

**STATE TRADING CORPORATION
OF INDIA LIMITED**

MINISTRY OF COMMERCE

**COMMITTEE ON
PUBLIC UNDERTAKINGS
1992-93**

TENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

TWENTY-THIRD REPORT
COMMITTEE ON PUBLIC
UNDERTAKINGS
(1992-93)

(TENTH LOK SABHA)

STATE TRADING CORPORATION OF INDIA LTD.—
IMPORT OF NEWSPRINT
(MINISTRY OF COMMERCE)



Presented to Lok Sabha
Laid in Rajya Sabha

30.4.1993

LOK SABHA SECRETARIAT
NEW DELHI

April, 1993/Vaisakha, 1915 (Saka)

C.P.U. No. 722

Price: Rs. 9.00

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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.

Committee on Public Undertakings
 (1992-93) on State Trading Corporation
 of India Ltd.- Import of Newsprint.

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**COMMITTEE ON PUBLIC UNDERTAKINGS
(1992-93)**

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19. **Shri V. Narayanasamy**
20. **Dr. Narreddy Thulasi Reddy**
21. **Shri Santosh Kumar Sahu**
22. **Shrimati Kamla Sinha**

SECRETARIAT

1. **Shri G. L. Batra—Additional Secretary**
2. **Smt. P. K. Sandhu—Deputy Secretary**
3. **Shri A. Louis Martin—Assistant Director**

* Ceased to be a Member of the Committee consequent on appointment as Minister in the Council of Ministers w.e.f. 18th January, 1993.

**STUDY GROUP V OF
COMMITTEE ON PUBLIC UNDERTAKINGS**

Aspect/special study of matters like Import of Newsprint by State Trading Corporation of India Ltd., Disposal of scrap of Public Undertakings through Metal Scrap Trade Corporation/other Public Undertakings and Indian Airlines—Delays in flights.

- | | |
|--------------------------------|-------------------------|
| 1. Shri Madan Lal Khurana | — Convener |
| 2. Shri Mohinder Singh Lather | — Alternate Convener-I |
| 3. Smt. Bibhu Kumari Devi | — Alternate Convener-II |
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| 8. Shri Dipen Ghosh | |
| 9. Shri V. Narayanasamy | |
| 10. Dr. Narreddy Thulasi Reddy | |
| 11. Smt. Kamla Sinha | |

INTRODUCTION

I, the Chairman, Committee on Public Undertakings having been authorised by the Committee to present the Report on their behalf, present this 23rd Report on State Trading Corporation of India Ltd. —Import of Newsprint.

2. The Committee took evidence of the representatives of State Trading Corporation of India Ltd. on 6th and 16th November and 4th December, 1992, 31st March and 16th and 17th April, 1993 and also of Shri B.K. Shroff, the former Finance Director of STC, and the representatives of Ministry of Finance (Deptt. of Revenue) and the Ministry of Commerce on 19th April, 1993.

3. The Committee considered and adopted the Report at their sitting held on 29 April, 1993.

4. The Committee wish to express their thanks to the Ministry of Commerce, Ministry of Finance (Deptt. of Revenue), State Trading Corporation of India Ltd. and Shri B.K. Shroff, the former Finance Director of STC 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 Ministry of Commerce, Ministry of Finance (Deptt. of Revenue), State Trading Corporation of India Ltd. and Shri B.K. Shroff, the former Finance Director of STC who appeared for evidence and assisted the Committee by placing their considered views before the Committee.

5. They would also like to place on record their appreciation for the valuable assistance rendered to them by the officials of the Lok Sabha Secretariat attached to the Committee.

NEW DELHI;
April 29, 1993

Vaisakha 9, 1915 (Saka)

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

PART A

BACKGROUND ANALYSIS

I. Universal Case

1.1 In February, 1991 State Trading Corporation floated a Global Tender for Import of Standard and Glazed Newsprint by 15 March, 1991 with validity upto 22nd March, 1991 later extended upto 1st April, 1991. The Tender was for 9000 MTs of Glazed Newsprint. The offers were tabulated and the Newsprint Purchase Committee (NPC) in its meeting of 30.3.1991 decided to place an order of 5000 MT glazed newsprint with Repap Sales Corporation, Canada manufactured by Miramichi Pulp and Paper Company, Canada. The offer of M/s. Repap Sales Corporation was the lowest at US \$ 700 PMT FAS New Castle Port, New Burn Swick or US \$ 810 PMT CNF main Indian Port. Repap Sales Corporation later informed STC that M/s. Universal Paper Export Company Limited had full authority on its behalf to finalise the contract with STC. A contract was signed by STC with Universal Paper Export Company.

1.2 Again on 25.4.1991 STC issued a tender for Standard & Glazed Newsprint. The offers received were placed before the NPC in its meeting held on 13.5.1991. The NPC decided to place another order of 5000 MTs of Glazed Newsprint with M/s Universal Paper Export Company, Canada at US \$ 715 PMT FAS. Another contract was signed between STC and M/s. Universal on 15.5.1991 in the form of an addendum to the original contract dated 30.3.1991 with a Special condition that the contract would be effective only after the quantity of 5000 MTs glazed newsprint already ordered with M/s. Universal is received by STC and subject to its acceptance by the user industry. Shipment of additional quantity of 5000 MTs *vide* addendum of 15.5.1991 would be permissible only on the fulfilment of above noted special condition.

1.3 In the instant case, Miramichi Pulp & Paper Inc., Canada had tendered through M/s. Universal Exports at substantially a lower price by US \$ 70 PMT and in the subsequent tenders too, Miramichi through Universal Exports came cheaper by US \$ 55 PMT as compared to Finnmap, the second lowest tenderer.

1.4 During oral evidence of the representatives of STC, the Committee desired to know whether the NPC is responsible to the Executive Committee or to the Board or it is autonomous and independent and can do anything without consulting the Board. The Chairman, STC stated that

the NPC takes final decisions of purchase, allocation etc. But the decisions of the Newsprint Purchase Committee are laid before the subsequent Board meeting for information.

1.5 When asked further whether the Executive Committee has anything to do with the purchase of newsprint, the Chairman, STC stated as follows:—

“Yes Sir, in the subsequent administration of these contracts where there is a dispute.”

1.6 With respect to the respective role and functions of NPC/EC/STC Board and Newsprint/Finance Divisions in regard to import of newsprint, execution of purchase decisions, settlement of disputes arising out of implementation of contracts with suppliers etc. and the evolution of the same, the STC have in a detailed written note explained the role and functions of various Committees etc. as noted below:—

“Newsprint Purchase Committee: Newsprint Purchase Committee was constituted by the Ministry of Commerce on 31.10.83 on the recommendations of the STC Board. The functions of this Committee are contained in the Delegation of Powers and are as under:

The conclusion of purchase and sale contract of newsprint and matters incidental thereto.

Executive Committee: It is a Committee constituted by the order of the Chairman to deal with all policy matters and to lay down policy guidelines pertaining to trade as well as personnel matters from time to time.

Board of STC: Since NPC had been set up on the recommendations of the Board by the Ministry of Commerce, the decisions of NPC were reported to the Board on regular basis.

Newsprint Division: Separate functions have not been codified for any particular division, but have developed and evolved because of past practice. As per this, the Newsprint Division performs the following functions:

- (a) to float tenders for inviting of offers for supply of newsprint in consultation with Associate Finance and as per estimated requirements of industry indicated by RNI and approved by NPC; (b) to open the foreign supplier's offers in the presence of officers of the Associate Finance, tabulate and compile the offers and put up the same before the NPC; (c) to place orders on the foreign suppliers on the basis of the decisions taken in the NPC; (d) to make out contracts and send the same to the suppliers for signing and return; (e) to liaise with Transchart for indication of the vessels to pick up cargoes from designated load ports; (f) to arrange insurance cover; (g) to monitor shipments within schedule; (h) to open L/cs wherever required; (i) to scrutinize shipping documents on receipt; (j) to effect high sea sales and to clear quantities in buffer stock as were required

to be kept to the decided level; (k) to recommend release of payment to the foreign suppliers; (l) to make payment of freight to carriers; (m) to effect sales to actual users from godowns at various places; (n) to arrange approval of sale prices from Newsprint Price Fixation Advisory Committee constituted by the Ministry of Information & Broadcasting; and (o) to settle claims, if any.

Finance Division: This Division performs following functions:

- (a) To be present at the time of opening of offers of foreign suppliers.
- (b) To concur placement of orders on the foreign suppliers before their approval by the Competent Authority.
- (c) To check the accuracy of the tabulated offers made by the commodity division and to make any suggestions regarding items which have escaped the attention of the commodity division.
- (d) To check and sign the import contract alongwith commodity division.
- (e) To check and sign L/C application.
- (f) To check and scrutinise shipping documents on receipt from Bank.
- (g) To release payment to suppliers and carriers on the recommendation of the concerned commodity division and settle claims arising out of dispute, if any.

The various functions of the Divisions have evolved because of past practice. As far as Newsprint Purchase Committee is concerned, its functions were laid down by the STC Board."

1.7 When the Committee asked whether STC was not satisfied about the correctness of the specifications inspite of the certificate of M/s. SGS, the STC in a written reply has stated as under:—

"STC on its own was satisfied about the certificate issued by M/s SGS regarding correctness of the specifications."

1.8 During oral evidence the Committee wanted to know the reasons and the basis for appointment of M/s. SGS for pre-shipment inspection of goods in the case of Universal Exports. Chairman, STC replied that M/s. SGS is an international company of repute doing this work for many years on behalf of STC.

1.9 The first consignment of Glazed Newsprint of 2342.554 MTs arrived at Bombay per vessel 'State of Manipur' on 12.6.1991 which was however, seized by the Customs on the pretext that the Cargo from Canada was not glazed newsprint followed by raids by Customs on the STC Branch Office at Bombay, seizure of documents/files and interrogation of STC officials. The customs then drew samples from the cargo, sent them to Dy. Chief Chemist, Bombay, who in his report confirmed that the samples conform to the declaration made in the Bills of Entry. On the basis of information received from some sources that the cargo detained by customs was not

glazed newsprint but light coated paper having Mechanical Wood Pulp (MWP) content less than 70% and that massive duty evasion was involved, the custom authorities did not release the cargo to STC.

1.9 (i) Enquired whether there was no coordination between the different wings of the customs, the Secretary, Deptt. of Revenue stated during evidence:—

“I do agree that there are two wings of the department in Bombay and they were proceeding independently. There was some lack of coordination which could have been avoided.”

1.9 (ii) Enquired whether any enquiry was ordered by the Ministry in regard to this case, the witness said:—

“Not yet. We will certainly look into it.”

1.10 Asked whether customs examined the reliability of the source of information, the Department of Revenue in a written reply stated that the information was personally recorded by an Additional Collector of Customs from the source and as per the information made available it appears that it was verified by the officers of the Marine and Preventive Wing of the Collectorate of Customs (Preventive), Bombay before detaining the consignment of newsprint.

1.11 After withholding the goods, the Customs again drew representative samples from ten different lots of the Cargo and sent them for analysis to (i) the Chief Chemist, Central Revenue Control Laboratory (CRCL), New Delhi, (ii) Indian Institute of Packaging, Bombay, and (iii) Central Pulp and Paper Research Institute, Saharanpur. The results of the analysis from all the three institutions showed that the cargo did not conform to the specifications declared in the Bill of Entry and therefore did not conform to the definition of Glazed newsprint as contained in the relevant customs manual.

1.12 The Assistant Collector of Customs, Bombay issued a show cause notice on 12.9.91 to STC as well as the High Seas buyers of the cargo *inter-alia* alleging that (i) the consignment did not conform to the definition of glazed newsprint as per customs manual and therefore attracted higher duty, and (ii) the goods were wrongly declared to be glazed newsprint with MWP not less than 70% by weight $\pm 4\%$. Customs, therefore, held that the cargo was liable for confiscation and attract a higher duty being light weight coated paper.

1.13 The then Secretary (Revenue) (Shri P.K. Lahiri) wrote to Chairman, STC that the customs were willing to clear the cargo on a provisional duty bond without bank guarantee and surety in view of the conflicting test reports of the analysis of the cargo samples.

1.14 the Newsprint Division in the STC's Corporate Office advised furnishing of the bond and getting the cargo released. However, the then Director (Finance), STC, (Shri B.K. Shroff) objected to the above course

of action and thereafter sent a message on 4.9.91 to the Bombay office not to post a bond till instructions are received from the Corporate Office.

1.15 Asked about the reasons for conflicting test reports by the same agencies, the Department of Revenue have replied that they have not inquired from the agencies about the reasons for conflicting test reports.

1.16 When the Committee asked the justification for non-clearance of the goods on P.D. bond especially when it was categorically known to STC that goods conform to declarations made in the Bills of Entry and non-clearance of cargo would amount to failure on the part of STC in honouring the contract with the supplier, the STC in a written reply stated as under:—

“STC was willing to clear the goods on PD Bond as offered in the letter dated 19.8.91 of Shri P.K. Lahiri, Secretary, Deptt. of Revenue, provided that the supplier gave counter bond to cover STC. However, the supplier chose not to give the counter bond but to go alone in the court. If the STC on its own had given the bond, released the goods, paid the supplier, then it would have been all alone in the custom's courts to contest and the suppliers may not have assisted the STC in this matter against the Customs. It is also noted that the offer of release of PD bond was withdrawn in Shri P.K. Lahiri's letter dated 21.9.91 when a bank guarantee was demanded for the entire amount.”

The Chairman, STC in a letter dated May 11, 1992 addressed to JS, Ministry of Commerce also maintained that on the insistence of the then Director (Finance) a PD Bond could not be posted.

1.17 The Committee also examined Shri B.K. Shroff, former Director (Finance), STC on his role in the different newsprint deals made by STC with M/s. Universal Exports, M/s. Meteor and M/s. Finnapp.

1.18 The Committee asked Shri Shroff the reason for his opposing the proposal of newsprint division to furnish a P.D. Bond and get the goods cleared, the witness replied that his objection was not to oppose the furnishing of P.D. Bond but he wanted that the Corporation's interests should be secured before a bond of six crore was posted with the Customs. It was with this view he had instructed that the supplier should be asked to give a counter-bond to STC. Enquired whether this had the approval of CMD, the witness said.

“It was from the Chairman.”

When pointed out that there was no reference to this effect in the telex, the witness said:

“I am not denying this.”

1.19 It is observed that at the instance of the then Director-in-Charge Finance & Law (Shri B.K. Shroff), Shri S.K. Wadia of M/s. Mulla & Mulla, Bombay in his covering letter of 29.8.91 enclosed with the opinion

of Shri J.F Pochkhanwalla, added the provision that STC might first obtain counter-guarantee from the supplier viz. M/s. Universal Exports before STC posts a P.D. Bond with customs and gets the cargo cleared. STC wrote back on receipt of this advice to M/s. Universal Exports on 26.9.91 to furnish a P.D. Bond or give a counter-guarantee to STC for the clearance of the cargo from customs subject to future adjudications. M/s. Universal Exports replied on 4th October, 1991 that they are intervening in the adjudication proceedings of the customs instead of giving a P.D. Bond or giving counter-guarantee. The Bombay High Court by an order allowed Universal Exports to implead as a party in the proceedings before the customs.

1.20 On 8.10.91 CGM and AMM & Legal Advisor, STC Bombay Branch met the Collector of Customs (Judicial) who suggested that STC may consider abandoning the newsprint with a view to come out clean. The same day the suggestion of Collector of Customs (Judicial) was discussed with Senior Counsel Shri J.F. Pochkhanwalla in the presence of solicitors Shri S.K. Wadia of Mulla & Mulla, who opined that "STC by giving it in writing about the abandonment of the goods, we (STC) will be 'Burning the Bridges' and that it automatically does not absolve STC from liability to pay penalty which the customs are entitled to claim under the provision of the Customs Act. He further-more opined that after we (STC) have abandoned the goods in writing STC will have no defence whatsoever to contest the penalty or to reverse the decision of abandonment."

1.21 The Corporate Office STC decided on 10th October, 1991 to abandon the goods irrevocably and the Universal Exports were informed accordingly. In the intervening period, however, there was a lot of adverse publicity that this import of Glazed newsprint by STC was a case of attempted smuggling alleging that the consignment was not newsprint but a more expensive paper i.e. light weight coated paper being brought on a concessional duty etc.

1.22 During oral evidence the Committee desired to know as to who took the decision of abandoning the goods, the Chairman, STC stated as under:

"It was taken at my level."

1.23 When asked further that was it not necessary that the Board should be taken in confidence, the Chairman, STC replied as follows:

"No sir."

1.24 On the point of the quantum of money to be written off or wasted and consequent loss and liability the representative of STC said as under:

"The first consignment of 2342 MT was worth Rs. 4 crore which we abandoned. We do not admit the liability of that case."

1.25 When asked the reasons for not discussing the question of abandonment of goods and its implication, either by STC Board or

Executive Committee before the abandonment and the decision to abandon goods, STC in a written note stated as follows:

"NPC was fully competent to take decision for import and other matters like abandonment of goods etc. E.C. had, therefore, no role to play then about import of newsprint.

When the Minutes of the NPC meeting held on 4/11/16.10.91 were put up in the Board meeting held on 17.7.92, the Board had noted the position which till then covered developments in this case upto the abandonment of the goods.

In the opinion of Shri J.F. Pochkhanwalla, transmitted by STC Bombay, on 8.10.91 notwithstanding the suggestion *i.e.* giving in writing by STC to Customs about abandoning of the goods would be like burning the bridges, Shri Pochkhanwalla had desired further information in the said telex to establish that STC had taken all reasonable precautions, which an average person of ordinary prudence could do in that situation. Replies to the points raised by Mr. Pochkhanwalla were conveyed to STC. Bombay, who in turn, held discussions again with Mr. Pochkhanwalla. After the said discussions, STC, Bombay advised on 10.10.91 that there were two options available to STC and that STC should take a clear stand instead of making plain statement of facts which might prove suicidal to STC.

Keeping in view the above STC had decided to abandon the goods. Before that, in the meeting held on 8.10.91 with Collector of Customs (Judicial) Shri S.P.S. Pundir, the latter had suggested that STC might consider abandoning the newsprint with a view to come out clean.

STC's decision to abandon the goods was, therefore, taken after holding consultations with the Collector of Customs (Judicial) and on getting the opinion of a leading counsel Shri Pochkhanwalla. STC's decision to abandon the goods was also taken keeping in view the advice of the counsel that in case the goods were to be stored in Customs Bonded Warehouse to avoid port demurrage, STC would have to execute a warehousing bond under Customs Act irrespective of whether STC received an indemnity from the supplier or not. Furnishing of P.D. bond by STC without getting a counter bank guarantee from the supplier, was not financially viable, and since the supplier was not found interested to give a counter bank guarantee, the decision of STC to abandon the goods was the only option left with STC."

1.26 The Committee asked the witness (Shri Shroff) whether the financial and legal implications were assessed by him before he concurred with the proposal of Newsprint Division to abandon the goods. The witness deposed to the Committee that as the demurrage charges were increasing with every passing day and that the Director (Newsprint) did not want to loose more money at that point of time and due to this the proposal was concurred. Apart from this the results by custom tests seemed very conclusive and that STC was being loaded with indeterminate liabilities.

1.27 On the question of abandonment of goods, the Ministry of Commerce have replied that it did not make any independent evaluation of the commercial advisability of this decision taken by STC. According to the Ministry of Commerce, STC did not make any systematic evaluation of the commercial & legal aspects of the options available to it, before the goods were abandoned. The Ministry was of the view that the decision could have been considered by the Board of STC.

1.28 Subsequent to the permission granted by Bombay High Court allowing Universal Exports to implead in the adjudication proceedings before the Collector of Customs and on the Court orders fresh samples were taken and sent to the same laboratories for opinion/analysis. The results of the fresh analysis confirmed that the consignment of newsprint was according to the specifications as declared in the Bills of Entry by STC.

1.29 On 15th July, 1992, the adjudicating authority tentatively decided to release the consignment in view of the fact that the results of the test conducted by the Department on the first, third and fourth stage conformed with the declarations given in Bill of Entry. STC however stood by their earlier decision to abandon the title to the goods irrevocably.

1.30 The Committee asked as to what were the considerations that weighed with STC to stick to its earlier decision of 10.10.91 to abandon the goods when the adjudicating authority was willing to its release on 15.7.92, the Corporation in a written reply have stated as under:

"In the event of withdrawing decision of abandoning, problems envisaged were that material had been imported at a higher price and after payment of Customs duty, BPT charges etc. disposal could have been impossible because the quality had deteriorated and international prices had dropped substantially, and the goods were older than three months.

It was, therefore, felt that under the given circumstances, to maintain the stand of abandonment was economically and operationally advisable.

In the light of above, the matter was considered in EC meeting held on 20.7.92 (after decanalisation of import of newsprint from April, 1992, NPC automatically got dissolved) and it was decided by EC that earlier decision of STC of abandonment of goods be maintained."

1.31 As a corollary to STC's decision of abandoning the consignment on 10.10.91 M/s. Universal Exports served a notice on STC on 23.4.1992 regarding release of payment for the consignment enclosing therewith copies of the test reports of different laboratories showing that the consignment of newsprint was according to the tender specifications,

1.32 The Executive Director (Vigilance) STC examined the various aspects of the notice and submitted a detailed report in May 1992 to Ministry of Commerce who in turn directed STC to get the case examined by a Senior Advocate suggesting the name of (Shri Chandrashekhar) Addl. Solicitor General, who on 28.5.92 opined that STC has a strong case for discharge of the show cause notice of Collector of Customs but at the same time STC will find it difficult to deny the suppliers payments which are to be made in accordance with the terms of the contract dated 30.3.91 for the consignment supplied to STC and STC could seek waiver of demurrage in the event of discharge of the show cause notice.

1.33 The Collector of Customs, Bombay by his order of 22nd July, 1992 held that the charges were dropped and since the cargo was abandoned by STC irrevocably the same may be disposed of under sections 48 & 150 of the Customs Act.

1.34 Asked whether Customs disposed of the abandoned goods and the manner of disposal and the amount realised, the Department of Revenue stated that attempts were made to dispose through public auction and that the matter has become a point of dispute before Bombay High Court and therefore the goods have not been disposed as yet.

1.35 The Commerce Ministry thereafter asked STC to make payment to M/s. Universal Paper Exports who also filed a detailed claim.

1.35 (i) Pointing out that the customs dropped the charges in July 1992 and enquired about the reasons for delay in placing the matter before the Board. The CMD, stated in reply:—

“After the customs order, there was a CBI enquiry into the case and it was in December 1992 that we placed the full facts before the Board.”

1.36 When asked the Ministry's views on the question of payments to Universal Company in respect of the abandoned goods, the Ministry in a written reply stated that the question of payment to M/s. Universal Co. in respect of goods abandoned by STC on the basis of information made available by STC at that point of time were communicated to STC on 7.10.92. However, subsequently, certain further facts were brought out by the STC and the issue was considered by the Board of STC taking all these factors into account at its meeting held on 17.3.1993. After considering the entire circumstances of the case and the implications thereof, the Board decided that this was a commercial transaction between STC and the foreign supplier which ought to be settled within the terms of the contract. However, in order to clarify the position suitably, the Board considered it appropriate for the STC to reopen the dialogue with the company. Action would now require to be taken in accordance with this decision.

1.37 Asked about the present position about the case, STC stated in a written reply as follows:—

“The contract provides for a clause of arbitration in case of dispute.

M/s. Universal has not yet taken recourse to this clause of arbitration for establishing their claim. This matter was considered in the meeting of the STC Board on 17.3.93 and it was decided that as it was a commercial transaction between STC and Universal, it ought to be settled within the terms of the contract. It was also decided to reopen the dialogue with the Universal to clarify the position of all concerned and to keep the Govt. informed of the stand taken."

1.38 Regarding the role of the Ministry in exercising control over STC, the Ministry of Commerce stated in a written reply:

"The Ministry of Commerce deals with the policy aspects of the management of PSUs under its administrative control and does not interfere with the commercial aspects of the PSU functioning. This is with a view to strike a delicate balance between governmental control for achieving the best returns on investment and autonomy and operational freedom to be accorded to the PSU for the most efficient use of its resources. The stranglehold maintained by Administrative Ministries over the PSUs under their control in the years past has been receiving severe criticism in the Parliament and without. With a view to encourage a 'hands off' relationship the Government has devised a Memorandum of Understanding (MOU) for monitoring the performance of the Public Sector Undertakings under the aegis of the Deptt. of Public Enterprises. STC is one of such PSUs who have signed a MOU."

1.39 Asked when the matter regarding the Universal case came to its notice the Ministry of Commerce stated in a written reply that it took cognisance of the matter in May 1992 for the first time (except for certain press reports on the issue) when the Canadian High Commissioner met the Commerce Minister and sought his intervention to ensure that STC fulfilled its contractual obligations towards Universal Exports.

1.40 Enquired whether the Ministry reviewed the performance of STC with reference to these cases, the Ministry of Commerce in a detailed written note replied as follows:

"Ordinarily, the Ministry does not undertake any review of the performance of any organisation on a commercial transaction basis. However, in the instant case, since it had been taken up by the Canadian High Commission, a meeting was convened to discuss some of the issues arising in the case.

Shri B.P. Misra, JS, Ministry of Commerce (MOC) held discussions on some of the issues involved in this case at a meeting held on 17.9.1992 which was attended by representatives of the STC. On consideration of the material made available by STC and on the basis of the discussions it was concluded that STC had acted in an irresponsible and un-professional manner in this case and not only brought upon itself considerable financial loss but also discredit to the country. Certain specific advice was consequently given to the STC

on the basis of the review. As a result of the review, the view taken in the Ministry was that the case had suffered because of gross administrative negligence and that STC had acted in an irresponsible and un-professional manner. However, no detailed review of all aspects of the transaction was undertaken by the Ministry. The Ministry views the commercial success or failure of STC in terms of the annual MOU and not in terms of success or failure in a single transaction or group of transactions as this would not be representative of the performance of the organisation as a whole. This is also in consonance with the terms of the MOU. Against failure in some cases of commercial transaction by STC, the company has proved to be a success in the large majority of its transactions. Its occasional failures should therefore be viewed in this light."

1.41 When asked the role of the Ministry's representative in STC Board and the action taken by him in the wake of controversies, the Ministry in a written note replied as under:

"The records do not indicate that any initiative was taken by the Ministry representatives on its Board to call for a Board meeting on the issue. However, subsequent to the issue of the Ministry's advice to the STC conveyed through D.O. letter of Shri B.P. Misra the matter was placed before the Board at various meetings."

1.42 Asked on the question of any enquiry or probe ordered by the Ministry in this case, the Ministry in a written reply have stated as follows:

"No probe by any outside agency was ordered by the Ministry in this case. It may be mentioned that the view of the Ministry is that in general, probes by outside agencies should be ordered only in cases where there is *prima-facie malafide* involved and a clear vigilance angle is established. Many of the glaring omissions were found to be administrative in the matter that called for administrative solutions rather than enquiry by any outside authority. It is considered that unless such restraint is consciously exercised by the Ministry, probes by outside agencies may have an inhibiting influence on the commercial judgement and transactions of the personnel and organisation respectively."

II. Contract with FINNPAP

2.1 In September, 1991 State Trading Corporation of India Limited floated Global tender for import of Glazed Newsprint closing on 30.9.91 before it decided to abandon the Glazed Newsprint which arrived at Bombay in June, 1991 from M/s. Universal Exports, Canada. The offers received were tabulated by the Newsprint Division and checked by the Finance Division of STC and were placed before the Newsprint Purchase Committee at its meetings held on 4.10.91, 11.10.91 and 16.10.91. The tabulations showed that lowest tenderer was FINNPAP at JS \$ 751.53 PMT and the next was Kymmene at US \$ 751.84 PMT. The NPC decide to place an order for 9000 MTs plus 5000 MTs (optional) for Glazed Newsprint with M/s. FINNPAP which was shown cheaper by 31 cents.

2.2 On close scrutiny it was observed that FOB price of Kymmene at US \$ 600 PMT was US \$ 9 PMT less than that of M/s. FINNPAP though interest rate for 180 days credit was higher, the freight rates equal and the insurance charges at 0.02 cents less than that of FINNPAP. After addition of these charges the cost of Kymmene at US \$ 745.10 PMT was less by US \$ 3.29 PMT than the cost of FINNPAP at US \$ 748.39 PMT.

2.3 Asked whether any action was taken against officials who were responsible for manipulation of figures in the tabulations which led to award of contract to FINNPAP at a higher price, the Chairman STC deposed that no responsibility has been fixed on anybody. The Chairman, STC in categorical terms stated that no action was taken against officials who mislead the NPC by jugglery of figures to favour the particular firm M/s. FINNPAP.

2.4 Asked whether bank guarantee is obtained as a matter of practice from all suppliers and if so, the reasons for making an exception in the case of FINNPAP, STC in a written reply stated as follows:

"It is established practice to obtain a Performance Bank Guarantee from the suppliers with whom contracts for import of glazed and standard newsprint are made. However, certain concessions were extended to regular established suppliers and these concessions were: they did not have to give a bid bond with the tender; they did not have to get their goods surveyed at load port, but could give their own certificate countersigned by the local Chamber of Commerce and they had the confidence that their goods would be accepted and payments made without a problem. They more often than not offered goods on CAD terms and thereby saved L/C charges. All these concessions made them financially more competitive than the new comers. This practice has been in vogue for about a decade and a

FINNPAP was a regular established supplier, hence the Performance Bank Guarantee was not insisted upon."

2.5 The cost of letter of credit were included in the bank charges in respect of Kymmene while the offer of M/s. FINNPAP was on CAD basis. The bank charges which are payable in Rupees have been converted into US \$ terms which when added to CIF cost increased the bid amount of Kymmene in comparison to that of FINNPAP. STC made a contract with FINNPAP on 16.10.1991 for supply of 9000 MTs of Glazed Newsprint with an "option" clause for another 5000 MTs valid upto 31.12.1991.

2.6 Asked the reasons for not explicitly indicating the nature of offer in the tender notices by STC, STC have in a written note stated as noted below:

"It was never the practice to indicate in the tender notice that the offer should be restricted to L/C terms or CAD terms. The accepted international practice is payment on L/C terms. However, the established old suppliers used to make offer on CAD terms as they had confidence that their goods will be accepted and payment released without a problem. This gave them an advantage as it saved the cost of bank charges of opening the L/C and to that extent made them more competitive."

2.7 When asked to clarify further this point, the representative of STC stated during oral evidence that they have now started specifying in their standard forms whether the offer was on L/C or CAD terms.

2.8 The Newsprint Purchase Committee at its meeting held on 30.12.91 had decided to exercise the "option" clause (valid upto 31.12.91) on being informed by RNI at the meeting, of the Ministry of I & B decision for an additional requirement of 5000 MTs Glazed Newsprint to be imported in the year 1991-92. This option was exercised by the NPC inspite of the fact that prices of Glazed Newsprint then had been falling appreciably both in respect of Standard and Glazed Newsprint. In spite of objections raised by some invitee members, the NPC approved purchase of 5000 MTs Glazed Newsprint from M/s. FINNPAP on 'Option' Clauses @ US \$ 609 PMT. The rate of Glazed Newsprint was around US \$ 500 PMT in the international markets. No tenders were invited by STC. Also there was no urgency for placing this additional order since STC had with them 21,885 MTs of Glazed Newsprint stock as on 30.12.91 sufficient to meet the requirement of the industry for a three month period.

2.9 When asked the machinery available in STC to keep itself informed of International prices of newsprint and whether Newsprint/Finance

Divisions of STC used to cross check the prices offered in tenders etc., the Corporation in a written note stated as under:

"Usually, the STC obtained New York Delivered Price for finalising its deals. However, in December, 1991 the STC did not have the system of receiving regular market information regarding the movement of prices of newsprint in the international market. Also the current prices of glazed newsprint were not analysed in the agenda put up to the NPC on 30.12.91 as there was no proposal to purchase more Glazed Newsprint. The meeting of NPC had been convened to report the current position of purchases and the options existing with the STC till 31.12.91. It was only the intervention of Sri Kirpa Sagar at the meeting which raised this demand of additional 5000 MTs.

STC presumed that a competitive global tender would reflect the prices prevalent at that time."

2.10 Asked about the other offers that were available with STC as on 30.12.1991, STC in a post evidence reply stated that as on 30.12.91, two letters; one from Kymmene and the other from Laakrichen had been received. According to these offers, FOB Price of Kymmene was US \$ 600 PMT compared to FINNPAP rate of US \$ 609 PMT. Kymmene had stated further that they were willing to quote a further reduced price. The other offer of Laakrichen, however, stated that their offer would be at a price lower than the one at which STC purchased the Glazed Newsprint earlier.

2.11 It was observed that the original contract documents duly signed by FINNPAP in respect of the order placed by STC on 16.10.91 had not been received even at the time of exercising 'option clause' to place additional order on 31.12.91. The supplier accepted the additional order on the same day.

2.12 The Committee asked whether the fact of the non-return of contract document by FINNPAP was brought to the notice of NPC at its sitting held on 30.12.91, STC replied in negative.

2.13 Executive Director (Vig.) made an inquiry on receipt of certain complaints after which E.D. (Vig.) on 10.1.1992 advised the Chairman to keep all actions in abeyance in this case till the conclusion of his inquiry. The firm was informed of the decision of STC.

2.14 The NPC was also informed of the status of this case at its meeting on 21.1.92. The NPC, however, felt that legal opinion be obtained in the case. Shri K. Parasaran, Senior Advocate opined that "on the exercise of option on 30.12.91 and acceptance of the same by the supplier on 31.12.91, STC was bound to purchase the goods at the rates and that the contract has become binding on both the parties. It was further opined that only the terms & conditions stated in the first contract dated 16.10.91 with

FINNPAP were binding on both and that any further changes could be applicable only if agreeable to both the parties.

2.15 On the question of loss suffered/expenses incurred in FINNPAP deal, STC in a written reply stated as follows:

"No loss has been incurred by STC regarding exercise of option for 5000 MTs of Glazed Newsprint. M/s. FINNPAP had filed a civil writ petition in the Delhi High Court (writ No. 2064/92) requesting the Court for a writ of mandamus for specific performance of the contract to purchase 5,000 MTs Glazed Newsprint. This writ was contested by the STC and subsequently dismissed by the Court. The cost incurred by STC in defending this writ was Rs. 37,491/- and for obtaining legal opinion in the case was Rs. 21,500/-. Subsequently, this matter was examined by the STC Board in its meeting held on 23-12-92 in which a decision was taken that in case the supplier goes to Court again the STC will defend itself. The supplier has not proceeded against the STC so far."

2.16 The CBI on 6.5.92 registered a case against (i) Shri B. K. Shroff, former Director (Finance), STC (ii) M/s. FINNPAP, the Principal firm, and (iii) M/s. Anika International, New Delhi (Agent of FINNPAP). The case is under investigation by CBI and final outcome awaited.

2.17 On the current status of the CBI investigations in the case, the STC stated as under:

"The CBI has taken all the connected papers and the investigating officer is also interrogating the concerned persons. However, the CBI have not disclosed to the STC the present position of this investigation."

III. Contract with Meteor Paper

3.1 The State Trading Corporation entered into contracts with Meteor Paper Limited—a trading concern in March/May 1991 for import of 31,500 MTs of standard newsprint. The goods to be supplied were to originate in Hungary, Poland and Germany. The deliveries were to be effected in April/May, 1991 and June/September, 1991 for 6,500 MTs and 25000 MTs respectively. The supplier could effect shipments of 13745 MTs out of 31500 MTs during the period. The newsprint of Hungarian origin was for 9500 MTs at US\$ 544 PMT FOB, the German of 6000 MTs at US\$ 508 PMT FOB and the Polish goods of 16000 MTs of US\$ 509 PMT FOB.

3.2 The suppliers defaulted in shipment of entire quantity of 31500 MTs newsprint by 30.9.1991 and STC decided to cancel the contract for the unshipped quantity. NPC also approved it.

3.3 It is observed that Additional Solicitor General Shri Altaf Ahmed advised on 12.10.1991 that STC would be within its legal rights to cancel the contracts for the unshipped quantities and based on legal opinion STC invoked the 3 Bank guarantees on 1.11.1991 of M/s. Meteor Paper Limited, London totalling US\$6,44,700.

3.4 During oral evidence when the Committee asked whether the mills of origin in respect of Hungarian goods were verified, a representative of STC said that STC did not verify it and that it was a mistake.

3.5 The Committee asked the reasons for STC's failure to verify the claim of Meteor about Hungarian Newsprint, STC in a written reply stated as follows:

"STC did not make any inquiries from its own foreign offices at Frankfurt or London regarding facilities available with the mills to meet STC's demand of 9,500 MTs of newsprint. STC should have exercised more care and caution in accepting newsprint of Hungarian origin as it was a new supplier. This was a default. In the NPC meeting of 20th March 1991, Meteor Paper Ltd. offering Hungarian supply was the second lowest tenderer and again in the NPC meeting held on 13.5.1991, the firm offered Hungarian supply and was at the fifth lowest position and the NPC took these price advantages without verification."

3.6 When asked the reasons for contracting with Meteor for Hungarian goods inspite of RBI's rejection prior to it, the Corporation in a written reply stated as noted below:

"On the 4th of February, 91 Shri R.K. Vachher then Director, Newsprint, wrote to Joint Controller, Exchange Control, Reserve

Bank of India, for permission to purchase in hard currency 2000 MTs of Newsprint from M/s. Meteor Paper Ltd., London, for which pulp will be supplied by Meteor and it will be converted into newsprint in Romania. Subsequently, Shri R. K. Vachher wrote to the Ministry on 11.3.1991 asking for the intervention of the Ministry in this matter. This request was turned down by the Reserve Bank in their reply dated 4th March, 1991.

In the NPC meeting of 20.3.1991 when the first order was placed and the NPC meeting of 13.5.91 when the second order was placed the Committee took into account the price advantage of these two offers. It was a default not to verify the origin of this newsprint more thoroughly."

3.7 Asked whether the Ministry was aware of RBI's decision of March 1991 to refuse permission to import newsprint made in Romania from GCA against hard currency from M/s. Meteor and the reasons for not taking any action, the Ministry have stated as below:

"The Ministry was aware of RBI decision. The STC's proposal was examined with particular reference to the fact that Romania was yet to fulfil the trade plan provision for supply of newsprint under Rupee Payment Arrangement. The Ministry decided to support the proposal recommending it to Deptt. of Economic Affairs. DEA in turn intimated that in the specific circumstances of the case, they had no objection to allow STC to purchase newsprint from M/s. Meteor Paper Company subject to the condition that it may be treated like any other GCA purchase."

3.8 When further asked the failure of Ministry's representative in STC Board to inform of divergent views about the origin of Hungarian goods, the Ministry in a written note stated as follows:

"The Ministry was aware of the deliberations on the issue in various Board meetings in which Government Directors also took part. However, CMD, STC was advised by the Ministry in January, 1992 to have the case investigated thoroughly and fix specific responsibility for the lapses. STC were also advised that the deal be settled in the light of the decisions of their Board. The Board of STC approved entrusting the case to the CBI for investigation. CBI also registered an RC against the foreign supplier on 13.11.1992. Further action in the matter would be taken on receipt of the formal report of CBI."

3.9 On 2.11.1991 (i.e. holiday) suppliers met CMD, STC at his residence and represented against the invoking of PBGs on 1.11.1991 and requested to withhold the invocation till they submit their own version of Legal position. Chairman, STC thereafter ordered that forfeiture of PBGs be deferred by 4 weeks.

3.10 The Committee during oral evidence asked Shri Shroff, former Director (Finance) STC whether in his opinion there was urgency to defer the invocation of PBGs in the case of M/s Meteor, the witness replied that there was absolutely no urgency to do that and felt that instead of the suppliers' it was STC's interest which was marred by that decision.

3.11 The supplier of 7240 MT of newsprint contracted in May, 1991 shipped by SCI's vessel 'Vishwa Mohini & Vishwa Shobha' was underway during end of November, 1991. At that time STC received a letter dated 19.11.1991 from Ministry of Commerce (alongwith photocopy of the letter dated 16.11.1991 of the Ministry of Finance, Department of Revenue) to the effect that information received from Indian Embassy in Budapest (Hungary) revealed that newsprint was not being produced by the purported manufacturer M/s Lignimpex which is only a trading concern in newsprint. M/s Lignimpex also stated that the supplier viz. M/s Meteor had furnished forged documents to STC & by misdeclaration that the goods were of 'Hungarian' instead of Romanian. This obviously meant misuse of foreign exchange. The Enforcement Directorate confirmed this to STC on 23.12.91.

3.12 Asked what action was taken by STC on receipt of the Ministry's letter dated 19.11.91 regarding contravention of FERA by the supplier, STC in a written note stated as follows:

"The letter of the Ministry dated 19.11.91 was received on 26.11.91. This letter pointed out to the contravention of FERA and ordered 'you may like to get the matter immediately looked into and also fix the responsibility for misuse of foreign exchange by STC in import of newsprint and consider taking corrective measures to stop any further misuse.'

The Ministry had not prohibited payment. The Chairman first ordered payment for these goods on 11.12.91 when informed that the suppliers will attach an SCI ship in default of payment. The Chairman ordered payment irrespective of other considerations as supplies were received and sold to users. Also an attachment of an SCI ship and subsequent publicity and litigation cost would not have been in the interest of STC. The second order of payment was passed by the Chairman on the advise of the Attorney General on 19.12.91 which was not implemented because of objection of Finance.

Shri Manzoor Ahmed, Director (Vig.) made an inquiry into the points raised in the letter of 19.11.91 and sent a report to the Commerce Ministry on 26.12.91 and this report formed a part of the Agenda of the Board meeting held on 27.12.91."

3.13 The supplier had issued certificate of origin issued by London Chamber of Commerce in violation of contractual terms. International practice stipulates that certificates of origin should be from the country of origin.

3.14 When asked the reasons for not specifying the exact nature of certificate to be furnished by sellers in the contracts, STC in a written reply stated as under:

"In the contract used by STC, in Clause 14(iv) it is prescribed 'Certificate of origin—3 in original and 1 copy—to be issued by local Chamber of Commerce or equivalent body'. This clause has worked well over the years without any dispute and this was the first case of dispute. After this dispute this clause was changed to read *Certificate from the Chamber of Commerce from the country of origin.*"

3.15 The analysis tests by lead Port Surveyor in respect of German goods indicated that the goods were not as per contract specifications. The supplier failed to furnish this certificate alongwith shipping documents.

3.16 The supplier obtained on 15.11.1991 legal opinion of Sr. Advocate Shri A.K. Sen on the cancellation of contract for the unshipped quantities by STC and invocation of PBGs, according to whom the action of STC was in contravention of contractual terms.

3.17 STC obtained Attorney General's (Shri G. Ramaswamy) opinion on 19.12.1991 to the effect that (a) retention of payments was unfair and illegal till the matter of misdeclaration of origin of goods and misuse of foreign exchange & violation of FERA is adjudicated upon, (b) cancellation of contract was in order, and (c) PBGs need not be enforced.

3.18 The Committee asked the reasons for ordering payment to Meteor by Chairman, STC overruling Finance and not informing the Board, STC in a written reply stated as follows:

"The Director (Finance) had advised non payment not only for Hungarian newsprint but all newsprint from Meteor including the German and Polish origin though he had given oral orders to Ms. Kunur to make the payment for a similar earlier shipment.

Chairman ordered payment as the goods have been received and sold & the money taken by STC. The Finance Department did not execute this order. Shri B.K. Shroff, went to the Ministry of Commerce and sought their intervention and then Commerce Minister telephoned to the Chairman not to make the payment and take the matter to the Board."

Release of payment was also ordered by CMD when Director (Finance) was away on tour for two days.

3.19 The SCI discharged the Hungarian Newsprint without the production of original Bills of lading etc. The suppliers held SCI responsible for

this lapse and threatened SCI with arresting their vessels. STC informed SCI of possible FERA violations by suppliers. SCI insisted on STC to furnish bank guarantees either in favour of suppliers or P&I club so that if a SCI vessel is arrested by the suppliers it may be got released. STC refused to provide any bank guarantees to SCI as it viewed the lapses were that of SCI. SCI informed STC that their vessel 'Vishwa Parimal' has been arrested at Antwerp on 12.2.1992.

3.20 The Board in its meeting held on 27.12.1991 decided that (a) PBGs be invoked for default in suppliers' performance; (b) no payment be made for contract dated 23.2.1991 and addendum dated 15.5.1991 in respect of newsprint of Hungarian origin; (c) in respect of contracts dated 15.5.1991 for Newsprint of Polish origin, the authenticity of certificates from the manufacturers' mills be verified to the satisfaction of the Corporation and certificate from load port surveyors be obtained before releasing payments; (d) an enquiry be conducted within a month by ED (Vigilance) which should bring out procedures followed in import of Newsprint under above contracts and the area of default, if any, be identified and responsibility fixed and corrective measures be suggested; (e) the unsold stocks of Newsprint of Hungarian origin and appropriate quantities of Polish and German origins be sealed for facilitating the enquiry; and (f) in case suspected fraud/forgeries were established, appropriate criminal proceedings be launched against suspected persons.

3.21 An inquiry by ED(Vigilance) revealed that newsprint claimed to be of 'Hungarian' origin was not 'Hungarian', The German newsprint was German but its quality was in variance with the contract specifications as inspected by the load port surveyor and the Polish origin newsprint was Polish but the mills were different from the ones mentioned in the contract and the goods were from an untested source.

3.22 The Board in its meeting held on 14/17.12.1992 decided, to start a dialogue with M/s Meteor for amicable settlement but negotiations with the supplier were not to be conducted in view of forged documents furnished by the supplier.

3.23 The STC Board in its meeting held on 6.5.92 decided that a commercial settlement be arrived at with M/s Meteor Paper Limited and also to get the entire matter investigated independently by an outside agency. The Board authorised CMD, STC to head the team to negotiate with the supplier.

3.24 The Board decided that detailed inquiry by CBI/Directorate of Enforcement be made into the 'Hungarian' newsprint purchase since FERA violation and civil/criminal laws were involved.

3.25 STC in a post-evidence reply furnished on the Committee's query regarding the efforts made by STC to get the matter investigated between 8.1.92 (the date on which FIR was lodged by STC with Delhi

Police) and 13.11.92 (the date on which RC was registered by CBI) in the case of M/s Meteor, have stated as follows:

"Shri R.C. Meena, MM, STC filed on 8.1.1992, an FIR with Delhi Police under Sections 420, 463, 468, 471 IPC against M/s Meteor Paper Limited, London, Mr. J.A. Hill, its Managing Director and Mr. P.J. Crossby, its Director and others. On ED(Vig.)'s instructions, he also sent written communications to S.H.O., Connaught Place Police Station in this connection.

Exec. Director (Vig.) also took up the matter with DIG, CBI separately as the case was of a very important nature. Exec. Director (Vig.) wrote a letter dated 10th June, 1992 to DIG, CBI informing him about the decision of the STC Board recommending investigation by the CBI. DIG, CBI, however, on 4th August, 1992 informed that the CBI would not be able to establish a case of criminal misconduct on the part of the STC officials. In spite of the reluctance of CBI to take up the investigation, the STC kept on pursuing with Delhi Police and CBI. Finally, the investigation was taken up by CBI at the intervention of Ministry of Home Affairs and a R.C. No. 6(s)92-DLI u/s 480, 468 & 471 I.P.C. against M/s Meteor Paper Ltd., London was registered."

3.26 STC entered into a commercial settlement with Meteor on 9.6.1992 which *inter-alia* provides for (i) a discount of US\$ 409,000 against the three supplies of newsprint from Germany, Poland and Hungary to be applied against settlement of payment for the shipment under 'Hungarian' contract, (ii) payments to be made by STC into an interest bearing escrow account with SBI, London to be jointly operated by solicitors of STC & M/s Meteor/Receivers, (iii) settlement of bill value of 'Hungarian' contract against export of Indian goods in line with approvals obtained from M/o Commerce/RBI, and (iv) the commodity transaction against the 'Hungarian' contract to be completed by 31st August, 1992 and Meteor/Receivers to furnish documents relating to the three shipments to STC by then upon which all payments due to Meteor are to be released from the escrow account in London. The agreement also provides that it does not bar any other Government agency to conduct any other inquiry into these transactions of the newsprint.

3.27 On the question of net loss suffered by STC as a result of the commercial settlement with Meteor, the Corporation replied as noted below:

"The net loss suffered by STC so far in this case is Rs. 1.55 crores. This loss is computed in terms that had the payment been made in December '91 under Chairman's order the outgo would have been Rs. 11.81 crores. The outgo under the settlement now has been Rs. 12.73 crores."

IV. Sukab Case

4.1 A.B. Sukab, Sweden offered to supply to State Trading Corporation about 5000 MT standard newsprint of Polish origin manufactured by Polish Mill-Myszkowskie at the rate of Rs. 10948/- PMT FOB Polish port for shipment in lots of 1500-2000 MT during April-June 1991. Payments to be made within 7 days from receipt of documents to a blocked 'Escrow' account to be operated by a bank mutually agreed/acceptable to Sukab/STC. The proposal of Sukab was open for acceptance upto 25.1.1991 later on extended.

4.2 Asked about the reasons for *suo moto* offer of Sukab for supply of newsprint and the other suppliers offering on barter basis, the Corporation replied in a note as follows:

"The offer dated 18.1.91 of Sukab to supply 5,000 MT standard newsprint under barter was not a *suo moto* one. Sukab had earlier supplied to STC 10,000 MT standard newsprint under a contract dated 9.4.90 which had counter trade provision for supply of goods from Indian companies/STC equivalent to 100% f.a.s. value of newsprint sold under that contract. Shipment of newsprint under the aforesaid contract of 9.4.90 was to be made during July-September, 1990. However, the last lot was shipped by Sukab as late as 30.3.91. Since the obligations of Sukab under contract dated 9.4.90 were going to be completed soon, Sukab made a similar offer on 18.1.91, which was further to a similar earlier arrangement between STC and Sukab.

The other suppliers, who had offered to supply newsprint on barter basis, are: M/s Technoforest, Romania, M/s Stora, Sweden; M/s Daishowa, Canada; M/s CNG, USA; and M/s Stone Consolidated, Canada."

4.3 The proceeds for supply of newsprint were to be used by Sukab only for export of Indian goods listed in the supplier's letter. Shipment of Indian items was to commence in February, 1991 and completed not later than June, 1991. It was also mentioned in the proposal that STC could establish a credit facility to Sukab within the escrow account and against the said credit Sukab were willing to issue a bank guarantee in favour of STC, if the shipment of Indian items is effected prior to delivery of newsprint or if the proceeds in the escrow account were insufficient to cover Sukab's payment for barter exports.

4.4 The Newsprint Purchase Committee on 20.3.91 considered and approved the proposal of Sukab alongwith other offers and an order was placed on 1.3.91 for import of 5000 MT standard newsprint @Rs. 10,948/- PMT FOB Polish port. The supply was to be completed during April/

June, 1991. NPC approved counter-purchase by Sukab of items like coffee, jute goods directly from STC against it. STC items were to be exported first and newsprint supply to commence later.

4.5 The mill of manufacture of newsprint was changed to M/s Paged, Poland as newsprint manufactured by Polish Mill-Myszkowskie when tested was not upto STC's standard specifications.

4.6 When asked on what grounds the test reports of goods manufactured by the mill Myszkowskie were found not upto the standards, the STC have stated that on the recommendation of RNI two reels manufactured by this mill were got tested from the Hindustan Times and the Times of India who have reported that the surface, wrapper, general conditions and printability of the Newsprint were not found good.

4.7 Regarding the analysis of the goods from alternate mills M/s. Paged, Poland and its acceptability, the Corporation informed the Committee that the samples of reels manufactured by this mill were tested as early as 25.5.89 and that the results of test reports matched with STC's specifications for standard newsprint and that the NPC too approved it as early as 25.5.89.

4.8 The Escrow Account to be opened with SBI was to become operative after Government clearance and RBI approval and interest free payment in Indian Rupees to be made on receipt of documents on CAD basis to the 'Escrow' account. A formal contract incorporating these provisions was to be signed separately. Sukab was requested to confirm bank guarantee for fulfilling counter-trade obligations.

4.9 STC informed the Ministry of Commerce that it proposed to operate the 'Link Transaction' independently and to withdraw its earlier request to open an Escrow account before RBI approval was received.

4.10 When the Committee asked STC the urgency in withdrawing the request to operate an Escrow Account and to operate the 'Link Transaction' independently, STC have stated that as the shipment of Coffee had already commenced and the approval of the Ministry of Commerce/ Department of Economic Affairs in this respect was not received till 8.4.91, the Corporation, therefore, proposed to operate the transaction independently.

4.11 Asked further the reasons for not indicating to Ministry of Commerce the proposal to convert the rupee contract into a dollar contract in their letter withdrawing the earlier request for opening Escrow Account the Corporation stated that they have in their letter of 8.4.91 to M/o Commerce sent their request to withdraw only the proposal regarding the

Escrow Account. Neither ~~STC~~ have communicated to MOC its decision to convert the rupee contract into dollar contract nor the Ministry of Commerce raise any objections in this regard.

4.12 The contract was later changed to the dollar one unilaterally with the joint recommendation of Director, Newsprint and Counter Trade and Director, Finance in STC fixing the rate of newsprint at US \$ 529.40 PMT approved by Chairman, STC on 17.5.91. The Rupee-Dollar parity arrived at by STC ignored the mechanism of conversion of rupee price based on the exchange rate on the date of negotiation of newsprint document. The application of wrong method resulted in huge loss to STC in foreign exchange.

4.13 The Committee wanted to know what prompted STC to indicate to Sukab on 25.4.91 that the deal would be in hard currency before the same was decided by management on 17.5.91 and the person who conveyed it to Sukab and if any inquiry was ordered within STC into leakage of this impending decision, the Corporation in a written note submitted as follows:

“Ministry of Commerce while supporting the STC's proposal for export of coffee and jute goods on 4.3.91 requested RBI to accord approval to the proposal for opening an Escrow Account. STC communicated to MOC on 8.4.91 that since no approval had been received till then from MOC/DEA regarding opening of Escrow Account, STC proposed to operate the above link transaction independently, as the shipment of coffee had already started. STC, therefore, requested that its request for opening of Escrow Account may be treated as withdrawn.

The Counter Trade Division of STC, therefore, requested Newsprint Division for changes in payment terms to be in free currency by both sides. As a sequel to that, an indication could have been given by STC to Sukab that the transaction by both sides would be in hard currency.

There is no record to show who in STC had conveyed to Sukab that mode of payment of the deal would be changed from rupee to hard currency. However, at that time, the concerned officers at the level of GM in STC were Shri A.M. Desai in Newsprint, Dr. A.K. Mathur in Counter Trade Divn. and Shri G.R. Arora, Chief Finance Manager in Finance Divn.

No inquiry was conducted by the STC.”

4.14 The Committee asked STC to explain the reasons for not taking approval of NPC before conversion of the contract and whether Chairman, STC was competent to take such a decision, STC replied that on a proposal from Director (Newsprint) duly concurred by Dir. (Finance), Chairman, approved conversion of rupee contract into US \$ contract on

17.5.91. They further stated that the conversion of the contract to US \$ could not be reported to NPC, as there was no NPC meeting between 17.5.91 to 4.10.91 and various dealing managers, in the meantime had opted for Voluntary Retirement Scheme (VRS) and reorganisation was under way.

4.15 As agreed, Sukab was required to furnish Bank guarantees for (a) performance guarantee for 5% of value of newsprint, (b) US \$ 40,000 guarantee for difference in Dollar-Rupee parity worked out earlier, and (c) 3% value of 200% for counter trade obligations. Sukab did not furnish the performance bank guarantee for newsprint on the plea that the cargo has already been shipped.

4.16 Sukab shipped the newsprint consignments of 4993 MTs by July, 1991 but had not signed the formal contract with STC till 2.11.1991. Sukab were to supply 1000MT in the size 162.5 cms but that supply was in the size 81.5 cms. 300 MTs was allocated to one actual user who declined its acceptance as the sizes varied. This resulted in a loss of Rs. 13.89 lakhs to STC.

4.17 When the Committee asked the reasons for shipment of Indian items to Sukab though the firm did not return the signed contract of 21.3.91 till 2.11.91, the Corporation in a written note stated as under:

“Under clause 17 (Counter Trade) of STC's contract with Sukab, of 21.3.91, it was provided that STC items will be exported first and after that only, newsprint supplies would be imported. That contract was sent to Sukab by STC on 24.10.91 for Sukab's signature and return.

As per Newsprint Purchase Committee (NPC)'s decision of 20.3.91, STC sent to Sukab its acceptance on 21.3.91 for import of 5,000 MT standard newsprint manufactured by M/s. Paged, Poland at Rs. 10,948 PMT f.o.b polish port, with a provision of counter purchase of Indian items like coffee, jute goods & blankets. Sukab were requested to return one copy of the said order, duly signed as token of their acceptance. It was specifically stated in the said letter that a formal contract duly modified shall also be signed separately.

Newsprint contract was sent late due to change of one clause or the other, non-furnishing of the required bank guarantees by Sukab as well as uncertainty of agreement on Indian products to be exported under counter trade agreement.

In the meantime, Sukab had effected shipment of 2,000 MT on 19.5.91 and the balance 3,000 MT on 14.7.91. Since Sukab had executed its obligation under the contract, STC also commenced shipment of Indian goods to Sukab and therefore they did not want to lag behind.”

4.18 The Committee further asked the urgency for taking delivery of newsprint consignment in view of Sukab not signing the contract, the Corporation stated as follows:

“Shri Inderjit Singh Sial, of Sukab mentioned that it is clearly understood and agreed that US \$ payment will be made by STC only after Sukab has fulfilled all the terms and conditions as revised by STC today by mutual agreement. Secondly, both the parties were aware of the contractual provisions based on the previous contract of 9.4.90, which also had counter trade provision.

To meet the requirement for election during May, 91, as per decision of the Ministry of I&B/Commerce, STC was required to ensure sufficient availability of newsprint and hence accordingly contracted for large quantities to arrive during that period. Hence, on arrival of both the consignments from Sukab, STC took delivery thereof, to avoid demurrage, damages and other complications.

4.19 The Committee further sought clarification on the role of Handling & Clearing Agents employed by STC in this case and the loss incurred as a result thereof and the extent of its recovery from them, the Corporation in a written reply stated as follows:

“1000 MTs was to be supplied by Sukab in the size of 162.5 cm, but was supplied in the size of 81.5 cm. Out of that quantity, 300 MT was allocated by STC on high-seas sale to M/s. Bombay Samachar who refused to take delivery on high-seas of allocated quantity of 300 MTs as sizes varied. When any consignment was allocated on high-seas, the high seas allottee was to appoint Handling & Clearing Agents for handling and clearing of his allotted quantity.

The quantity of 1000 MTs supplied by Sukab in the size of 81.5 cm was a standard normal size, which is used by about 90% Indian actual users. Hence, the entire quantity of 1000 MTs received in 81.5 cm was cleared to buffer stock by STC. This was done to avoid further demurrage to the consignment, as an amount of Rs. 22,448/- had already been incurred as demurrage on the quantity of about 300 MTs allocated on high-seas sale basis. The remaining amount of Rs. 13,66,964.69 was loss incurred on account of price adjustments.

While settling the dispute with M/s. Sukab, STC had recovered the full amount of Rs. 13,89,412.69 converted into Dollars at the rate of US \$ 1 = Rs. 30.12 arriving at US \$ 46,000.00.

There was no question of recovery of any loss from the Handling & Clearing Agents appointed by STC, after high-seas sale allottee had refused to take delivery and the goods were cleared to STC's buffer stock. The demurrage incurred on the consignment was not due to any fault on the part of Handling & Clearing Agents.”

4.20 It is observed that apart from counter trade in regard to export of coffee, jute goods and other items listed in Sukab's offer, a counter trade deal with Sukab for export of blankets from India was also settled. Sukab opened a letter of credit for it, but did not fulfill the same. On account of this default of Sukab, a MOU was signed on 3.2.92 between Sukab and M/s. Hindustan General Export House, New Delhi (suppliers of blankets) witnessed by STC. STC claimed Rs. one crore as compensation from Sukab for the default, Sukab agreed for Rs. 50 lakh only to be paid to M/s. HGEH to be released to them by STC on behalf of Sukab.

4.21 The deal with Sukab was inquired into by ED (Vig.) for import of standard newsprint and recommended for (a) fixing of responsibility inside & outside STC including action against officials/non-officials for wilfully causing loss to STC, and (b) settling the dispute with the suppliers at best possible terms. This was also the opinion of the Chief Legal Advisor, STC.

4.22 The Committee desired to know the serious areas of default identified by ED (Vig.) in respect of this case, the persons held responsible for causing loss to STC and the action taken against such officials, the STC in a written reply stated as follows:

"Executive Director (Vig.), Shri Manzoor Ahmed while examining a legal notice from AB Sukab had briefly scrutinised the deal on 7.10.92 and identified the following areas of default in this case:

- (i) The STC officials stopped writing to the RBI for opening of and operating Escrow Account. In fact, the STC withdrew its request for opening of the Escrow Account at a later date.
- (ii) STC did not provide any contract for counter trade, although M/s. Sukab had given a guarantee to this effect. Thus, M/s. Sukab were saved from their counter trade obligations towards the country's export.
- (iii) The Dollar price at 529.40 PMT was arrived at in lieu of the Rupee price of 10,948/- PMT. This conversion was pegged up to STC's disadvantage by nearly 11%.
- (iv) While Sukab were expected to complete the counter trade obligation by Sept. '91 the Newsprint Contract itself was given to them on 24.10.1991.

Shortly after this examination, the Committee which had been constituted by Executive Committee to settle this matter with Sukab, arrived at an amicable settlement on 14.11.92.

The persons held responsible were the then Director-in-charge (Newsprint & Counter Trade), Mr. R.K. Vachher who authorised in writing to Ministry of Commerce for withdrawing the request before opening and operating the Escrow Account, and Mr. B.K. Shroff, the then Director (Fin.) who was also Director-in-charge of Counter-Trade since Sep.'91 for pegging the conversion rate to STC's disadvantage by nearly 11%. Enquiry to identify others involved in

these omissions & commissions under the aforesaid two Directors, continues."

4.23 In a written complaint to Chairman, STC dated 30.9.92 Shri Lars P. Lundgren made certain serious allegations against S/Shri B.K. Shroff former Director, Finance and R.K. Vachher, Director (Newsprint) concerning their role with regard to counter-trade obligations viz. sale of green coffee, purchase of blankets etc. The letter was then forwarded to CBI for further inquiries.

4.24 The Committee asked STC whether CBI completed its enquiry with regard to complaint of Shri Lars P. Lundgren of AB Sukab, the findings thereon and the action taken by STC on the findings, STC in a written reply stated as under:

"Shri Lars P. Lundgren of M/s. AB Sukab submitted to CMD a written complaint dated 1.10.92, levelling serious allegations against Shri B.K. Shroff. The matter was reported to Shri P.C. Sharma, IPS, IG, CBI, as well as Shri Balwinder Singh, IPS, DIG, CBI by ED (Vig.) on 10.10.92. An Investigating Officer of the CBI has visited STC office a number of times in this inquiry. However, we are not aware of the CBI's findings. No report has yet been received from CBI in the matter."

4.25 Sukab filed a Civil writ petition during September, 1992 in the Delhi High Court claiming payment for the quantity of newsprint supplied alongwith interest.

4.26 STC sought legal opinion in the matter from Shri Kapil Sibal, Sr. Advocate on 21.10.92 who opined that (a) the matter should be negotiated and sorted out across the table (b) counter affidavit be filed before High Court taking all defences so as to have better bargaining power during negotiations, and (c) our (STC) case on merits seems to be weak.

4.27 When asked the reasons for not filling counter-affidavit before the Delhi High Court as advised by Senior Advocate Shri Kapil Sibal before negotiations were held with Sukab, STC have stated that no counter-affidavit had been filed in this case. On 3.11.92 STC was granted 6 weeks' time to file its reply. The draft of the counter affidavit was prepared and sent by STC's counsel on 16.11.92. While the same was under consideration, Sukab came forward for negotiated settlement as a result the counter affidavit/reply was not filed. After the negotiated settlement, Sukab instructed its counsel to withdraw the writ petition which was done on 7.1.93.

4.28 To settle the dispute amicably with Sukab, a committee of senior officers in STC was constituted to hold negotiations and to

arrive at settlement. STC offered a payment of US \$ 20.25 lakhs as taking into account compensation to STC for waiver of counter trade obligation. But Sukab refused to reduce their demand from US \$ 25 lakhs.

4.29 The civil writ petition of Sukab was listed for 3.11.92 for admission. The court granted six weeks time to STC for filing counter affidavit/reply. The case was listed for further hearing on 7.1.93.

4.30 This case was considered by the Executive Committee of STC on 23.10.92. The Executive Committee decided to hold negotiations with Sukab. The Ministry of Commerce also asked STC to settle the matter amicably through negotiations with Sukab.

4.31 STC concluded an agreement with Sukab on 14.11.92. The agreement *inter-alia* provides for (a) to release full and final payment of US \$ 21,50,000 for supply of 4993 MT of standard newsprint, (b) STC to return Sukab's Bank Guarantees, and (c) that Sukab will immediately withdraw the writ petition filed before the High Court. The counter-trade obligations of Sukab were also waived. The Ministry of Commerce was apprised of the settlement on 17.11.1992.

V. Chinese Case

5.1. China emerged as a new source of supply of newsprint in January, 1991 prior to decanalisation of Import of Newsprint in April, 1992. The Newsprint Purchase Committee in its meeting held on 24.12.1990 authorised STC to make purchase against the tender upto Rs. 5.56 crores for the residual foreign exchange with STC for the year 1990-91 and purchases be made in such a way that supplies arrive latest by mid-March, 1991.

5.2 STC floated a tender on 7th January, 1991 closing on 14.1.1991 and the offers received were tabulated according to the derived CIF price and purchase orders were made on 22.1.1991 from the first three offers.

5.3 It is observed that STC placed orders with the China National Pulp and Paper Corporation (CNPPC) on 21.1.1991 for a quantity of 2000 MTs the second lowest offer at the CIF price of US \$619.07 PMT with shipments in February/March, 1991. STC did not receive any samples for testing and the same were to be received latest by 15.2.1991.

5.4 The NPC at its meeting held on 20.2.1991 noted and approved the action taken on finalisation of purchases of 4950 MT of Standard Newsprint against free foreign exchange worth Rs. 5.56 crores. The NPC however, noted that in future trial order quantity should preferably be for about 1000 MTs only.

The INS representative in the NPC desired that maximum quantities could be considered from the tested Chinese suppliers.

5.5 When asked the reasons for not placing the bids evaluated by STC before NPC against the tender dated 7.1.91 and the departure from the normal procedures, the STC in a written reply stated as follows:

"In its meeting held on 24.12.90, the Newsprint Purchase Committee had delegated to STC the authority to make purchases against this tender upto Rs. 5.56 Crores (exchange available for 1990-91) and report to NPC in its next meeting. NPC further desired that purchases be made so that material arrived latest by mid-March 1991. Out of the offers received against the tender floated on 7.1.91 which closed on 14.1.91, order for import of 2000 MT was placed on M/s. China National Pulp & Paper Import-Export Corporation, Beijing (China). There was no departure in the said purchase as NPC had delegated authority to STC to make purchases, as mentioned above."

5.6 Asked further whether any member of NPC object to the departure from the practice at the meeting of NPC held on 20.2.91, STC stated in a written reply as noted below:

"The NPC on 20.2.91 while noting placement of trial order for 2000 MTs on China National Pulp and Paper Corporation, expressed satisfaction that China, a proximate source had been opened up at comparatively lower price than traditional suppliers and that freight & voyage period would be comparatively less. Further, the Committee expressed satisfaction with the test reports of Chinese samples. The Committee did not raise any objection but only decided that trial order should preferably be for about 1000 MTs only in future, and that maximum quantities available may be considered from tested Chinese suppliers."

5.7 Asked the reasons for placing orders with CNPPC, China at higher rates and the extra expenditure incurred by STC, in a written reply STC stated as follows:

"The order on CNPPC, China for supply of 2000 MT standard newsprint was placed at FOB price of US \$500 PMT from Chinese port of Dalian to Bombay. The CIF price in this deal worked out to US \$ 579.75 PMT. There has been some error in indicating CIF price of US \$ 619 PMT, which was based on supplier's offer to supply either at US \$ 500 PMT FOB or US \$ 614 PMT C&F. To their CNF offer of US \$ 614, insurance element @ 0.825% was added, making the CIF price as US \$ 619 PMT. However, the import had been made at US \$ 500 PMT FOB. The freight paid was US \$ 75 PMT.

From the above, it would be seen that no extra expenditure was incurred by STC."

5.8 Another tender was floated on 1st February, 1991 for newsprint. The NPC at its meeting held on 20.2.1991 approved and in pursuance of NPC decisions purchase orders were made from the following firms from China:

- (i) M/s. Guangdong Stationery & Sporting goods Import & Export Corporation for 1000 MTs at US\$ 494.40 PMT FOB (trial order)
- (ii) M/s. China National Pulp & Paper Corporation for 10,000 MTs at US \$ 510 PMT FOB shipment in March/April, 1991.

5.9 This was followed by another tender for newsprint on 26.2.1991. The NPC approved offers received on 20.3.1991 and placed an order for 6000 MTs from China National Pulp & Paper Corporation, at a price of US \$ 614.30 PMT alongwith bank charges. This order, however, was subject to approval of samples from Kwangchow Mill, China.

5.10 When the Committee wanted to know as to when the quantity of 6000 MT contracted with Kwangchow Mills was received, the quality acceptable to the industry and complaints, if any, from actual users, the STC stated in written reply as follows:

"STC placed following orders after approval of NPC in various meetings for import of Chinese newsprint manufactured by the mills indicated against each:

Sl. No.	Contract Date	Ordered Qty.(MT)	Mills Name	Shipment Schedule
1.	21.1.91	2,000	Jilin	March 91
2.	21.1.91	10,000	-do-	March-Sept 91
3.	22.3.91	6,000	Kwangchow	May-June 91
4.	14.5.91	8,800	-do-	June-Sept 91
5.	-do-	1,000	Qiqihar	July-August 91
6.	-do-	1,000	Nanping	June-July 91
7.	-do-	6,000	Jilin	Aug-Sept 91
		34,800		

The quantity of 6,000 MT from Kwangchow mill was shipped in June and July in 2 lots instead of original shipment schedule of May and June 91. The shipments arrived during July and August 1991. The number of complaints were equal to the number of approvals. The industry representatives on the NPC had also recommended this purchase."

5.11 It is observed that meeting of NPC was called on 30.3.1991 to purchase newsprint to meet the requirement for the General Elections in May 1991 after extending offers of Canadian & Scandinavian suppliers upto 1.4.91 against tenders of 26.2.91.

5.12 When asked further the reasons for extending the offers of the Canadian & Scandinavian suppliers only against the tender of 26.2.91 and convening of a special meeting of NPC on 30.3.91, the STC stated that the special meeting of NPC was necessitated because of Government's directive to procure election quota requirements and backlog requirements in addition to normal import plan allocation of 75,000 MT during the quarter April-June 1991. The NPC approved purchases of only 43,500 MT on 20.3.91 and the balance of 30,000 MT was covered in the NPC meeting held on 30.3.91 and therefore, STC got extended the offers of the Canadian and Scandinavian suppliers.

5.13 M/s. Guangdong Stationery & Sporting Goods Import & Export Corporation, China was given a trial order of only 1000 MTs. The Dainik Jagran had certified grammage of 48.8 GSM on 19.3.1991 and 52 GSM on 20.3.1991. The NPC desired that STC may examine the matter further and report to NPC in its next meeting.

5.14 A delegation comprising officials from the China National Pulp & Paper Corporation, China, its representative in India and the first Secretary (Commercial), The Embassy of China in India visited STC office on 4th April, 1991 and held discussions with officers in the Newsprint division & Associate Finance headed by Shri R.K. Vachher, Executive Director. The delegation expressed its willingness to arrange supplies upto 50,000 MT during the year. In respect of the 2000 MT contract with CNPPC, it was agreed that lot-wise inspection certificate would be issued by the supplier (Mill concerned) and the Chinese Government Inspection Bureau would issue the same for the entire quantity shipped. STC agreed to amend the LC suitably.

5.15 A delegation of Members of the Newsprint Purchase Committee led by Shri R.K. Vachher, Executive Director (Newsprint), STC visited China between 28th April to 5th May, 1991. In addition Shri Ashok Mitra leading publisher and Member INS, Shri A.K. Sud, local representative of CNPPC and Mr. Li, the first Secretary in Embassy of China in India also accompanied the delegation. The delegation visited Newsprint mills at Kwangchow Mills, Jilin Paper Mills and had a number of meetings with different officials of CNPPC. The delegation also visited the Office of Nanfang Daily Newspaper.

5.16 A Memorandum of Understanding with CNPPC of China was signed at Beijing to import 40,000 MT of newsprint per year from China before the visit concluded.

5.17 The NPC members who visited China briefed the Committee about the visit and the findings at its meeting on 13.5.1991. The Guangdong mill was manufacturing two qualities of newsprint—one was termed offset quality standard newsprint which was better than the ordinary newsprint. The industry members of the Committee were of the view that only the better quality (offset quality) newsprint should be procured. The NPC also approved the MOU signed by STC with CNPPC.

5.18 The NPC decided on 13.5.91 to purchase 16,800 MT Newsprint from CNPPC, China against the tender due on 8.5.1991 from four different mills viz. Jilin Mill (6,000 MT), Quiqihar Mill (1000 MT), Nanping Mill (1,000 MT) and Kwangchow Mills (8,800 MT).

5.19 A controversy was started perhaps by the established suppliers of newsprint about the quality of newsprint supplied by China at the time China was becoming a substantial source of supply for newsprint imports owing to the controlled prices and freight which are considerably low in comparison to the established sources in Canada and Scandinavia. STC also received representations from actual users for and against the quality of newsprint from China. This issue was also debated in INS.

5.20 When the Committee wanted to know whether the established suppliers complained to STC in writing about the quality of Chinese

Newsprint and whether STC conducted any enquiry of its own or by outside agencies and the findings thereof. The STC replied that none of the established suppliers or their agents in India complained in writing to STC about quality of Chinese Newsprint and that STC did not conduct any enquiry of its own to judge the correctness of the complaints. STC further stated that it did not think it advisable because decanalisation of import of newsprint from STC was imminent.

5.21 The additional order for supply of newsprint from Kwangchow Mills, China to the tune of 8800 MTs when placed before NPC for approval became controversial. The mill manufactured 2000 MT of newsprint and transported to the port of shipment to keep the schedule within the prescribed time limits. The NPC agreed to the shipment, the Director (Finance), STC opposed it on the ground that "13,000 MTs of Chinese Newsprint was in stock and allottees are reluctant to lift" and recorded his note of dissent in the meeting held on 30.12.1991 against the wishes of NPC.

5.22 Ministry of Commerce asked STC to place the matter again before the NPC when the Chinese represented to it, so as to ensure a satisfactory resolution of the matter. This matter of dissent of Director (Finance) was again taken up by the NPC at its meeting on 21.1.1992 and a consensus was reached to drop the decision to take delivery of the 2000 MT of newsprint from the Kwangchow Mills, China.

5.23 The Committee asked when the matter in respect of supplies of 2000 MT of newsprint of Kwangchow Mills, China was again taken up by NPC, the STC in a written reply stated as noted below:

"The matter came up before NPC meeting held on 12.11.91 when after some discussions, NPC had decided to defer this issue.

The matter was again considered in NPC meeting held on 30.12.91 when despite Director (Fin) not agreeing, NPC decided to go ahead with the proposal of placing order on CNPPC at US \$ 350 PMT f.o.b. and place the note of dissent of Director (Fin) on record. It was also decided that the condition of material not being more than three months old be waived and an independent surveyor be appointed to certify the condition of the goods.

This matter was re-considered in NPC meeting held on 21.1.92 when after detailed discussions, the consensus was that there was no commercial justification for the proposed purchase."

5.24 When asked further whether STC took delivery of 2000 MT newsprint of Kwangchow mill which was ready for shipment and the loss incurred, STC stated that in view of NPC decision on 21.1.92, STC did not place order for import of 2000 MT of newsprint and that since the goods were not imported, no loss was incurred by them.

5.25 In November, 1992 STC still had stocks of 3181 MTs of newsprint of the canalisation days and moving of stocks in 1992 was slow due to falling prices in the markets.

5.26 When the Committee wanted to know the manner in which the buffer stocks available with STC at the beginning of November, 1992 were disposed of and the loss/gain made in the disposal of stocks, the STC in written reply stated as under:

“The buffer stock as at the beginning of November, 1992 was sold to actual users against tender.

On the 1st of April, 1992, on decanalisation of newsprint, STC was carrying at Calcutta a stock of 1,410 MT of 22 inches width Chinese Standard Newsprint and 3,804 MT of CSWHSW Glazed Newsprint. As the world prices had gone down stocks were not lifted by users. These stocks were sold by tender and STC suffered a loss of about Rs. 1.5 crores in this sale.”

VI. Afnan Exports Case

6.1 A Study Group of Committee on Public Undertakings headed by Shri Madan Lal Khurana was constituted in November, 1992 to examine in depth the cases relating to import of Newsprint by STC. When the cases relating to import of newsprint was under consideration of the Study Group and when the position of STC's officials became vulnerable a news item appeared in the Financial Express on 20.11.1992 under the caption "Will Antulay succeed in squeezing STC" making a reference to the STC's contract with M/s. Afnan Exports for export of Alphonso mangoes. A copy of the news item was placed before the Study Group by its Convener, at its sitting held on 24.11.1992.

6.2 The Study Group felt that the news item casts aspersion on the working of the Committee on Public Undertakings as the Committee's examination of import of newsprint by STC is independent of extraneous considerations. The Study Group felt that the timing of leaking the information which became a news item obviously tantamounts to pressurising the Committee which is enquiring into some of the grave irregularities in the import deals of STC. The Study Group decided unanimously that their displeasure and unhappiness in this matter should be placed on record. They resolved to continue their examination of the subject in the same spirit irrespective of publication of this news item. The Study Group felt that the publication of this news item amounts to a breach of privilege.

6.3 The full Committee chaired by Shri V. Narayanasamy at its sitting held on 31.3.1993 drew attention of CMD, STC to the publication of the above news item. In order to study the facts of the case which appeared in the news item, the Committee directed that STC should furnish all records, files & documents relating to the deal.

6.4 It is observed from the information furnished by STC that M/s. Afnan Exports were enrolled as associate suppliers of STC and an agreement was signed on 13.2.1991 for export of 500 tonnes of Alphonso Mangoes between 15th April, 1991 and 31st May, 1991.

6.5 According to STC, against 500 tonnes of mangoes proposed to be exported M/s. Afnan could supply only about 2.5 tonnes of Alphonso mangoes and the supplier was unable to supply even the initial trial consignment in conformity with the required standards and quality. It is observed from the information furnished by the Ministry that the then Executive Director of STC informed the then Commerce Minister that the packaging and quality of Alphonso mangoes supplied by M/s. Afnan Exports were found to be excellent and to the satisfaction of foreign

buyers/customers and the then Minister of Commerce had ordered that the dispute be settled by negotiations.

6.6 M/s. Afnan is stated to have made a claim of Rs. 85 lakhs on account of loss from contracts, packaging and other small expenditure and another Rs. 70 lakhs as consequential loss. STC has reportedly denied and refused the alleged claims. M/s Afnan has been stressing that the case be referred to arbitration for settlement.

6.7 The Committee asked whether STC inspected the infrastructure of Afnan Exports and such other relevant requisite material which need to be examined & tested before contract is entered into by any PSU before finalising the contract. During the oral evidence Chairman, STC replied that STC did not inspect on their own but simply relied on the solvency certificate provided by Bank of Baroda signed by its Chairman Shri Shah and also that no inspection was done by STC on the capability of the enterprise executing the contract.

6.8 Asked whether STC conducted any inspection with regard to quality of mangoes, during oral evidence Chairman, STC replied: 'Yes'.

6.9 On the question of assistance STC given to small entrepreneurs desirous of exporting their products, the representative of STC replied that in case of small firms in the field of sports goods and leather goods, STC imports raw material and provides working capital and then exports their products.

6.10 From the information furnished by the Ministry of Commerce the Committee finds that in January, 1991 one of the then ruling party Members of Parliament had brought it to the notice of the then Minister of Commerce the case of Afnan stating that:

"Paradoxically, what STC does not want to do, it expects small firms like Afnan to do; STC cannot place firm order of one thousand tonnes (without even advance payment) on 'Afnan' but STC expects 'Afnan' place orders for 5/10 thousand tonnes on the growers and small local traders (with lakhs of rupees by way of advance payment). STC still claims to do all in its power to help, encourage exports to earn foreign exchange for the State."

The then Minister of Commerce in response to the letter of Member of Parliament stated that:

"STC is in the process of entering into a firm procurement arrangement with them for the forthcoming Alphonso mango season."

6.10 (i) During oral evidence when asked whether Afnan Exports asked for arbitration in this case and STCs response thereto, the Chairman STC

replied that STC was against arbitration and it is not the practice of having arbitration clause in respect of perishable items STC also consulted its legal authorities in this regard. Subsequent arbitration does not arise because the goods (perishable items) will not be there.

6.11 The Committee on Public Undertakings (1992-93) in their Ninth Report on 'Litigations pending for settlement in Public Undertakings' had recommended as under:

"The Committee are, of the firm opinion that in all future contracts/agreements a clause for arbitration must be included unless there are strong and compelling reasons for not including the same. Besides they also recommend that in all existing contracts/agreements where there is no clause for arbitration, the arbitration clause should be deemed to exist unless the other private party/individual refused to refer the same to conciliation/negotiation or arbitration. It is also recommended that in all such cases the dispute should be referred to Indian Council of Arbitration for conciliation/negotiation within a period of one month, failing which the same be referred to arbitration by the Indian Council for Arbitration for making an award within a period of six to nine months unless the contract/agreement expressly prohibits recourse to conciliation/arbitration."

VII. General

7.1 The Study Group, Committee on Public Undertakings in its sitting held on 24.11.92 noted the recommendations contained in the report of the previous Committee on Public Undertakings (1989-90) in the context of undue favours shown by STC to a firm called M/s Haria Exports and the action taken by STC on the recommendation of the Committee. It was observed that inspite of CBI's observations in its report dated 29.6.1992 that there is sufficient material for launching prosecution against six managers and departmental action against two officials in respect of M/s. Haria Exports. STC appears to be scuttling the case by taking a stand that it would be very difficult to establish that there was any criminal conspiracy in the matter.

7.2 The Committee pointed out that the ED (Vigilance) has recommended in his report that the Marketing Division should be restructured. In spite of the fact that import of newsprint had remained canalised through STC for nearly two decades, the Marketing Division had some inherent deficiencies on account of which it failed to discharge its functions efficiently. When asked the reasons for not taking corrective measures, the STC in a written reply stated as under:

"The Executive Director (Vigilance) in his report on Meteor case and the Universal case had suggested a number of corrective measures to avoid such recurrences in future. The recommendations in the Meteor case were made on 26.2.92 while the newsprint purchase was decanalised on 31.3.92. The suggestions in the report were placed before the STC Board also. However, in the changed circumstances of decanalisation, the Corporation is in the process of reworking its strategy."

7.3 The Committee noted that in the 60th Report of STC, the previous Committee on Public Undertakings (1989-90) had desired that in order to improve the work culture of the organisation, STC should get rid of at least such officials who have been found guilty by CBI/CVC of serious charges of criminal conspiracy or causing financial loss to the Government of India. The Committee had desired to know the concrete action taken against Shri K.C. Hazarika, Chief Marketing Manager and Shri B.N. Rao, G.M., who were found guilty by CBI of criminal conspiracy in separate cases. Asked what action has since been taken by STC on these recommendations of the Committee, the STC stated in a written reply as follows:

"During the last 1½ years the STC, in compliance of the instructions of the 60th Report of the Committee on Public Undertakings, has

made concerted efforts to eliminate persons who are found at fault and were of doubtful integrity. Shri Jayanta Sen, incharge of Middle East operations of STC at Jeddah was summarily dismissed on April 19, 1991 as a result of a report from Executive Director (Vigilance).

Shri Sampath Kumar, Chief Marketing Manager of the STC in New York was also removed from services on 3.7.1991 as a result of an inquiry by ED (Vig.). Shri Dipanker Roy, incharge of STC operations in Far East was recalled on a report from ED (Vig.) and is absconding at present. A police case has been registered against him to recover our dues. The departmental action is also being taken in absentia against him. Branch Manager of London Office, Shri H.L. Kabra was also recalled prematurely on a report from ED (Vig.) and departmental action was taken against him. He has now left the STC. Shri Surinder Kumar, Branch Manager of Frankfurt office incharge of STC's operations in Western Europe and North Africa, was recalled and departmental action is being taken against him. ED (Vig.) also reported against one of STC's Senior Director, Shri R.S. Bakshi for certain acts of omissions and commissions and Shri Bakshi resigned from STC. ED (Vig.) recommended a CBI inquiry against Shri P. Chakraborty, formerly the Branch Manager of London Branch for his omissions and commissions during his London posting. The Ministry of Commerce, however, recommended drawal of departmental action against him, which is in progress. Shri Chakraborty has resigned from services of the Corporation but the same has not been accepted on account of the pending departmental action.

In addition the CMD constituted a Committee in July 1991 to weed out managers of doubtful integrity and nominated ED (Vig.) as the presenting officer before the Committee and three other Directors as Members. This Committee recommended compulsory retirement of seven senior managers which was approved by the Chairman on 30.7.92 and they were compulsorily retired. Shri K.C. Hazarika, Chief Marketing Manager, who was found guilty by the CBI was also punished in departmental proceedings against him and he has now left the STC. Shri B.N. Rao, General Manager is being prosecuted by the CBI in the court. Four more senior managers (out of which two, viz. Mr. B.R. Mina and Mr. S. Kumar are under suspension and two retired) are facing court cases. In addition, a large number of lower functionaries were punished in several ways. A large number of STC employees numbering five hundred opted for VRS on account of these stringent measures."

7.4 The Committee had also noted (Rec. 16) in the above mentioned report that inspite of the findings of Vigilance Division that undue favours were shown to M/s. Haria Exports, no action had been taken against any

of the dealing officers. The Committee were informed in the action taken reply that the question of placing the officers involved under suspension is to be considered on receipt of the report on investigations being conducted by CBI. Asked when the CBI submitted its report regarding this case the details of findings/recommendations of CBI and the action taken on those found guilty, in a written reply the STC stated as follows:

"The CBI has recommended prosecution of 6 managers in Haria Exports case and departmental action against two managers. The CBI report which was received in June this year was examined carefully by the Legal Division and it was found that there were not sufficient reasons to sanction prosecution of these managers on the basis of the evidence collected by the CBI so far. The matter has been referred back to the CBI for their reconsideration and to the CVC for their consideration of these additional facts given to them. Suitable action will be taken as and when CBI's fresh recommendations are received. The Ministry of Commerce has also been kept informed in the matter."

7.5 When asked the reasons for referring back the case to CBI/CVC for reconsideration and the additional facts given to CBI/CVC, the STC in a written reply stated as follows:

"Letter No. 3/21(A)/89-Bombay dated 29.6.92 from DIG, CBI, Bombay, forwarding SP's report in a case against Shri R.M. Parate, DMM, STC and others and requesting *inter-alia* sanction for prosecution against Shri R.M. Parate & others, was received. It is a requirement of law that the competent authority before according sanction for prosecution shall satisfy himself on the basis of oral and documentary evidence available on records that the offence, has been committed by the officials for which sanction is being sought. Accordingly, CBI report was examined in STC in consultation with Legal Division and it has been found that there is no substance in the allegations, as brought out in the report that a conspiracy was hatched between Shri R.M. Parate & others to cause loss to STC and gains to M/s Haria Exports and others by intentionally delaying the distribution of quotas in showing undue favours to M/s. Haria Exports and others. The Central Vigilance Commission was also kept informed.

CBI was requested to discuss the case with Director (Law) STC in case they did not agree with STC's point of view. They have not discussed with him so far."

7.6 Asked further when the CBI/CVC have submitted their fresh recommendations and the details of their findings and the action since

taken against guilty officials, in a written reply the STC have stated as under:

“CBI *vide* their D.O. letter dated 16.2.93 to CMD, STC intimated that the decision in this case was taken by CBI in consultation with the Ministry of Law & Justice, Deptt. of Legal Affairs, New Delhi and their full opinion was received through DP&T. They further stated that if it is felt by the Ministry/Department that the facts of the case have not been fully appreciated or that some clarifications are needed in the matter, the case could only be referred to the Ministry of Law for further consideration. They also stated that under the circumstances, it will be appropriate for STC to refer the matter to the Ministry of Law for further advice. We are in correspondence with CBI to refer the matter, alongwith report of Legal Division of STC, to Ministry of Law for their final opinion in the matter.”

7.7 Asked the reasons for STC overruling the recommendations of CBI especially when the officials are not of Board level, the Ministry of Commerce in a written reply stated as follows:

“As intimated by STC, the report of the CBI in this case was received by the STC in June, 1992 requesting for sanction of prosecution against STC officials involved in this case. As the competent authority is required by law to satisfy itself that the offence has been committed by the officials named, before according sanction for the prosecution, STC consulted its legal division. After examining the CBI report and in consultation with its legal division, STC opined that there was no substance in the allegation and conveyed their views to the CBI duly informing CVC. In Feb. 1993, CBI advised STC to refer the case to the Ministry of Law for further consideration and advice if similar clarifications were required. This is being processed by the STC.”

7.8 On the question of the procedure followed with regard to follow up action on CBI report involving the Board level officials, the Ministry of Commerce have stated that in case of Presidential appointees on receipt of CBI report for prosecution, the comments of the CMD are called for where relevant. The report is examined in the context of the comments and the case is processed in accordance with the procedure laid down in the Vigilance Manual and CVC is also consulted if felt necessary.

7.9 Asked the reasons for not taking any action by the Ministry in respect of Board level employees found guilty by CBI, the Ministry in a written reply affirmed that action is to be taken by it and the same practice was followed in respect of prosecution of Shri A. K. Sen a former Director—a Presidential appointee and that the matter was referred to CVC in November, 1992 and further action would be taken on receipt of views of CVC.

PART B

RECOMMENDATIONS /CONCLUSIONS OF THE COMMITTEE

1. The Committee's examination of import of newsprint by STC has revealed gross administrative negligence, grave irregularities, serious lapses and malpractices in the purchase of newsprint from foreign suppliers. Contracts of newsprint purchases regarding few such cases are dealt with in the succeeding paragraphs.

2. In one case, STC entered into a contract with Universal Paper Export Co., Canada initially on 30.3.91 for supply of 5,000 MTs of glazed newsprint and again on 15.5.91 for supply of another 5,000 MTs glazed newsprint. The first consignment of about 2900 MTs of glazed newsprint supplied by the Universal Co. arrived at Bombay Port on 12.6.91. The first stage results of samples tested in the departmental laboratory in the Bombay Customs House was satisfactory. Customs however issued a show cause notice to STC on the basis of subsequent test results of samples sent to the three laboratories which indicated that the goods did not tally with the declarations made in the Bills of Entry. At this stage STC abandoned the consignment. The retests conducted on the direction of Bombay High Court at Supplier's intervention however revealed that the consignment conformed to the declarations made. Even at this stage STC maintained their original decision to abandon the goods. The total cost involved in this case taking into account all demands of the supplier is stated to be approx. Rs. 20 crores. The Committee are distressed to find that handling of this case by various organisations left much to be desired.

3. The Committee are shocked to find that the decision taken by the Chairman & Mg. Director of STC to abandon the goods supplied by Universal Co. was not preceded by any systematic evaluation of the commercial and legal implications of all the options available to STC. The Committee are distressed that there was failure on the part of the CMD to place this matter before the Board of Directors and to obtain its decision in a case such as this which involves not only crores of rupees but the image of the country as well. The circumstances of this case indicated below clearly shows that there was unmistakable failure on the part of the CMD to exercise care and caution in deciding the course of action.

- The fact that STC was satisfied about the correctness of the specifications contained in the preshipment inspection certificate of SGS who was an internationally reputed agency.
- Substantial low price of the glazed newsprint supplied by the Universal Co. to break the cartel which had been existing for long.

- Non-clearance of the material under provisional duty bond-even after the opinion of the solicitor Shri Pochkhanwalla, who had opined in clear terms that even if PDB is furnished, STC still had the option to contest the case before the appellate authority in customs, failing which they could also go to the Supreme Court.
- STC's knowledge about rival suppliers' motivated publicity campaign in the national press having lost the captive market.
- The view of STC's Counsel that abandoning the goods will be burning the bridges and that automatically does not absolve STC from the liability.
- That the newsprint supplied by Universal could not in any case be the expensive Light Weight Coated paper at the price at which STC had contracted the newsprint.

The Committee are surprised to notice that STC did not think it proper though there was a valid ground for STC to contest the show cause notice and to get retest of samples done by the customs.

According to the Ministry of Commerce also, the case suffered because of gross administrative negligence on the part of STC which acted in a totally irresponsible and unprofessional manner. The Committee are in agreement with the Ministry that by inefficient handling of the case STC has not only brought upon itself considerable financial loss but also discredit to the country. In Committee's view, the CMD being head of the Institution and responsible for taking all important decisions himself is to be blamed. They do not appreciate the shifting of the burden on his part on to the officers who are junior to him. The Committee are of the firm view that safeguarding the commercial interests of public sector undertaking is the prime responsibility of the Chief Executive and any person who fails to discharge his duties in this regard has no moral right to continue and more so when it is a commercial undertaking like STC.

4. The Committee are also distressed at the role played by the three laboratories in this case viz. (i) Central Revenue Control Laboratory, New Delhi, (ii) Indian Institute of Packaging, Bombay, and (iii) Central Paper and Pulp Research Institute, Saharanpur. All the three laboratories initially reported that the samples tested by them did not conform to the declarations made in the Bill of Entry. When samples were sent again for retesting all the three laboratories surprisingly indicated that the goods conform to the specifications. Considering the test results at the first, third and fourth stages the Committee cannot but conclude that there appeared to be a definite bias in the initial test reports of these laboratories reasons for which are not known. What dismays the Committee is that the Ministry of Finance (Deptt. of Revenue) have also not thought it fit to enquire into the reasons for contradictory test reports of

those three laboratories inspite of the fact that their original test reports necessitated seizure of cargo with inevitable consequences.

5. The customs and the Deptt. of Revenue have also not acquitted themselves creditably. It is regrettable that the credentials of the informer was not verified nor the information provided by him properly ascertained by the different wings of customs. The Revenue Secretary was frank enough to admit that there was lack of coordination in this regard. Evidently, sufficient care and caution was not exercised nor the common sense used by the Deptt. of Revenue in this case even when the facts and circumstances of import of newsprint from Universal Co. were apprised by STC. The Committee find that this is a fit case which require a thorough probe to be made into the various aspects of the case without further loss of time. They recommend that the matter be referred to CBI and they be intimated of the fact of such reference within 3 weeks from the date of presentation of this Report.

6. The Committee's examination of import of newsprint from M/s. Meteor Papers Ltd. London has brought out startling disclosures. The supplier had deliberately misdeclared the origin of the goods as that of Hungarian instead of Romanian thereby causing misuse of foreign exchange to the extent of as much as over US \$one million. That the STC had not cared to verify the mill of origin before accepting the newsprint of Hungarian origin indicates not only the serious lapse on the part of STC but also collusion with the supplier. The manufacturer's certificates purportedly issued by M/s. Lignimpex were bogus and forged. The Committee note that on supplier's default to ship the quantity by the stipulated date, STC decided to cancel the contract for unshipped quantities and invoke the performance bank guarantees of the suppliers on 1.11.1991 amounting to US \$ 6.44 lakhs.

What is more disappointing is that CMD met the foreign supplier at his residence on 2.11.91 (i.e. holiday) and issued orders that performance bank guarantee be deferred by four weeks and on Sunday the instructions to this effect were sent to the bank. No senior officer from Finance was consulted in this regard. Urgency for taking such an important decision at his level without even placing the same before the Board speaks for itself. Release of payment was also ordered by CMD when Director (Finance) was away on tour for two days and it was only after objections were raised by Director (Finance) and then Minister of Commerce intervened that the payment was stopped. The instructions in the letter of Secretary (Finance) were also ignored with impunity. The Committee are constrained to observe that taking up such important decisions at his level without the matter being placed before the Board casts reflection on the intent and motive of the CMD. Besides, the arrest of Indian ship at ANTWERP (Belgium) not only lowered the prestige and image of the country but also resulted in eroding the credibility of STC as an international trading house. The Shipping Corporation of India got the vessel released on furnishing indemnity bond

of US \$ 5.13 million against STC's bill value of US \$ 3.49 million. This necessitated STC arriving at a commercial settlement with the supplier which STC did. The Committee desire that the results of the CBI inquiry and action taken at each stage be intimated to the Committee.

7. The case relating to import of newsprint from FINNPAP reveals grave irregularities and malpractices besides the irresponsibility exhibited by those at the helm of affairs. There were manipulations in the tabulation of tenders placed before Newsprint Purchase Committee (NPC) on 16 October, 1991. Apparently no control was exercised to check the correctness of information placed before the NPC. Nor did NPC bother about the details of information placed before it. The FINNPAP was shown cheaper by 31 cents as compared to the price of Kemmenye. NPC expectedly decided in favour of FINNPAP for supply of 9,000 MTs plus 5,000 MTs (optional) of glazed newsprint. What irks the Committee more was that the option clause in this case was exercised on 30.12.91 with the explicit knowledge of declining prices. The order placed on exercising option clause was at the rate of US \$ 609 PMT as against the prevailing market rate of US \$ 500 PMT. The extent of irresponsibility displayed by those involved in this decision is not expected from any quarter.

The order placed with FINNPAP was subsequently cancelled. The committee understand that the CBI has registered a case in this regard and is investigating the matter. The Committee would like to be informed of the outcome of the CBI investigation and the action taken thereon.

8. The Committee find that in the case relating to M/s. Sukab also there were serious irregularities such as failure to provide any contract for counter trade although M/s. Sukab had given a guarantee to this effect, conversion of rupee contract into Dollar contract and pegging the conversion to STC's disadvantage by nearly 11%. The CBI is reportedly enquiring into this case also.

9. The Committee feel that without CMD's tacit concurrence most of the shady deals which have been highlighted by the Committee in this report would not have fructified at all.

10. The Committee are of the firm view that the Government Directors in the Board of STC were not discharging their role effectively. It is their specific responsibility to effectively act as the eyes, ears and hands of the Government, keep a close watch on the performance of the undertaking and ensure timely corrective steps when and where called for. The Committee are disturbed to find that no cognizance of the case was taken by the Commerce Ministry's representative on the Board in the wake of the controversies surrounding the Universal case. No detailed review of all the aspects of the transaction was undertaken by the Ministry inspite of gross administrative negligence on the part of CMD of STC. The Committee expect Commerce Ministry and their representatives in STC's Board not to be found wanting in the discharge of their duties in future.

11. When the Committee was in the thick of the examination of this sordid affair relating to import of newsprint by STC, suddenly a news item appeared in the press under the caption, "Will Antulay succeed in squeezing STC" making a reference to STC's contract with M/s Afnan Exports for export of Alphonso Mangoes. The Study Group which considered the news item felt that since the news item referred to the person of the Chairman, it in fact cast aspersion on the functioning of the Committee as a whole. The matter was placed before the full Committee which decided unanimously to call for all the files and papers from STC and Ministry of Commerce relating to this contract in order to ascertain the correctness of the facts of the news item which was almost defamatory in nature. The Committee, on considering all relevant facts and studying all papers, documents and files received from STC and Commerce Ministry came to the conclusion that it is a clear case which involves a question of breach of privilege and therefore, needs to be referred to the Committee on Privileges. However, the Committee felt that since the name of the Chairman of the Committee is involved, the Committee would rather drop the idea to refer the matter to the Privileges Committee and be content with showing their utmost displeasure on such pressure tactics of STC.

12. The Committee's examination of this case reveals that M/s. Afnan Exports had been enrolled as associate suppliers of STC and an agreement was signed on 13.2.1991 for export of 500 tonnes of Alphonso mangoes. STC, however, failed to honour the contract on the plea that M/s. Afnan could supply only about 2.5 tonnes (Two and half tonnes) of Alphonso mangoes and M/s. Afnan was unable to supply even the initial trial consignments in conformity with the required standard and quality. The Committee, however, find that the former Executive Director of STC had informed the then Commerce Minister that the packaging and quality of Alphonso mangoes supplied by M/s Afnan Exports were found to be excellent and to the satisfaction of foreign buyers/customers. M/s. Afnan has since made a claim of Rs. 1.55 crores. Following STC's refusal to admit this claim M/s. Afnan has been pleading for arbitration of the case for settlement. The Committee in this connection refer to their recommendation made in the Ninth Report (1992-93) on 'Litigations pending for settlement in Public Undertakings' wherein the Committee had recommended that in all existing contracts/agreements where there is no clause for arbitration, the arbitration should be deemed to exist and that in all such cases the dispute should be referred to Indian Council of Arbitration for conciliation/negotiation within a period of one month failing which the same be referred to arbitration by the Indian Council of Arbitration for making an award within a period of six to nine months unless the contract/agreement expressly prohibits recourse to reconciliation or arbitration. The Committee, therefore desire that the dispute regarding M/s. Afnan Exports should be settled first by negotiation as was directed by the then Minister of Commerce in June 1991 failing which it be referred to Indian Council of

Arbitration where eminent Judges/Jurists are on the panel. The Committee would like to be informed of the action taken in this regard within a month.

13. The Committee on Public Undertakings (1989-90) had observed that inspite of Vigilance findings that undue favours were shown to M/s. Haria Exports, no action had been taken against any of the dealing officers of STC. The CBI which investigated this case observed in its report dated 29.6.92 that there is sufficient material for launching prosecution against six managers and departmental action against two officials in respect of M/s. Haria Exports. STC however appears to be scuttling the case by taking a stand that there were not sufficient reasons to sanction prosecution of these managers on the basis of the evidence collected by the CBI. It appears to the Committee that the top hierarchy of STC is trying to shield the corrupt officials by thwarting prosecution against the latter for whatever reasons. The Committee would urge that no time should be lost in taking prosecution proceedings against those found guilty by CBI and suitable departmental action should be taken against the other officers also immediately.

NEW DELHI;
April 29, 1993

Vaisakha 9, 1915 (Saka)

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