and SAIL, an alternative way can be found, we will not be interested in prolonging this issue. We would like to have a resolution as early as possible, because we would like to cut our losses and go ahead with the job of producing steel and selling the same to the nation.”

1.62 Asked about the opinion of MMTC in this regard, the CMD, MMTC stated during evidence:—

“Normally, in our case, the policy is that we make the claim on the defaulting supplier and whatever claim is received, is passed on to our client-in this case SAIL. Now the case is under arbitration, and our contract provides that any dispute will be subject to arbitration under the Act in India; so this arbitration has been initiated. When it is concluded, whatever claim is realised, we will pass it on to SAIL. SAIL has made a claim on MMTC. In turn, we are passing it on to the foreign party. Since both are Government Undertakings, it can be resolved between us. But if it is felt by our Ministry and their Ministry and amongsts the two undertakings that we should settle the claim and then whatever claim we finally get from the foreign company we will keep it to ourselves, we are willing to keep an open mind and settle it.”

1.63 In this connection, the Committee desired to know whether SAIL suggested any alternative machinery to settle their claim against MMTC, the witness stated:—

“The Government’s directive is that when there is a dispute between two public undertakings, BPE should set up a machinery. That machinery is yet to be set up. It will take a long time. They have not suggested any alternative machinery. But if both our Ministries agree, between the two undertakings we can sort our... We are prepared to keep an open mind. We have no problem... the substantive loss from this transaction is Rs. 1.04 crores, barring the Rs. 22 lakhs towards customs duty and interest and certain differences in rail freight between Bhilai, Durgapur etc. We have not done it so far. If they do it, we can discuss it with the support of the Ministry concerned.”

1.64 In this connection, the Committee desired to know the opinion of the Ministry on the suggestions of both SAIL and MMTC about settlement

of the dispute at the level of administrative Ministries. The Secretary, Department of Steel during evidence stated:—

“We find from the files that in March, 1987 by the time the new guidelines of the Bureau of Public Enterprises were issued, the new procedure had already come into operation. The two undertakings should not go to the court but should go to the arbitrator. The Ministry had told SAIL that this should be settled between SAIL and MMTC. But, Bureau of Public Enterprises instructions now lay down that it should be settled through permanent machinery that is arbitration machinery. The Department of Steel has reminded the Bureau of Public Enterprises three times that they may set up the permanent machinery for us and left this matter be settled.”

1.65 The Committee enquired as to when was this matter brought to the notice of the Ministry. The Secretary, Department of Steel stated:—

“I have studied the files and I find that the Department of Steel has been consistently taking the stand that this is basically a commercial matter between SAIL on the one hand as a customer, the SBI as a banker and the MMTC as a canalising agency. The matter was brought to the notice of the Department first on 30.6.1986 and at that time it was brought to the notice of the Government in paranthesis. The larger issue was raised by SAIL that they did not like canalisation. The canalisation till then was through SAIL themselves. For the first time the MMTC came into picture sometime in 1985. Like any two Government agencies, there was difference of opinion and SAIL was taking a stand that they have problems with import. They told us that we do not want to canalise through MMTC. They reiterated their stand that SAIL must be permitted to import. Subsequently on 12th August, 1986 they again wrote to the Government and the Department of Steel asking for inter-ministerial assistance to settle this dispute. Thirdly a meeting did take place in the Department but I found from the Minutes of the meeting that primarily the impression that was given by that group was that they were interested in getting additional licences; but regarding the question of liability I found from the Minutes that it was touched rather peripherily. They said let the matter be settled quickly. This is all as far as Government intervention in the matter at that time was concerned.”

The witness added:—

“Going through the rest of papers I found that the Department has been taking the stand that they do not want to come into action. It is a buying and selling operation so they should settle it through commercial procedure available.”

1.66 When enquired as to whether it was a general practice that all

administrative Ministries do not interfere in such commercial transactions, the Secretary, Department of Steel stated:—

“Regarding administrative Ministries not intervening in commercial matters it is the normal stand which the administrative Ministries take. There are a large number of commercial transactions which public sector undertakings undertake day in and day out. What I am saying today is only what I have assessed from the papers. I am also re-inforcing that today. In the normal cause if such a situation arises, then we would take a stand that, it is a commercial transactions, please settle it.”

1.67 In this connection, the Committee wanted to know as to why Ministry did not resolve the issue earlier and who was responsible and accountable to Parliament. The witness stated:—

“The administrative Ministry is responsible and accountable to Parliament and, therefore, in issues of this kind, if normal procedure of settlement of commercial disputes do not bear fruit within a reasonable time, and the value of disputes is so much, the administrative Ministries will get together. They must do so, and try to resolve the problem, because Government money is involved with respect to a seller. Such a meeting of the administrative Ministries took place only once after getting the letter from SAIL sometime in August, 1986. The first meeting took place in September, 1986. The administrative Ministries at the higher level should have come together. I find from the file that the top management of MMTC and SAIL did not meet even once.”

1.68 As regards the inter-ministerial meeting held on 9.9.86 as a result of continuous demand raised by SAIL for the same time to sort out the differences among the different organisations arising out of import defective billets, the Committee pointed out that although SBI was also involved in the transaction but Ministry of Finance was not invited to participate in the Meeting. The Secretary, Department of Steel, during evidence stated:—

“As regards the question why the Ministry of Finance had not been called or what kind of action has been taken against the SBI, first of all, I may say that I have to base my opinion on the decisions on the file. I also found that SAIL had been dealing with MMTC only, not with the SBI direct. Secondly, in the Ministry nowhere has it been thought or considered, about the fixing responsibility for the loss. We have to conduct an inquiry into it.... The Government assessment that SBI has committed a mistake is only three days old and nothing has yet been decided on it.”

1.69 In the background of the present case of import of billets by MMTC, the Chairman, SAIL during evidence expressing his views on canalisation of steel items through MMTC stated as follows:—

“The whole thing arise out of the very concept of ‘canalisation’ of imports. Whatever may be the strong reasons for canalisation, one must look into whether the canalisation of steel is advisable unlike general consumption goods like sugar, wheat and a variety of other things, steel is not a commodity which can be bulked and purchased in a canalised fashion. The billets required for us in Durgapur for producing bars and rods are different from those required for Bhilai Steel Plant and producing light structurals. In terms of length and size, they are different. I wanted to submit to you that the whole thing arises out of that.

The second point I want to make is that SAIL is the largest producer of steel in this country. What is not known to SAIL about problems of steel is not worth knowing. They produce 60 percent of India’s steel requirements. They control 70 percent of steel producing capacity. In a situation like this, to have another organisation or intermediate group of organisations to procure the materials like billets would not be correct. This is again a matter on which I have very strong views and I think that this Committee should take note of it. It is not just a small scale producer wanting a few tonnes of steel. It is the steel Authority of India which buys steel for public demands in large quantities like 30,000 metric tonnes and 100,000 metric tonnes and to different specifications. There are not very many buyers of steel who buy such large quantities. Here is an organisation which has got the capability to produce steel and purchase steel and when it wants an intermediate product, it gets canalised by someone else. In such circumstances, you must be prepared for this type of situation. I think the customers in this country should be allowed to have a free access to purchase of raw materials stores and should be able to buy these things as they want subject to Governmental Rules and Procedures for such inputs. But this type of problem is unavoidable if canalisation is continued for steel. But if you want to avoid this problem we should go to the bottom of it, whether we should puruse this process of canalisation or not.”

1.70 When the above opinion of Chairman, SAIL was brought to the notice of Secretary, Department of steel by the Committee and enquired about his views in this regard, he stated during evidence:—

“For the first time the MMTC came into picture in 1985. Like any two Government agencies, there are difference of opinion and SAIL was taking a stand that they have problems with import. They told us that we do not want to cannalise through MMTC. They reiterated their stand that SAIL must be permitted to import. Subsequently on 12th August, 1986 they again wrote to

the Government and the Department of Steel asking for inter-ministerial assistance to settle this dispute..."

1.71 As regards the process of canalisation through MMTC, the Committee enquired about the normal procedure of import of goods through canalising agency. The Secretary, Department of Steel during evidence stated:—

"In the opinion of the Department of Steel, there should be contract. SAIL should have a contract with any canaliser. It is not a procedure prescribed. Therefore, nobody strikes a contract. The agreement has a legal validity of a contract because under the contract letter, we will find that in the absence of contract, if there is a valid agreement, the agreement serves the purpose of the contract. But that is for legal purpose."

1.72 When asked in the context of the present case, whether it was not necessary for SAIL to enter in to a contract with MMTC to avoid such an eventuality, the witness stated:—

"...it is the SAIL's responsibility or deficiency in not striking a contract. The point to note is that no buyer strikes a direct contract with MMTC. They only exchange an agreement and I have gone through that agreement letter and the language that is used there..... As a public sector buyer, SAIL has not entered into contract with MMTC. I am not sure whether MMTC enters into contract or not. I went into the terminology of the agreement, all I found from the language that MMTC being a Government owned canalising agency, it is doing a favour to its customer. It should not be found out from who we are buying. I am not finding fault with MMTC. This is an environment in which canalisation seems to be taking place. I was not aware of it. That is why, I came to the conclusion that if SAIL were to buy through MMTC as a canalising agent, it is necessary to strike a contract. The view that we hold is that when large amount of material is to be purchased by the user himself it should be canalised. SAIL should directly buy. By canalising, we have brought one more agency in-between. On the other hand, canalisation serves a purpose where number of small firms are involved and the country can benefit by centralised buying. In this case, SAIL was the very large customer. Since 1986, SAIL was resisting this canalisation. It is possible that the Government's view at that time was that it should be canalised. My answer is, bulk material purchased by the actual user should be best left to the user himself particularly when it is a public sector undertaking."

PART-II

CONCLUSIONS/RECOMMENDATIONS OF THE COMMITTEE

2.1 Against an indent of Steel Authority of India Ltd. (SAIL), the Minerals and Metals Trading Corporation (MMTC) acting as canalising agency, placed a purchase order in March, 1986 on Firm 'A' of France for import of 35,000 tonnes of billets to be manufactured and supplied from Turkey. The specifications of the billets required for rolling at the Bhilai Steel Plant were detailed in the purchase order. On the basis of letter of authority issued by MMTC, SAIL established a letter of credit with State Bank of India in favour of firm 'A'. The cargo containing entire quantity of 35,000 tonne billets arrived at Visakhapatnam by mid June, 1986. The firm presented the shipping documents to SBI, Paris, which released the payment to the firm and debited SAIL's account on 19.6.1986 for full value of the materials amounting to Rs. 9.74 crores. On receipt of the shipping documents from SBI, Calcutta, SAIL, noticed that the billets did not conform to the contracted specifications according to the accompanying certificates of analysis. The entire quantity of billets costing about Rs. 18.27 crores including customs duty etc. was found totally unsuitable for rolling at Bhilai Steel Plant and was, therefore, rejected.

(Recommendation S.No. 1, Paragraph 2.1)

2.2 The Committee note that according to custom classifications, if the copper percentage is 0.4% or more then the billet is classified as alloy steel and additional duty is levied. Therefore, for 1477 tonnes of billets which contained 0.4 copper, SAIL had to pay an avoidable customs duty of Rs. 22.68 lakhs. According to SAIL copper was an element which was not stipulated to be present in the billets as per the specifications given by them to MMTC. MMTC admitted that specifications given by SAIL did not envisage presence of copper in the steel billets. They also agreed that the contractor had violated contractual obligations for which he had been immediately put on notice and amount of Rs. 29.62 lakhs had been recovered from him by invoking the performance guarantee.

(Recommendation S.No. 2, Paragraph 2.2)

2.3 The Committee find that in regard to the sources of supplies for billets, although MMTC showed the tender results of all the four parties including their names, prices, quantities, delivery schedules etc. to SAIL, their opinion was not ascertained before placing the order for these billet on firm 'A' by MMTC. According to SAIL, it would have been better if they as end-users would have been involved in the selection process. But in the present canalising process, the canalising agency has the final decision in regard to placement of order and selection of the sources of supply.

2.4 The Committee regret to note that MMTC as a canalising agency failed to procure billets of desired specifications which resulted in causing not only avoidable loss to SAIL but also failed to serve the purpose of rolling them into light structures for which these were imported. They are of the view that had the opinion of the end user been obtained before placing the order on firm 'A' the present unpleasant situation could have been avoided. They would, therefore, recommend that in cases where imports of huge quantities are involved, the end users should invariably be actively involved in approving the sources of supplies, so that not only the causes of complaints could be removed but the material of desired quality and specification is procured. In case the canalising process which is presently being followed requires to be amended, that the same should be suitably amended by the Government.

(Recommendation S. No. 3, Paragraph 2.3 & 2.4)

2.5 The Committee further note that the purchase order placed by MMTC on firm 'A' of France provided for mills analysis and test certificates for each lot as well as certificate of an independent agency for inspection to be carried out before the discharge from the manufacturing mills. Although SAIL had paid an amount of Rs. 6.67 lakhs towards inspection charges, the inspection was got done on behalf of firm 'A' and not on behalf of MMTC or SAIL. As per clause 45.5 of the purchase order, the buyer had the right to have the material inspected before shipment. According to SAIL the inspection certificate accompanying the other documents received by them indicated that the material did not conform to the contractual specifications. The purchase order had stipulated the role of the inspecting agency correctly and the inspection was satisfactorily embodied in the document, therefore they had thought that their interest would be protected but in actual practice the course of events took a different turn. In this connection MMTC informed the Committee that they had indicated in the purchase order itself that SGS be appointed as independent agency called 3rd party inspection agency independent of both supplier and buyer. Accordingly the seller (M/s. Daval France) appointed SGS as inspection agency which carried out the inspection. According to them in the inspection certificate a reference was also made of the purchase order placed by MMTC. However, they admitted that the inspection as pointed out by audit had been made on behalf of M/s. Daval France and this was on account of the fact that at that time the transaction took place simultaneously. M/s. Daval bought from Turkish Mill and therefore at that point of time M/s. Daval was the buyer and Turkey was the seller and simultaneously MMTC bought from M/s. Daval. This was done by MMTC to avoid payment to be made out of letter of credit. If they had appointed inspection agency directly they would have to pay directly out of the letter of credit and clearance would also be required from Reserve Bank of India as a result of which payment would get delayed by one or two years.

2.6 The Committee are surprised to note that inspecting agency instead of

being appointed on behalf of MMTC or SAIL was appointed on behalf of the supplier itself that is firm 'A'. They are not convinced at all with the grounds put forward by MMTC for having not appointed an inspection agency directly and more so when the money had been paid specifically for this purpose by SAIL. The result has been that the Inspection Agency did not look after the interests of MMTC who had made the payment but of the French firm. They feel that the provision of payment to inspection agency directly could have been provided for MMTC well in advance after having anticipated the ensuing problems. They are of the firm view that there is a definite lapse on the part of MMTC in this regard and they have failed miserably in discharging their responsibilities as a canaliser and a buyer. No effort seems to have been made by them to ensure that the material purchased is of the specified quality with the result that substantial pecuniary loss has been caused to SAIL. They, therefore, desire the Government to fix the responsibility of this serious lapse and compliance reported within a period of three months.

(Recommendation S. No. 4, Paragraphs 2.5 & 2.6)

2.7 The Committee find that on the basis of letter of authority issued by MMTC, SAIL established a letter of credit with State Bank of India in favour of firm 'A' (M/s. Daval France). The firm presented the shipping documents to SBI, Paris, which released the payment to the firm and debited SAIL's account on 19.6.1986 for full value of the materials amounting to Rs. 9.74 crores. On receipt of the shipping documents from SBI, Calcutta, SAIL noticed that billets did not conform to the contracted specifications according to the accompanying certificate of analysis. The payment was released by SBI although the specification declared in the shipping documents differed from those given in the annexure to the letter of credit. When this matter was taken up with the SBI, the bank contended that the discrepancies were purely of technical nature and did not fall within the purview of the bank for consideration. In the opinion of CMD, MMTC, "No great technical expertise was required to find out whether the goods were in conformity with the specifications because the copper element and other elements were clearly laid down and inspection certificate is presented to the bank to make sure that goods conform to specifications and it is on this basis that the bank can release payment." He also added that, 'The bank is the custodian of the money of SAIL and as custodian, the bank is expected to exercise all caution to safeguard the interest of the customer or the client'. In this connection, Secretary, Department of Steel also expressed the view that it was incorrect for the bank to say that it is a technical matter. The bank releases the payment on comparison of documents. The banker has the obligation and responsibility to check conformity of the documents which come to him, with the letter of credit and see whether the specifications are properly followed or not. Therefore in his view it is the State Bank of India at Paris which had made a major error. When the Committee solicited the opinion of Department of

Economic Affairs (Banking Division), in this connection, the Additional Secretary of the Department stated that the bank had acted in accordance with the normal banking practice/and there had been no error in negotiating the LC. The inspecting agency of SAIL, Secretary General De Surveillance (SGS) gave a certificate specifically stating that the quality and quantity of goods had been found to be in conformity with the L.C. terms and since Bank is not a technical organisation they would go by the report of the inspecting agency. According to him in dealing with such documents, they are guided by 'Uniform Customs and Practices for Documentary Credit (UCPDC) issued by International Chamber of Commerce. Subsequently at the behest of the Committee, the Department of Economic Affairs (Banking Division) got the whole issue examined by Reserve Bank of India from the point of view of international Banking practice. On the basis of indepth examination of the matter by RBI also, it was concluded that SBI had complied with the relevant provisions of Uniform Customs and Practices for Documentary Credits (UCPDC) while negotiating documents relating to the transaction under reference. They were of the opinion that no irregularities/error or haste on the part of the Bank in honouring the commitment under the letter of credit could be attributable.

2.8 The Committee after having examined the report of the Reserve Bank of India however find that as per the Article 15 of the UCPDC, the SBI was supposed to have examined all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms & conditions of credit. Although the annexure IV (a) to the letter of credit provided that the billets should conform to Indian Standard 2830/75-SB-2 but it did not stipulate the presence of copper, silicon and chrome in the billets, which made them unacceptable to SAIL and unsuitable for rolling them into light structures.

2.9 The Committee are therefore of the view that State Bank of India, especially their Paris branch did not exercise reasonable care in comparing the documents properly and even the Calcutta Branch of SBI did not care to contact SAIL/MMTC to clarify the discrepancy in the two documents. In their zeal to meet the time stipulation they released the payment after expiry of 15 days i.e. on 11th June, 1986. The Committee, therefore, strongly feel that SBI has failed to act as custodian of their client's money, instead they protected their own interest by releasing the payment to the foreign party without ensuring themselves about the conformity of the documents with the letter of credit. The Committee would like the Government to issue necessary instructions to the banks to be more vigilant while making final payment to the foreign parties on the basis of shipping documents.

(Recommendation S.No. 5, Paragraphs 2.7 to 2.9)

2.10 The Committee note that Steel Authority of India opened a letter of credit with State Bank of India on the basis of letter of authority issued by MMTC. As per the stipulation of letter of credit, a set of documents was

required to be sent by beneficiary to Visakhapatnam office of MMTC which was the Canalising agency within 5 days from the date of shipment which was 27th May, 1986. According to the scrutiny made by the Reserve Bank of India and submitted to the Committee through the Ministry of Economic Affairs, the foreign sellers have stated to have certified having complied with the stipulation as per the certificate. This certificate was presented to the negotiating bank (Paris Branch of State Bank of India) as one of the documents evidencing compliance with the terms of letter of credit. Therefore the advance set of documents would have been received by the concerned office of MMTC latest by 6th June, 1986. In this connection CMD, MMTC stated that in the present case after having taken indemnity from SAIL, they permitted them to have financial arrangement with the Bank and there is no contractual relationship between MMTC and State Bank of India. It is only between State Bank of India and SAIL. SBI however, should not have released the payment once the documents were before them which showed very clearly that goods did not conform to specification. As soon as the documents were received these were simply passed on to SAIL with the hope that SAIL would see the discrepancy. It was however, admitted by CMD, MMTC at that point of time they could have found out the discrepancy and drawn attention of SAIL which they failed to do. The Secretary, Department of Steel also opined that the advance copy of the non-negotiable documents should have reached the hands of the buyer within 5 days of the ship leaving and MMTC, should have checked it as it was their responsibility. According to SAIL, advance copies of the non-negotiable documents were received by them on 11th June, 86 at Vizag. The ship arrived on 14th and normally the documents are received earlier than the arrival of the ship. The men at Vizag, however, failed in their duty as their first duty was to check whether the advance copy of the documents received by them was in order or not. On the other hand, out of their eagerness to save demurrage they deposited all the documents and by the time they came to know about it, it was too late. The Secretary, Department of Steel admitted, however, that the period from 11th to 19th was crucial when the payment by the bank could have been stopped. And there was a clear omission on the part of SAIL. He, however, informed the Committee that though the guidelines for handling the shipment are there but the same do not provide for exceptions like the present case and these need to be renewed.

2.11 The Committee are constrained to observe that though there was sufficient time at the disposal of both MMTC and SAIL for making proper scrutiny of the documents, yet neither SAIL nor MMTC cared to detect the discrepancies which resulted in avoidable loss that too of foreign exchange. They deprecate the casual approach adopted by SAIL and MMTC involving huge sum of amounts. They also express their strong displeasure, over the manner in which the MMTC has attempted to wriggle out by putting the blame across the doors of the bank and the SAIL. They are of the firm view

that MMTC being a canalising agency it was primarily their responsibility to ensure that atleast the documents reached SAIL within 5 days of the ship leaving as per the stipulation mentioned in the letter of credit. They also take a serious note of the fact that so far no enquiry has been instituted either by SAIL or MMTC with a view to fix responsibility. They therefore, recommend that the concerned administrative Ministries to conduct a thorough probe into the circumstances under which appropriate action was not taken by MMTC as well as SAIL in fixing responsibility on the defaulting officials. They would also desire that as pointed out by the Secretary, Department of Steel the guidelines relating to handling of shipment should be reviewed and made more exhaustive with a view to covering up exceptional cases also. They also desire to be apprised of the outcome of enquiries as well as the revised guidelines within 3 months from the presentation of this report to the Parliament.

(Recommendation S.No. 6, Paragraphs 2.10 & 2.11)

2.12 The Committee find that after the rejection of entire consignment of 35,000 tonnes by SAIL, they informed MMTC in their letter dated 26th June, 1986 that the materials were not in conformity with the specification to which SAIL had placed the indent on MMTC. SAIL had requested MMTC to take back the billets and replace them, and also compensate SAIL for the losses and expenditure incurred as a result of this transaction. According to SAIL, they had again re-emphasised these requests in their letters dated 3.7.86, 25.7.86 and 5.8.86. The Department of Steel had also attempted to pave way for a solution by agreeing to the diversion of the disputed billets in the domestic market and also a replacement import. No expeditious and concrete action was stated to have been taken by MMTC against these requests and decisions. The inter-ministerial meeting was held on 9.9.86 as a result of continuous demand raised by SAIL and in the meeting it was decided that MMTC should go in for physical replacement of quantity that has not been used by SAIL and was lying at Vizag Port as well as Bhilai Steel plant. MMTC agreed to take prompt action for replacement of 35,000 tonnes and import additional quantities against import clearance accorded by Iron & Steel Controller. As a follow up of the inter Ministerial meeting at the instance of SAIL, a meeting with MMTC was arranged at the office of SAIL on 17.10.86 for discussing the modalities and disposal of billets. Though SAIL had confirmed promptly these discussions vide their letter dated 24.10.86 no concrete measure was taken by MMTC for expeditious/disposal of the billets. In the meantime SAIL lifted about 22747 tonnes of billets and utilized these in their plants other than Bhilai Steel Plant. MMTC could give full despatch advice only on 19.1.87 for a quantity of 10,000 MT as against which SAIL delivered 9950 tonnes. According to SAIL, MMTC could not take any action for the disposal of balance quantity of 2253 tonnes of billets lying at Vizag and could only inform by end of October '87 that they wanted SAIL to divert this quantity also to Railways.

As the raw material situation was critical at SAIL plants, they had to utilize their residual stock of billets also by diverting them to Durgapur, under advice to MMTC. As such, out of the total quantity of 35,000 MT about 9950 MT were delivered to Railways and remaining 25,050 MT were consumed by SAIL themselves. As per SAIL, the billets were utilised by them to mitigate the mounting losses on this account. On this issue, the Ministry of Commerce informed Audit that 'had SAIL not lifted the material and allowed MMTC to sell the remaining quantity also, it would have been possible for MMTC to recover the entire cost by sale proceeds. The CMD, MMTC during evidence *inter-alia* however admitted that like Railways, they found other buyers also but all this took little time because these imported billets could be sold only to parties having import licenses for this purpose with clearance from Iron & Steel Controller.

2.13 The Committee regret to note that MMTC failed to take prompt action for replacement as well as disposal of the billets and thereby caused undue hardship to their consumers i.e. Steel Authority of India who were left with no other alternative but to use the billets in the other steel plants. They find this to be a poor reflection on the working of MMTC. The Committee would desire that if at all MMTC have to discharge the functions of a canalising agency efficiently they must try to remove the drawbacks inherent in their system so that their customers are not made to suffer and incur heavy losses in future on account of the lapses committed by them. Every Public Undertaking must endeavour to live upto the expectations of public. It should inspire confidence in its straight and fair dealings—be that M.M.T.C., SAIL or any other Public Undertaking either while dealing with the sister undertaking in the public sector or with any other private party; be the dealing with customers, suppliers, dealers or parties, individuals in any other category having anything to do with the public undertaking—of public or private sector. The approach and aptitude of every public undertaking with public undertaking or private parties should always be just fair, reasonable and equitable and none—customers, supplier or any dealer with any Public Undertaking—should be made to suffer and incur losses for the lapses of Public Undertakings. Public confidence in fairness of Public Undertaking should be considered to be the very foundation of public accountability of public undertakings. Any act on its part which will undermine public confidence in it should, in deed, warrant severe censure. The Committee desire, therefore, that a regular monitoring machinery should be set up by the Public Undertakings jointly in groups or separately to avoid such pitfalls as in the instant case, within three months and the results thereof be intimated to this Committee, accordingly.

(Recommendation S. No. 7, paragraphs 2.12 & 2.13)

2.14 The Committee note that as against the earlier claim lodged on 18.9.87 on firm for Rs. 598.74 lakhs which was the amount of earlier claim

of SAIL on MMTC, SAIL have since revised their claim to Rs. 461.51 lakhs. This claim was stated to have been revised by SAIL after utilising 25050 tonnes of billets in their plants (other than Bhilai Steel Plant) and selling the remaining quantity of 9950 tonnes to Railways. The claim was stated to have been filed by MMTC against the firm 'A' (M/s. Daval, France) in the arbitration proceedings initiated by firm 'A'. The dispute between the two agencies viz. MMTC and SAIL was yet to be resolved because as per the new guidelines of the Bureau of Public Enterprises, the dispute between two public undertakings should be settled by the arbitration machinery—Permanent Machinery of arbitrators. Although Ministry of Steel & Mines (Department of Steel) have reminded the BPE three times but the permanent machinery has not been set up so far. In this connections, both SAIL and MMTC agreed that this issue may be settled at level of administrative Ministries instead of prolonging it.

2.15 The Committee find that this matter was brought to the notice of the Ministry only on 30.6.1986 in the context of SAIL's aversion to canalisation of import of steel through MMTC. Subsequently on the persistent request of SAIL a meeting was arranged by Department of Steel in September, 1986 to settle this dispute. According to Secretary, Department of Steel, this was all as far as Government intervention in the matter at that time was concerned. In his view and in the opinion of the Department this was a commercial Transaction which public sector undertakings undertake day in and day out and administrative Ministries do not interfere in such matters. He however admitted that in such cases where normal procedure of settlement do not bear fruit within a reasonable time, and the value of dispute is much the administrative Ministries at the higher level should have got together to resolve the problem. The Committee also find that although SBI was also involved in the transaction but the Ministry of Finance was never invited to participate in the inter Ministerial meeting nor did SAIL ever deal with them directly.

2.16 The Committee regret to note that despite the fact that a total claim lodged by SAIL against MMTC amounts to Rs. 4.62 crores, the meeting of administrative Ministry took place only once sometime in the month of September, 1986 and that too at the instance of the SAIL, and yet what further dismays the Committee is the fact that though SBI was also involved, yet association of Ministry of Finance was never considered at any level. The Committee, therefore, are of the opinion that the Administrative Ministry have also failed to discharge their administrative responsibility in this regard. As a result of inaction on the part of the Ministry the matter is still pending settlement. The Committee, therefore, desire that the new guidelines of Bureau of Public Enterprises regarding disputes between two Public Undertakings, in the instant case, between MMTC and SAIL, should also be uniformly applied to all disputes to which one party is public undertaking. In other words, the new guidelines be applied not only to disputes between one public undertaking and another but to all disputes

between one public undertaking on one hand and any other private party on the other. The Committee are pained to find that this dispute between two Public Undertakings has been hanging fire for too long; it could and should have been resolved quickly by arbitration in terms of BPE's new guidelines. They also desire that the Administrative Ministry should immediately take up the matter at the highest level for setting up the Permanent Machinery of Arbitration as stipulated in BPE Guidelines for settling all disputes. The Committee desire that once a dispute arises, it must be finally resolved through arbitration within six months.

(Recommendation Sl. No. 8, Paragraphs 2.14 to 2.16)

2.17 The Committee note that import of steel was being done by SAIL directly prior to 1985. It was after 1985 that MMTC came into picture as a canalising agency. The Committee also note that all along SAIL through their administrative Ministry has been opposing the very idea of canalisation through MMTC. The Chairman, SAIL while expressing his ideas on canalisation of steel items through MMTC stated that steel is not a commodity which can be bulked and purchased in a canalised fashion. Besides SAIL is the largest producer of steel in this country, they produce 60% of India's steel requirements and control 70% of steel producing capacity. In a situation like this, to have another organisation or intermediate group of organisations would not be correct. The consumers in this country should be allowed to have free access to purchase of raw materials and should be able to buy things subject to Rules and Procedures for such inputs. In his view, in the present system of canalisation such type of problems as elucidated in the above mentioned paras are bound to be there. The Committee also wanted to know the views of Secretary, Department of Steel in this regard. He too stated that when large quantities of material is to be purchased by user himself it should not be canalised, SAIL should directly buy. By canalising one more agency has been brought in between. Canalisation serves a purpose only where number of small firms are involved and the country benefits by centralised buying, but bulk material purchased by the actual user should be left to the user himself particularly when it is Public Sector Undertaking. But besides SAIL, there are other bulk consumers such as Railways and also private rolling parties. Interest of all consumers small or big, public and private is to be kept in view within the larger framework. In the circumstances, the Committee desire the Government to constitute a Committee to assess the advantages and disadvantages of canalisation and to make recommendations within a period of three months and the Committee also desire to be apprised of the same.

2.18 The Committee after finding that in the instant case MMTC have failed in discharging their responsibilities as a canalising agency, are also inclined to agree with the above observations made by the Chairman, SAIL and Secretary (Department of Steel). They would, therefore, desire that the justification of canalisation of import of bulk quantities like steel through

another agency like MMTC should be, as indicated above, thoroughly re-examined as the present instance clearly demonstrates that the canalising agency has not been able to discharge its functions effectively.

(Recommendation S. No. 9, Paragraphs 2.17 & 2.18)

NEW DELHI;
November 26, 1991
Agrahayana 5, 1913(S)

A. R. ANTULAY,
Chairman,
Committee on Public Undertakings.