External Affairs and
International Trade Canada

INDIA'S
COUNTER TRADE: IMPLICATIONS AND OPPORTUNITIES FOR CANADIAN BUSINESS

Canada

PREFACE
PAR LE HAUT-COMMISSARIAT DU CANADA
A NEW DELHI

Les pratiques indiennes en matière de contre-échange ont eu un impact sérieux sur le commerce extérieur du Canada avec l'Inde tout particulièrement pour neuf produits canadiens d'exportation qui, selon la loi indienne, ne peuvent être importés en Inde que par le biais d'agences gouvernementales indiennes, oeuvrant dans le secteur commercial. Ces neuf produits "canalisés" sont: le papier journal et les huiles comestibles, importés seulement par le State Trading Corporation of India (STC), l'amiante, la potasse, le sulfure, le nickel, le cuivre, le plomb et le zinc, importés uniquement par Minerals and Metals Trading Corporation of India (MMTC). Mis ensemble, ces neuf produits représentent à eux seuls à peu près la moitié des exportations canadiennes vers l'Inde.

Dans le cas de trois de ces produits, le contre-échange a eu comme impact majeur une perte significative de la part de marché du Canada à l'avantage de fournisseurs d'Europe de l'Est et d'Union Soviétique. Ces pays bénéficient d'ententes avec l'Inde concernant l'utilisation de la roupie à des fins commerciales, une forme de contre-échange qui permet au STC et au MMTC d'acheter des marchandises en roupies plutôt qu'en monnaie convertible. Comme les devises convertibles se font de plus en plus rares en Inde, la préférence institutionnelle s'accentue envers les fournisseurs acceptant la roupie comme devise d'échange. Ces ententes concernant l'utilisation de la roupie sont graduellement abandonnées avec la plupart des pays d'Europe de l'Est mais l'entente avec l'URSS a été renouvelée jusqu'en 1995. Un autre des impacts du contre-échange est que dans plusieurs cas le STC et le MMTC ont demandé aux fournisseurs étrangers qui font des offres en devise convertible d'accepter de faire un achat équivalent de biens indiens d'une valeur de 20% ou 30% ou plus du montant de leur proposition. L'étude qui suit, préparée par un consultant privé, expérimenté dans le domaine, décrit différentes facons qui ont été utilisées pour satisfaire ces exigences.

Les firmes canadiennes faisant des offres sur de grands projets, ou sur d'importants contrats pour les forces armées indiennes peuvent aussi se faire demander de faire du contre-échange. Néanmoins, jusqu'à présent, le contre-échange n'est normallement pas requis sauf pour les neuf produits "canalisés" et les grands projets.

Le Gouvernement du Canada ne croit pas que les pays devraient chercher à établir un équilibre de leur balance commerciale et n'encourage pas activement le contre- échange. Meme en Inde, cette politique suscite des controverses puisqu'il est largement reconnu que la plupart des obligations reliées au contre-échange sont en pratique remplies en re-documentant des exportations existantes plutôt qu'en créant de nouvelles exportations, causant ainsi des coûts additionnels. Conséquemment, la politique du contre-échange est sujette à changement comme le sont d'ailleurs les façons acceptables de remplir les obligations du contre-échange. Le Haut-Commissariat du Canada à New Delhi encourage les exportateurs canadiens à le contacter pour connaître les plus récents changements en ce domaine.

Les opinions émises par l'auteur ne reflètent pas nécessairement les vues du Gouvernement du Canada.

octobre 1990

FOREWORD
by the
CANADIAN HIGH COMMISSION
NEW DELHI

Indian countertrade practices have had a serious impact on Canadian trade with India in the case of nine Canadian export commodities, which under Indian law can be imported into India only through Indian Government trading corporations. These nine "canalized" commodities are: newsprint and edible oils, imported solely by the State Trading Corporation of India (STC), and asbestos, potash, sulphur, nickel, copper, lead and zinc, imported solely by the Minerals and Metals Trading Corporation of India (MMTC). Taken together, this list of 9 commodities accounts for about half of Canada's exports to India.

The major impact of countertrade in the case of three of these commodities has been a significant loss of Canadian market share to suppliers from East Europe and the Soviet Union. Those countries enjoy "rupee trade agreements" with India, a form of countertrade which allows STC and MMTC to purchase the commodities for rupees instead of convertible currency; since convertible currency is increasingly scarce in India, the result has been a strong institutional preference to buy as much as possible from rupee suppliers. These "rupee trade agreements" are being phased out with most East European countries, but the agreement with the USSR has been renewed until 1995. Another impact of countertrade is that in many cases STC and MMTC have requested that foreign suppliers who bid in convertible currencies should agree to make a countervailing purchase of Indian goods worth 20% or 30% or more of the bid. The study that follows, prepared by a private consultant with experience in the field, describes various ways that have been used to satisfy such requests.

Canadian firms bidding on large capital projects, or on important contracts for the Indian military, may also find countertrade being requested. To date, however, countertrade is primarily related to the nine canalized commodities and capital projects.

The Canadian Government does not believe that countries should seek to balance their trade bilaterally, and it does not provide active encouragement to countertrade. Even in India the policy is controversial, as it is widely recognized that most countertrade obligations are in practice fulfilled by re-documenting existing exports rather than by creating additional new exports, and this is done at some additional cost.

Consequently countertrade policy is subject to change, as are the acceptable ways of fulfilling countertrade obligations. Canadian exporters are welcome to contact the Canadian High Commission in New Delhi for the latest changes.

The opinions expressed by the author of this study do not necessarily reflect the views of the Canadian Government.

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1. INTRODUCTION

Indo-Canadian trade relations are governed by the General Agreement on Tariffs and Trade (GATT). India is also a beneficiary of Canada's Generalized Preference Scheme (GSP), a system of tariff levels which gives India preferential access to the Canadian market.

The development of Indo-Canadian trade relations dates back to the early days of Indian Independence. Since then, bilateral trade has grown rapidly at least ten-fold, from a mere $68 million in 1950 to about $600 million in 1988. This declined to about $528 million in 1989. The range of goods has expanded to include hydraulic turbines, asbestos, potash, pre-fabricated structures, wood pulp, petroleum products, coffee, gemstones, spices, oriental carpets and generator parts. In the recent years, some major projects calling for expertise and equipment supply in the fields of energy and mining development, telecommunications, oil and gas and automotive components, among others, have contributed to a stronger economic relationship.

Some of the organizations involved in the trade include the Government of India (GOI)-owned State Trading Corporation (STC), Minerals and Metals Trading Corporation (MMTC), Oil and Natural Gas Commission (ONGC), Oil India Limited (OIL) and the Coal India Ltd (CIL).

Also, there are several Indo-Canadian joint ventures in India encompassing such range of manufactures as farm tractors, footwear, non-ferrous metals, water and waste treatment systems, poultry breeding, non-woven fabrics and hard gelatine capsules. The joint venture trend received a boost following the 1987 Memorandum of Understanding (MOU) on industrial and technological collaboration. The growth of Indo-Canadian trade relations is signified in the setting up of the Canada India Business Council (CIBC) in Ottawa in 1983 and the reciprocal Indo-Canadian Joint Business Council (ICJBC) in New Delhi by the Federation of Indian Chambers of Commerce & Industry (FICCI). Similarly, the Confederation of Engineering Industry (CEI) and the Indian Electrical & Electronic Manufacturers' Association (IEEMA) have signed protocols with their respective counterpart organizations in Canada for collaborative endeavours.

In order to service the increasing trade relations and recognizing the growth potential, the Government of Canada recently upgraded its trade office in Bombay to the level of a Consulate. Also, the Government of Ontario opened its own trade office in New Delhi in July 1988.

1.1 Evolution of Countertrade

India has conducted its trade relations with other countries in a wide variety of ways including through the traditional bilateral relationship such as with Canada. With East European countries, especially with the Soviet Union, such trade has been carried on through bilateral agreements extending over a three-to-five year periods envisaging import of goods against export of Indian products on non-convertible, rupee-payment basis. Nearly 20% of India's world exports have been to these East European countries on this basis. Over the years, however, with the balance of trade unaccomplished for a variety of reasons, Indian rupees in favour of the East European countries have accumulated to a significant degree. Also, these countries have very little to offer to India by way of technology or capital equipment to meet its requirements for modernization.

At the same time, in recent years, India's exports to hard currency and other convertible currency areas had tended to peak. Imports of high technology equipment and accessories as well as oil have however received significant boost, consistent with the GOI's rapid industrialization programme, particularly after 1984. This has naturally resulted in a serious foreign exchange crunch, accentuated further by the frequent increases in oil prices and the falling remittances from Non-Resident Indians (NRIs), particularly as a result of the 1990 Gulf crisis, and earnings from tourist traffic caused by political uncertainties in India. The situation got worse by the constant erosion of the rupee value vis-a-vis hard currencies, the rising debt now totalling to about $45 billion and the debt service ratio at 20%. Table 1 provides the statistics on India's foreign trade from 1986-87 to 1989-90.

TABLE 1
India's Foreign Trade (Rs in millions)

Year	Exports	Imports	Balance of Trade
1986-87	124,520	200,960	-76440
1987-88	157,410	222,440	-65030
1988-89	203,020	277,140	-74120
1989-90	276,810	357,140	-80330

Note: The current exchange rate is hovering around Rs 18 per US $1.

It is in this scenario of increasing trade deficit that the GOI considered various options to improve the balance of trade position. Export incentives, subsidies, income tax exemptions on total export earnings and export duty reductions were only a few of the new policy directions.

1.2 Directional Change

A significant change in the past about 18 months, however, took the form of what has come to be known as "Countertrade" obligations in global tender notices envisaging that at least a part, if not the whole, of the imports of capital goods and project equipment or other raw materials be tied to the purchase of Indian export goods — in other words, the imports be paid for by exports to a certain degree.

1.3 GOI Policy

There is, as yet, no official GOI policy on countertrade apparently because it would violate GATT Regulations. However, the GOI's own trading arms — the STC and MMTC as well as other undertakings such as ONGC and OIL -- have been insisting on countertrade against their own imports for GOI. For example, import of edible oil from Malaysia by the STC was partly tied to countertrade. Gradually, the range of imports covered by countertrade widened even to include defence equipment (Bofors). Quickly, however, traders' ingenuity short-circuited GOI aim of boosting exports and earning critically-needed foreign exchange when they resorted to tying up existing exports to countertrade deals! Thus, the purpose of the new direction — the achievement of additionality of exports and increasing foreign exchange earnings — was hardly realized. Therefore, most recently, the GOI has directed its trading arms that they certify only proven additionality of exports to qualify for export incentives including duty and tax concessions.

2. HOW IT WORKED

2.1 Bulk Imports

Almost half of India's imports were bulk goods such as edible oil, petroleum and oil lubricants, fertilizers, steel, non-ferrous metals, gems, etc. These were exclusively canalized through the GOI's two giant trading arms — STC and MMTC — whose total annual turnover was in the order of $4 billion as well as the Indian Oil Corporation (IOC). These arms were given freedom to enter into countertrade — reciprocity trade — keeping commercial interests in view. They seized this freedom to claim that part of their foreign exchange needs for bulk imports were met by their own foreign exchange earnings by way of exports through countertrade!

The following table provides data on India's bulk imports for 1987-88 and 1988-89.

Import Portfolio (Rs in million)

	1987-88	1988-89	
I. Bulk imports of which:			
Petroleum & petroleum products	40,830	43,740	Canalised through Indian Oil Corporation (IOC)
Fertilizer & raw materials	4,860	9,280	Canalised through Minerals & Metals Trading Corporation (MMTC)
Edible Oils	9,200	7,270	Canalised through State Trading Corporation (STC)
Steel	12,730	19,370	Partly canalised through MMTC. Large imports on Government account
Non-Ferrous metals	5,760	7,860	Canalised through MMTC
II. Non-Bulk imports of which:			
Capital goods	62,850	69,390	Substantial imports by Public Sector units like Oil & Natural Gas Commission (ONGC)

Source: Government of India's *Economic Survey 1989-90.*

2.2 Examples of Countertrade

Some of the major deals through countertrade are noteworthy, if only to signify the GOI's keenness to meet its foreign exchange needs.

For example

in the mid-eighties, MMTC entered into an agreement with Jordan for the import of rock phosphate and fertilizers in exchange for the export of earthmoving equipment, which later led to India bagging a contract for road construction;

with Zimbabwe, an escrow account was floated for the import of asbestos against export of tractors, sewing machines, copiers and auto-rickshaws; and

several such deals were entered into with Iran for import of sulphur, with North Korea for zinc, etc.

2.3 Monitoring Role

The experience gained from these deals led to extending the system to purchases by STC of fatty acids, chemicals, newsprint, sugar and cement, etc. Gradually, individual Ministries themselves began to include countertrade as an obligation against global tenders — Defence Ministry for defence hardware, Civil Aviation Ministry for civilian aircraft, Railway Ministry for rails, signalling equipment, locomotives, etc. These Ministries, however, did not have the wherewithal to ensure compliance of countertrade obligations and therefore entrusted the STC and MMTC to monitor the fulfillment of these obligations. This monitoring role has now evolved into their tying up with foreign suppliers directly, on behalf of the Ministries concerned, for all countertrade obligations against these tenders. Over a period now, these two organizations have become the focal point of virtually all countertrade activities.

2.4 Volume of Exports Generated

During a two year period, 1987-89, \$235 million worth of countertrade obligations were to be fulfilled. Annexure I provides information on countertrade obligations performed by STC against its own imports of edible oils, fatty acids, newsprint chemicals, etc. during a four-year period, 1985-89. Annexure II deals with outstanding countertrade obligations noted during the MMTC's monitoring role. Annexure III provides information on the volume of countertrade obligation monitored by STC on behalf of the various Ministries.

3. PROCEDURE FOR COUNTERTRADE

3.1 STC/MMTC's Imports

The STC and MMTC in their tender enquiries for import of edible oils, rubber, fertilizers, non-ferrous metals, etc. provided a clause that preference would be given to suppliers who guarantee buy-back of Indian goods and services at least in part. When the foreign supplier agrees, he provides a performance guarantee with time limits specified. Where deadlines are not met, extensions are generally granted. Where the supplier fails totally to fulfill the performance guarantee he faces a threat of being blacklisted/debarred from future participation, though such a threat has not yet been enforced.

3.2 Government Imports

The concerned Ministries issue tenders against project imports in which also a similar provision is made for countertrade. In these cases the Ministries concerned determine the quantum of countertrade obligations, which may vary from as low as 10% of import value to 100%. During the evaluation of the tenders followed by negotiations, the foreign suppliers are given the indication of the extent of countertrade obligation expected and once it is agreed upon, the supplier is directed to the STC or the MMTC to work out the *modus operandi*. The STC/MMTC decide the time-frame, export items, documentation procedures, performance guarantee and service charges payable to them in regard to fulfillment of the countertrade obligations. Once the understanding is reached, a formal Memorandum of Understanding (MOU) is signed by the foreign supplier with the STC/MMTC.

3.3 Documentation Procedure

The procedures followed by the STC and the MMTC, which differ in some minor details, are outlined below.

STC's Procedure

(a) The foreign supplier is free either to fulfill the countertrade obligation directly by local purchase and export, or may nominate one or more business organizations registered outside India to fulfill the obligation on their behalf.

(b) The foreign supplier/nominee can negotiate and make arrangements for exports.

(c) Once firm commercial contracts for local supplies for exports are entered into, these are registered with the STC.

(d) If the payment for Indian exports is on Cash Against Document (CAD), the foreign supplier/nominee has to take prior approval of the STC for such exports. If the exports are covered by Letter of Credit (L/C), transferable L/Cs specifying countertrade MOU numbers are to be opened in favour of STC which in turn will open the L/C in favour of the exporter.

(e) Upon completion of shipment the following documents complete in all respects must be submitted to STC within 60 days from date of shipment.

(i) A copy of Bill of Lading drawn on account of STC

(ii) A copy of invoice drawn on account of STC, showing STC as co-shipper

(iii) A copy of Form I (a kind of bank negotiation certificate normally issued by Indian banks indicating foreign exchange earning by the shipper concerned)

(iv) A certificate from the Indian supplier to the effect that neither the export documents are related to any other export obligation scheme of the Government of India nor have the same been routed under any other countertrade obligations

(v) A bank draft/cheque covering STC's service charges in foreign exchange payable in New Delhi. (No service charges are levied if the STC itself is the exporter.)

MMTC's Procedure

(a) The foreign supplier/nominee can either perform the countertrade obligation himself or nominate a limited number of organizations to fulfill the obligations on his behalf.

(b) The foreign suppliers/nominees conduct detailed discussions with exporters from India and make arrangements for purchase of goods from India.

(c) As soon as Indian export deal has been finalized, full details are to be lodged with MMTC giving name of the Indian exporter, quantity, price, shipment schedule, etc.

(d) MMTC then signs a tripartite contract with seller of Indian products and overseas importer of Indian products.

(e) In case L/Cs are required to be opened for exports of Indian goods the same has to be routed through MMTC.

(f) For CAD shipments, all original shipping documents such as Invoices, Bill of Lading etc. have to be countersigned by MMTC prior to shipment. Alternatively, seller has to get a certificate from the bank that all original shipping documents are drawn on account of MMTC.

(g) Upon completion of shipment, seller submits a non-negotiable copy of invoice, a Bill of Lading, a copy of bank certificate and MMTC's service charges by bank draft for accreditation to be set against countertrade obligation.

Annexures IV and V respectively, provide the standard tripartite contract and documentation procedure as prescribed for the purpose.

4. COUNTERTRADE RESTRICTIONS

Having realized the lack of additionality of exports generated through countertrade (as explained in para 1.3), the Ministry of Commerce in consultation with STC, MMTC and others concerned decided upon a list of ongoing exports as falling outside the scope of countertrade. The items of goods currently disallowed under countertrade are listed in Annexure VI.

4.1 Modifications to Lists

The lists of disallowed items are modified from time to time according to the needs of the circumstances. For example, in early 1988 STC banned export of Soyabean meal and Basmati rice while in 1989 meat and meat products were disallowed. Similarly exports from Free Trade Zone (FTZ), Export Processing Zone (EPZ) and 100% Export Oriented Units (EOU) were also covered by the disallowed lists. While for a limited period, countertrade exports from these areas were allowed on the rationale that these units were not working to full capacity, the Government has now banned such exports completely because they were already getting several other concessions and incentives. This ban came as a severe disappointment to several units set up in the export processing zones as they were originally conceived against countertrade.

4.2 Items Allowed Under Countertrade

In January 1990 the Government substantially modified the above lists and prescribed a tentative "Positive List" of items which alone qualified for countertrade obligations against Government purchases. The current list is given in Annexure VII.

5. EMERGING SCENARIO

5.1 Initial Reluctance

Initially, foreign suppliers either to Indian Government Ministries or to STC/MMTC or other Government-owned corporations were reluctant to agree to countertrade obligations. The reasons were many, the prominent ones being:

(a) The foreign suppliers did not need these Indian goods.
(b) They have no experience in dealing with such exports.
(c) They had no means of determining quality of such goods.
(d) They did not have any particular incentive which would attract them to enter into such arrangement with India.

5.2 Agency Arrangement

This initial reluctance, however, is gradually giving way as a variety of options became available. An option was that the foreign suppliers need not directly procure the goods for exports. They were able to locate foreign registered agencies involved in import-export trade who were ready to act on behalf of the principals for a fee which generally ranged between 4-5%. Under this option, the foreign supplier opened the L/Cs through the STC/MMTC according to their procedures and made it obligatory on the part of the Indian supplier to do the documentation according to the STC/MMTC prescriptions. The process was further helped when companies specializing in countertrade mushroomed in India itself to provide the link between the foreign supplier and the Indian exporter. The procedure to be followed also became simple with the foreign supplier subcontracting the countertrade obligation to Indian agencies. These agencies in turn

— took over the countertrade obligation of the foreign supplier
— located exporters of Indian products who fit into the framework of the STC/MMTC policy guidelines from time to time
— negotiated and finalized incentive levels with such exporters for routing their ongoing exports under countertrade
— assisted the exporter to follow the procedures prescribed by the monitoring agencies and
— liaised with STC/MMTC for liquidation of countertrade obligations duly performed on behalf of the foreign supplier.

In this scheme of things the foreign supplier need to do nothing except enter into a subcontract and pay a negotiated rate of fees of 4-5%, but this rate is coming down because of keen competition in this field.

6. MODES OF COUNTERTRADE

There are three modes to conduct countertrade which are briefly described below:

6.1 Direct Purchase

Some of the countertrade success stories are built upon direct counter purchase with or without Government intervention. MMTC imported rock phospate from Jordan through the intermediary of a Japanese company. The same Japanese intermediary who held financial stake in the mining company of Jordan was able to buy Indian earthmoving equipment for Jordan. Subsequently a road construction project in Jordan was also awarded to MMTC.

India being one of the major importers of palm oil, tin and rubber from Malaysia, STC and MMTC together have signed a Memorandum of Understanding (MOU) with Ministry of Primary Industry of Malaysia, under which, in return for Indian imports from Malaysia, the Malaysian Government awarded the following projects for execution in Malaysia to Indian companies:

1. Advanced machine tools training centre by Hindustan Machine Tools
2. For renewal of railway tracks to be carried out by the Indian Railway Construction Company (IRCON)
3. Rehabilitation of Boilers in power plants by Bharat Heavy Electricals Limited

6.2 Co-ordinated Imports

Hungarian Government owned Technika Foreign Trade Company is supplying defence equipment against which some other Hungarian foreign trade enterprise is importing motor cars (Maruti) from India and another trading house soyabean meal. The major part of the obligation, however, has been fulfilled by the import of iron ore pellets.

6.3 Nominations

Most of the countertrade obligations have been fulfilled through the obligate's nominees. For example, when Boeing, USA, sold aircrafts to India, they nominated agencies like Continental Trade Enterprise of Hongkong (a subsidiary of Continental Grain Company of USA) and Citicorp, UK (a subsidiary of Citi Bank, USA) etc. For the largest countertrade obligation undertaken by A.B. Bofors, Sweden, there are currently 19 nominees in the list, of which ten have performed — the major among them being Sukab of Sweden, Barex World Trade Corporation USA, Elof-Hansson and Alexander Crichton of Sweden, Helm AG of Germany and Andre of Switzerland. Against a major project undertaken by French Consortium for construction of a power project in India, the chief nominees are ABB and Metellgesellschaft of Germany and Cargill of USA. In most cases the nominees of the countertrade obligate appoint subcontractors in India to locate items for exports and put them through the monitoring procedure. A number of Indian companies are actively cooperating with the nominees for fulfilment of countertrade obligations. Annexure II provides a few examples of such nominees.

7. SWITCH TRADE

This agency trade system has also lent itself into what has come to be known as "Switch Trade".

As mentioned earlier (para 1.1) India has bilateral trade relationship with several East European countries, prominently with USSR, East Germany, Poland, Romania and Czechoslovakia, which are carried on under rupee-payment arrangements. Over the years rupee balances in favour of East European countries had swelled. In order to use these rupees, while at the same time conserving scarce foreign exchange resources, the GOI encouraged import of goods from hard currency areas via the East European countries by paying heavy discounts (17-18%) for Indian rupees. In other words, they paid more to that extent in rupee terms.

At the same time, several overseas importers took advantage of the discounted rupee availability in the East European markets and bought Indian goods against those rupees. The goods are shipped on FOB basis and declared as being shipped to an East European country while the destination may well be a free currency area.

7.1 Switch Deals as Competitor to Countertrade

As discussed previously countertrade nominees have performed countertrade obligations by simply routing the documents of existing exports as per the requirement of the monitoring agencies. It is fairly well known that the routing of documents costs 3-5%. Most of the routing is done through the brokers and in some cases directly with the exporters depending upon the volume of countertrade obligation. Fees are paid after countertrade commitments have been fulfilled.

It was a fairly established practice for the exporters to book their export orders and to look for the additional benefits under countertrade by routing the documents through the monitoring agencies. At times, for agricultural commodities this additional 3-5% made all the difference to make them competitive in the world market. That is, countertrade provided the margins to make them competitive.

East European re-routing on the other hand came out fetching better premia for the exporters. Therefore, the Indian exporter had now two clear options available to make money out of their existing exports. Either they could route the business through countertrade for which they make 3-5% or reroute their exports via East Europe making 5-15% but receive rupees only. East European routing thus is more remunerative for the exporters. Indian exporters have also found that countertrade documentation at times could be laborious and cumbersome because the monitoring agencies occasionally became arbitrary and rejected documents earlier accepted by them under countertrade. STC/MMTC now also ask exporters to prove additionality of exports which puts countertrade benefits under doubt. The exporter thus is no longer confident of getting countertrade support of 3-5% though he may have followed the entire drill laid out for the purpose. In East European business not only rewards are higher but also they are sure of getting the additional premium. Of late, therefore, East European business has emerged as a major competitor to countertrade.

Though switch trade has been going on for years amongst East Europen countries, the demand for Indian rupees in East Europe has come as a boon to them since they are able to use these rupees to buy hard currency goods. At the same time a number of large business houses and exporters in India have switched their business through East Europe as it fetched them handsome tax-free profits from tax exemption of the total value of exports.

7.2 The Procedure

The system works briefly as under:

(a) Indian exporter A is shipping goods ultimately to a US customer B. However he uses the advantages of the discounted rupee by using an European intermediary C and an East European trading company D. A asks the L/C covering Indian exports to be sent to C and C in turn arranges a parallel export order from A to D.

(b) B opens an L/C on C. C opens the L/C on A ex D. At this stage, a 3-5% premium is built on to the price. The export documents A prepares show the sales to B while D passes such documents on to C. C switches the documents and negotiates the L/C received from B.

In the process this switch deal proves more economical because of the discounted rupees.

7.3 The Future

The GOI has taken note of this widespread diversification of trade without resulting in achieving its objective to earn critically needed foreign exchange, the objective for which the entire scheme of countertrade was put in place. Therefore, the GOI has already instructed the STC/MMTC and other concerned organizations to stop this switch trade. Other circumstances which portend a doom for the switch trade include the unification of Germanies and the democratic process now sweeping the USSR and other East European countries which would call for systematic monetary changes in these countries.

8. OPPORTUNITIES FOR CANADIAN BUSINESS

8.1 India's Burgeoning Market

India's market potentialities are insatiable for a variety of consumer and project/capital goods. India is desperately trying for an economic breakthrough, though occasional political uncertainties have clouded — even caused serious setbacks at times — such developmental efforts. Being the second largest populated country and the largest democracy in the world, Canadian business could ignore India's market with long-term implications.

While India's countertrade exercises are basically short-term, crisis overcoming efforts, there is basic realization amongst the economists and the political leadership in the country that the real progress could be achieved only through rapid industrialization and capturing the markets for its quality products amongst the developing and the developed world. For Canadian business, the countertrade requirements may be only entré points for its products which are relatively not yet well-known, as opposed to those from the US, UK or other European countries. India is conscious that modern technology base can be obtained only from these countries with the addition of Japan.

8.2 Long-term Prospects

Canadian companies may therefore wish to take a long-term view of trade and economic relations with India, ignoring short-term pinpricks. There have been examples where substantial business potential may have been lost for Canada because countertrade clauses proved a hindrance. Import of Canadian newsprint through Swedish channels may be a classic example of such loss. The slide-back in the overall Indo-Canadian trade in 1989 could at least partially be attributed to diversion of sources under countertrade to European or East European countries.

In other words, Canadian business should keep all options open for trade with India and offer competitive sources for products and prices. CIDA and EDC organizations could provide valuable guidance and assistance where appropriate to Canadian business, besides the Commercial Section of the High Commission in New Delhi.

As part of its promotional efforts, the Government of Canada is hosting a high-level STC/MMTC delegation from India in October 1990. It is expected the officials will not only gain first-hand knowldege of Canadian capabilities, facilities and technical/consultancy services available but also use the opportunity to promote and develop prospects for Indian goods in Canada. These visits should serve as the beginning of a new endeavour to promote increased trade between the two countries.

8.3 Suggestions

New countertrade obligates entering the field of purchases from India should, at first, be aware of the various alternatives available to him under countertrade. If they can build into their offers such proposals wherein they specify the items that they can purchase from India, it would perhaps help them in having a good deal with the Indian negotiator. They should identify possible imports of goods and services from India including buy-back possibilities before coming to India for negotiations. They would also be well advised to study and confirm to the Indian negotiators that the rules of countertrade and its monitoring should not be changed unilateraly during the currency of countertrade arrangement.

They also may like to lay down parameters of countertrade from the very beginning. For example, if the Indian party insists on a higher percentage of countertrade (say 50%), the Canadian businessman could negotiate from a lower percentage level, properly documenting the advantages of his offer, including the technological and price factor as compared to his counterparts.

One of the easiest methods of avoiding countertrade is to let the performance bank guarantee under countertrade be revoked although it would obviously cost the obligate perhaps 3 to 5% of FOB value. This way out however, may lead to a bad name for the principals and may, if publicised, create problems for future contracting with India.

Yet another strategy could be tried. After clarifying to the Indian negotiators that no extra cost has been added on account of countertrade because the offer for countertrade has been based on, say greater capacity utilisation etc., they may tell the Indian negotiator that they are not in the business of imports and are not sure that they would be able to generate true additionality of exports if they work through certain agents. They should then offer certain financial help to India for export development, to be placed at the disposal of Government of India or in identified developmental projects. It should be emphasized that such financial help will be given only in instalments, as it would be generated by the greater capacity utilisation and that it cannot be built into the price offer for the items being purchased by India. That is, the price cannot be discounted unless the gains of capacity utilisation are forthcoming.

Annexure VIII provides a list of helpful contacts, Canadian and Overseas, in the area of countertrade. For further information, as may be available, Canadian High Commission in New Delhi may be contacted.

ANNEXURE 1

COUNTER TRADE OBLIGATIONS PERFORMED BY STC — 1987-88 AND 1988-89

Value in millions Rs (Rs 18 = US $1 Approx.)

GROUP	COUNTERTRADE OBLIGATE (CTO)	PERFOR-MANCE	%AGE TO CTO incl B/F	WEIGHT-AGE
		1987-88		
EDIBLE OILS	(94+62 B/F)	1571	100%	91%
FATTY ACIDS	37 (B/F)	28	76%	2%
CHEMICALS	(3+5 B/F)	33	94%	2%
NEWSPRINT	(8+12 B/F)	13	65%	1.2%
SUGAR	(+23 B/F)	23	100%	1.3%
CEMENT	(+27 B/F)	22	81%	1.6%
N.RUBBER	—	—	—	—
AGRI.COM	(16+)	1	6%	0.9%
TOTAL	**997+72 B/F (1717)**	**1691**		**100%**
		1988-89		
EDIBLE OILS	330 (B/F)	78	23.7%	84%
FATTY ACIDS	21 (B/F)	1	5.2%	5.4%
CHEMICALS	(13+2 B/F)	—	—	3.8%
NEWSPRINT	7 (B/F)	—	—	1.8%
SUGAR	—	—	—	—
CEMENT	5 (B/F)	2	40%	1.3%
N. RUBBER	—	—		
AGRI. COM	15 (B/F)	12	82.2%	3.4%
TOTAL	**13+379 B/F (392)**	**93**		**100%**

ANNEXURE II

COUNTER TRADE OBLIGATION OUTSTANDING WITH MMTC AS ON 1-1-90

S.No.	C.T. Obligate	C.T. Value (US $ Million)	C.T. Nominee
1.	M/S INTERBRASS CAYMAN CO. C/o Petrobrass Commercio International S.a. Interbras Rua do Rosario 90, Rio de Janerio (Brazil)	1.00	Not yet nominated
2.	M/S OTTOWOLF POST FASCH 102010, 5000 KOLN-1 Germany	2.5	M/S M.G. Services, Friends Colony, New Delhi.
3.	M/S GERMAN GREEKCOAL PVT LTD., 444, Queen Street, Brisbane (Australia)	0.62	Not yet nominated
4.	M/S COAL RESOURCES OF QUEENSLAND MARKETING, Liechardt Colliery, Blackwater, Queensland (Australia)	4.28	M/S Countercorp, 1, Scotts Road, Singapore
5.	M/S MOUNT ISA MINES, MIM Bldg., 160, Ann Street, Brisbane (Australia)	8.63	M/S Andre & Cie., Lausanne, Switzerland.
6.	M/S FERROSTALL, Germany	4.43	Not yet nominated
7.	M/S VOEST ALPINE, Austria	1.20	Not yet nominated
8.	M/S INTERCOM, U.S.A.	1.60	Not yet nominated
9.	M/S TRANSNATIONAL, Canada	0.40	Not yet nominated
10.	M/S CSPT Senegal	3.70	Not yet nominated
11.	M/S OTP, Togo	2.00	Not yet nominated
12.	M/S SUMITOMO, Japan	0.83	Not yet nominated
13.	M/S LUNA CONSULTANTS, U.K.	2.34	Not yet nominated

ANNEXURE III

TARGET & PERFORMANCE AGAINST VARIOUS MOUs SIGNED BY STC FOR EXPORT UNDER COUNTERTRADE AGAINST GOVERNMENT IMPORTS (AS ON 30.12.89)

Value: In Rs Millions

Sl. No.	MOU No.	C.T.Party	C.T.Commitment	Date of Validity	Performance during Apr-Dec 89	Cumulative Performance upto Dec.89
1.	STC/FH/002/87	Bofors (Defence)	8000.00 (SEK 4200 Mln)	1995	2253.4	3912.7
2.	STC/Boeing-007/87	Boeing (Aviation)	973.5 (US $ 59 Mln.)	Aug.'91	275.8	880.7
3.	STC/BA E-005/87	British Aerospace (Defence)	133.9 (£Stg.6 Mln)	Early '90	2.3	133.9
4.	STC/CFT-010/88	C.F.Taylor (Aviation)	16.9 (£Stg.0.63 Mln)	Dec.'88	—	16.9
5.	STC/CF/012/88	-do-	24.9 (£Stg.0.91 Mln)	July '89	9.4	24.9
6.	STC/THOMOSON-011/88	Thomson S.A. (Defence)	115.0 (FF 45 Mln)	June '90	63.9	84.0
7.	STC/RSL-014/88	Rediffusion Simulation (Aviation)	35.3 (US $ 2.12 Mln)	April '90	35.3	35.3
8.	STC/CFT-015/89	C.F.Taylor (Aviation)	6.0 (£ Stg.0.225 Mln)	May '90	8	8
9.	STC/COSMOS-009/89	Cosmos (Defence)	75.4 (US $ 4.568 Mln)	March '90	22.2	22.2
10.	STC/TECHNIKA-013/88	Technika-Foreign Trade Co.	1235.7 (US $ 74.89 Mln)	July '91	Performance by KIOCL/Maruti in progress	
		Cumulative Commitment	10616.6		2663.1	5111.4

ANNEXURE IV

TRIPARTITE CONTRACT

THIS AGREEMENT made this

day of

1989 between

hereinafter called the Seller (which expression shall unless repugnant to the context mean and shall include its successors and assigns).

MINERALS AND METALS TRADING CORPORATION OF INDIA LIMITED, having its registered office at Scope Complex, Core - 1, 7, Institutional Area, Lodi Road, New Delhi 110003, hereinafter called the Associate Seller (which expression shall unless repugnant to the context mean and shall include its successors and assigns) of the one part

AND

hereinafter referred to as the Buyer (which expression shall unless repugnant to the context mean and shall also include their successors and assigns).

WHEREAS the Associate Seller has obliged M/s

to buy Indian Products through the Associate Seller, under the Counter Trade Agreement No. ________ dated __________ entered into by ____________ and Associate Seller.

WHEREAS the Buyer has approached the Seller to supply to the Buyer and Associate Seller and Seller have agreed to this agreement.

WHEREAS the Seller is willing to supply to the Buyer. Now, it is hereby mutually agreed as follows:

THAT the Seller shall sell to the Buyer, the Buyer shall purchase from the Seller good in terms and conditions stated below:

Item
Quality
Price
Delivery

MODE OF PAYMENT: Either on CAD basis or on L/C, both providing for 0.50% payment to the Associate Seller immediately by the foreign buyers/seller, after completion of each shipment and 99.5% payment to the Seller as per payments terms agreed to in export arrangements.

CAD: Seller would raise Invoice for 100% value of goods of which 0.50% of value would be payable to MMTC and 99.5% to Seller. All original shipping documents such as Invoice, Bill of Lading etc. mentioning "A/c MMTC" to be countersigned by MMTC. Alternatively Seller to get certificate from Bank that all original shipping documents e.g. Invoice and B/L mentioned "A/c MMTC" alongside shipper's name, Seller to submit non-negotiable copy of Invoice and Bill of Lading alongwith copy of Bank Certificate of Exports (Form-1) and Demand Draft (D.D.) or pay order for MMTC's service charges @ 0.50%. Alternatively, foreign buyer can remit 0.50% service charges directly.

L/C: 1. Irrevocable and Transferable Letter of Credit at sight in US Dollars ("Letter of Credit") for 100% value to be opened in favour of the Associate Seller and which shall be transferred to the Seller. The Associate Seller shall transfer to the Seller the Letter of Credit immediately upon the receipt thereof from the buyer.

The Seller to Submit copies of non-negotiable set of Invoice and Bill of Lading as well as copy of Bank Certificate of Exports (Form-1) and D.D. for MMTC service charges @ 0.50%. Alternatively, the foreign buyer can remit MMTC service charges @ 0.50% separately.

All shipping documents such as B/L etc. and invoices should mention "A/c MMTC" alongwith seller's name. This should be stipulated in L/C.

All Letter of Credit charges in the seller's country are for Seller's account.

MMTC service charge of 0.50% would be based on FOB Invoice value irrespective of whether the shipment is on FOB or C&F/CIF basis. All export benefits shall accrue to the seller.

Insurance: Covered by Buyer from port of shipment. Payment of goods shall be a matter between Seller and Buyer and Associate Seller shall not have any responsibility in this regard.

That the Associate Seller's responsibility under the contract is restricted only to the extent of asking the Seller to arrange supply of goods to the Buyer.

That the Associate Seller shall not be liable for non-supply of substandard supplies effected by the Seller. All demurrage, losses and damages resulting on account of the failure on the part of the Seller to fulfil its obligations under this contract shall be borne by the Seller and Associate Seller shall not be responsible for such losses, demurrage and damages in any manner whatsoever.

That the supply, shipment, quality and all other formalities regarding supply shall be the sole responsibility of the Seller.

Seller hereby confirms that exports covered under this agreement is an additional volume to his export business arising out of countertrade obligation the buyer has with the Associate Seller and their export unit is not in EPZ, FTZ and 100% EOU.

That if at any time during the continuance of this contract either party is unable to perform in whole or in part any obligation under this contract because of war, hostility, military operation, civil commotion, sabotage, quarantine restrictions, acts of God and acts of Government, (including but not restricted to prohibition of exports or imports), fires, floods, explosions, epidemics, strikes, labour embargoes, then the date of fulfilment of any obligation/engagement shall be postponed during the time when such circumstances are operative.

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

If party which is unable to fulfil its obligations under the present contract must within 15 days of occurrence of any of the causes mentioned in this clause shall inform the other party of the existence or termination of the circumstances preventing the performance of the contract.

Certificate issued by a Chamber of Commerce in the country of Seller or the Buyer shall be sufficient proof of the existence of the above circumstances and their duration. Non-availability of raw material will not be an excuse to the Seller for not performing his obligation under this contract. If operation of such circumstances exceeds three months, either party will have the right to refuse further performance of the contract in which case neither party shall have the right to claim eventual damages.

ANNEXURE VI

List of Items Disallowed Under Countertrade

(a) **Fast Moving Items**
1. Semi-processed leather
2. Opium
3. Sugar
4. Iodised salt
5. Diamonds
6. Naphtha

(b) **Quota Items**
1. Coffee to Quota countries
2. Textile (quota items/countries)
3. Ready-made garments (quota items/countries)

(c) **Traditional Markets/Items**
1. Carpet backing cloth to North America
2. Shrimps to Japan and USA
3. Tea (bulk) to UK
4. Exports to Rupee-payment Areas
5. Exports to Israel and South Africa

ANNEXURE VII

List of Items Allowed Under Countertrade

1. Drugs and Pharmaceuticals — as formulations

2. Chemicals

3. Heavy and Light Engineering items (see items 21 and 22)

4. Jute Products

   (i) Hessian
   (ii) Sacking
   (iii) Carpet Backing Cloth
   (iv) Jute decoratives
   (v) Jute diversified products particularly jute shopping bags, jute or jute blended carpets, jute yarn, jute geo-textiles (also known as geo-jute) jute or blended felts, etc.

5. All Agro and Marine Products in consumer packs, not exceeding 5 kgs.

6. Processed and packaged food, excluding meat

7. Mica products

8. Projects — to the extent of net foreign exchange realization

9. Coffee

10. Processed Cashewnuts (in consumer packs upto 1 kg)

11. Cardamom and Spices (in consumer packs)

12. Spice Oils and Oleoresins

13. Leather travel goods and leather travel accessories

14. Cut and Polished Granite and Slates

15. Sports goods

16. Cotton seeds extractions

17. All fish, other than shrimps

18. Cement — other than export to SAARC countries

19. Tobacco

20. Electronic items

(i) Black & White Picture tubes
(ii) Resistors
(iii) Capacitors
(iv) Sound systems and
(v) Radio cum cassette recorders

21. Heavy Engineering Items

(i) Chemical and process plants
(ii) Electrical power generation & distribution equipments
(iii) Sugar machinery
(iv) Mining machinery
(v) Earthmoving equipments
(vi) Trucks/commercial vehicles
(vii) Air and gas compressors
(viii) Industrial Machinery

— Major items of specialized equipments used in fire specific industries

— General items of machinery like compressors, fire-fighting equipment, lift industry and power driven pumps

— Other items of industrial machinery like roller bearings and spun pipes and grinding wheels, etc.

(ix) Agriculture machinery
(x) Prime-movers like diesel engines
(xi) Textile industry
(xii) Railway Rolling Stock like wagons, locomotives, coaches, trucks, signalling equipment & components, castings & forgings, etc.
(xiii) Industrial projects of all kinds such as sugar mills, cement plants, power generation & distribution projects, chemical and process plants, transmis-

That in the event of any differences or dispute arising out of or relating to the construction, meaning and creation of effect of this contract or breach thereof, the same shall be settled amicably between the Seller and the Buyer directly failing which the same shall be referred to arbitration. The reference shall be made to two arbitrators, one to be nominated by the Seller and the other by the Buyer and in case of the said arbitrators not agreeing, then to an umpire to be appointed by the arbitrators, in writing before proceeding on the reference.

The decision of the arbitrators or in the event of their not agreeing of the said umpire shall be final and binding on the parties to the contract. The provisions of the Indian Arbitration Act and the rules made thereunder shall apply to the proceedings.

The arbitrators or the umpire, as the case may be, shall be entitled with the consent of the parties, to enlarge the time from time to time, for making award. The arbitrators umpire shall give a reasoned award. The venue of the arbitration shall be New Delhi.

ACCEPTED

For Minerals & Metals Trading Corporation of India Limited,
SCOPE Complex, Core - 1
7, Institutional Area, Lodhi Road
NEW DELHI 110 003

BUYER

Witness:

Witness:

ANNEXURE V

MMTC DOCUMENTATION PROCEDURE

1. In case the export order is received by MMTC directly either by its own efforts or through the efforts of the CT obligate but if the source of supply is located and tied up by MMTC itself, then no service charge would be payable by the Buyer. In this case MMTC would be prime exporter and payment to Indian supplier can be made in local currency or any other arrangement agreed to between MMTC and Indian supplier.

2. In case the export order is obtained by the CT obligate and the source of supply is also tied by him, then:

   (a) A Trilateral Agreement as per Annexure IV would be concluded between MMTC, CT obligate and the domestic supplier of the exports. This Agreement will ensure that the CT obligate would be responsible for all aspects of performance of the export contract and MMTC will have no obligations/responsibility towards it. In all the cases, the CT obligate will advise in advance of actual export, the Goods he proposes to buy, the name of the buyer, prices, total value, etc.

   (b) In case of L/C terms, the overseas buyer will open L/C, with MMTC as beneficiary. MMTC will transfer the L/C to the domestic supplier. L/C's terms must specify as an 'essential condition' that all original negotiable copies of shipping documents such as B/L, Export Invoices, etc. would clearly state "A/C MMTC" alongside shipper's name.

   (c) In case of CAD payments, the original export/shipping documents such as Export Invoice, B/L etc should mention "A/c MMTC" alongside supplier's name. Before presentation to the bank, the original negotiable set of export/shipping documents would have to be presented to designated MMTC official for being countersigned as co-exporter and to ensure that the export documentation has been done as specified herein. Alternatively, seller will get a certificate from Bank to the effect that all original shipping documents such as Invoice, B/L etc. mentioned "A/c MMTC" alonside shipper's name.

   (d) The service charge leviable by MMTC in either of the case will be half of one per cent (0.50%) of the FOB value of export and may be remitted by Demand Draft or cheque payable in New Delhi by the importer/nominee.

sion line towers, water supply and sewerage projects, road transport network, involving both civil engineering construction and supply of commercial vehicles, small/medium scale agro based projects.

22. Light Engineering Items

(i) Scooters and Mopeds
(ii) Consumer durables such as complete bicycles, electric fans and lamps
(iii) Sewing machines
(iv) Pumps and industrial valves
(v) Projects of Metallurgical industries like castings, forgings, fasteners, etc.
(vi) Commercial office equipments
(vii) Electrical industry

ANNEXURE VIII

LIST OF HELPFUL CONTACTS IN CANADA AND OVERSEAS

Canada:

Royal Bank of Canada, Royal Bank Plaza, 88-180 Wellington Street, Toronto.

Phillips Bros. (Canada) Limited, 2305 Royal Bank Plaza, Toronto.

Overseas:

Continental Enterprises Limited, 1001, Admiralty Centre, Tower I, 18 Harcourt Road, Hong Kong. Tel. 852-8236111, Fax. 852-8611826, Tlx. 00802-273483 COGRA HX.

Contitrade Services Corporation, 16, Av, Evgene-Pittard, Case Postale 351, 1211 Geneva-25, Switzerland. Tel. 4122-479311, Tlx. 45-424233 CTS CH, Fax. 4122-473091.

Andre & Co. Limited, 7 Chemir Messidor, 1002 Lausanne, Switzerland. Tlx. 454101, Fax. (021) 318249.

Riccino Trading Limited, 12th Floor, Ruttonjee House, 11, Duddel Street, Hong Kong. Tel. 521366, Tlx. 66256 ACC. Fax. 5849198.

BK Consimpex, 16A Uday Park, New Delhi-110 049. Tel. 6423386, Tlx. 031-62108 BKXP, Fax. 91-11-6423874.

Continental Overseas Corporation, 903 New Delhi House, Barakhamba House, New Delhi-110 001. Tel. 3313042, 3312685, Tlx. 031-66873 FRIB IN, Fax. 011-3316147.

Citicorp International Bank Ltd., 355 Strand, London WC2 R1HB, Tel. 071-8361230, Tlx. 299831 CIBIL.

AB Sukab, P.O. 70370 S-10724 Stockholm, Sweden. Tlx. 19146.

Elof-Hansson and Alexander Crichton, Forsta Langgatan, 17, S-413 80 Gothenburg, Sweden. Tlx. 2530, Fax. 31-126735.

Barracks World Trade Corporation, 777 W. Putnam Avenue, Greenwich, CT 06830 USA. Tel. (203) 531-1059, Tlx. 240007.

Cargill South East Asia Limited, D-58 Panchsheel Enclave, New Delhi-110 017. Tel. 6440757, Tlx. 71272.

Carl O. Helm AG, P.O. Box 103060, 2000 Hamburg 1, Germany. Tlx. 2170150.

Hindustan Brown Boveries Ltd., Som Dutt Chambers, 5 Bikajee Cama Place, New Delhi-110 066. Tel. 6417282.

Metellgesellschaft, 3801, Edinburgh Tower, 15 Queen's Road Central, The Landmark, Hong Kong, Tel. 5213631, Tlx. 71754, Fax. 8452727.

Chairman, Minerals and Metals Trading Corporation of India Limited, Scope Complex, Core-1, 7, Institutional Area, New Delhi-110 003. Tel. 360568, Tlx. 031 74042.

Chairman, State Trading Corporation of India Limited, Jawahar Vyapar Bhavan, Tolstoy Marg, New Delhi-110 001. Tel. 3321403, Tlx. 031 65181 STC IN, Fax. 3326459.

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