

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)
TARIFF AUTHORITY FOR MAJOR PORTS

G No. 214

New Delhi,

8 August 2013

NOTIFICATION

In compliance of the policy direction issued by Government of India in the Ministry of Shipping (MOS) under Section 111 of the Major Port Trusts Act, 1963 (38 of 1963), as conveyed by MOS vide its communication No.PR-14019/16/2012-PG dated 31 July 2013, the Tariff Authority for Major Ports hereby notifies the following Guidelines for Determination of Tariff for Projects at Major Ports, 2013:

The relevant clause of the guidelines stipulates that these guidelines will come into effect from the date of issue. The MOS has issued these directions to this Authority on 31 July 2013. Accordingly, these guidelines will come into effect from 31 July 2013.

Guidelines for Determination of Tariff for Projects at Major Ports, 2013

1. Preliminary

1.1. Preamble:

The market conditions for provision of port services have undergone significant change since liberalization in the Port sector and expansion of port infrastructure following the introduction of Public Private Partnerships at Major Ports since 1996. Moreover, non-major ports have since expanded rapidly and now have a substantial presence which accounts for about 40% of the cargo share. In order to provide a level playing field in the Port sector, it has become imperative that competitive market forces may be allowed to play a greater role in determination of tariffs at major Ports. Hence, the Government hereby issues the following directions.

- 1.2. These directions are issued to the Tariff Authority for Major Ports (the “**TAMP**”) under Section 111 of the Major Port Trusts Act, 1963 as amended from time to time (the “**MPT Act**”), for regulation of tariffs at major Ports to which the provisions of the MPT Act apply or are extended (the “**Port(s)**”).
- 1.3. The directions may be called ‘*Guidelines for Determination of Tariff for Projects at Major Ports, 2013* (the “**Guidelines**”).
- 1.4. The Guidelines shall come into effect from the date of its issue and shall apply to all projects to be awarded by any Major Port Trust to which the provisions of MPT Act apply under BOT/BOOT or any other arrangement for private sector participation (PPP Projects) for which RFPs are issued after the date of issue of these guidelines. The guidelines will also apply to Major Port’s own projects to be commissioned after the issue of these guidelines.
- 1.5. The ‘*Guidelines for Upfront Tariff Setting for PPP Projects at Major Port Trusts, 2008*’, as amended from time to time, (the “**2008 Guidelines**”), and the ‘*Guidelines for Regulation of Tariff at Major Ports, 2004*’, as amended from time to time, (the “**2005 Guidelines**”) shall continue to apply to projects governed by the respective guidelines.
- 1.6. Unless revoked or modified earlier, the Guidelines may be reviewed and revised after 5 (five) years from the date of its issue.
- 1.7. If any difficulty arises in giving effect to the Guidelines, the Central Government may, in consultation with the TAMP, make such orders, not inconsistent with the basic features of the Guidelines, as may be necessary for removing such difficulty.

Section II: Guidelines for determination of Tariff

(A). Notification of Reference Tariff

- 2.1. The maximum tariff (the “**Tariff Cap**”) (and the conditionalities, if any, governing the application of such Tariff Cap) to be levied and collected for handling of any commodity or for provision of any service or combination of service or services by Major Port Trusts under Section 48 and Section 50 of the MPT Act or by an operator awarded a Project under Section 42(3) of the MPT Act (the “**Operator**”), shall be determined by TAMP in accordance with the Guidelines.
- 2.2. The Reference Tariff (“the **Reference Tariff**”) for each commodity/category of commodities and each service/category of service or combination of service or services, as the case may be, shall be determined by TAMP for each Port based on a proposal from the concerned major Port. Such proposal shall contain the proposed Reference Tariff and “**Performance Standards**”. The **Reference Tariff** will be the highest tariff fixed for that commodity in the concerned major Port Trust under the 2008 Tariff Guidelines. While adopting the highest tariff, the base rate set under the Tariff Guidelines, 2008 shall be escalated to the extent of 60% of WPI per annum, as provided in the said guidelines for the period between 1st January of the year in which the said tariff was originally notified and 1st January of the subsequent relevant year when the Reference Tariff for the particular project in question is being notified. On receipt of the proposal, TAMP shall notify the Reference Tariff and Performance Standards within 15 days of receipt.
- 2.3. For the current year (2013-14), projects for which RFP has not yet been issued, the Major Port Trusts would submit to TAMP a Reference Tariff proposal along with Performance Standards based on Clause 2.2 above, which would be notified by TAMP within 15 days of its receipt.
- 2.4. In case no tariff has been fixed for a particular commodity in a particular Major Port Trust under the 2008 Guidelines, then TAMP will notify the highest Tariff under the 2008 Guidelines available for that commodity in the nearest Major Port Trust.
- 2.5. In case no tariff has been fixed for a particular commodity under 2008 Guidelines in any Major Port Trust, then the Reference Tariff for such commodity would be determined by TAMP on scrutiny of the proposal received from the Major Port Trust by applying the principles of 2008 Guidelines within 45 days of receipt of the proposal.
- 2.6. The Reference Tariff and Performance Standards notified by TAMP will be mentioned in the bid document and subsequently in the Concession Agreement in respect of PPP Projects.
- 2.7. Every 5 years as on 1st of April, TAMP will update and notify a new Reference Tariff port-wise and commodity-wise, along with Performance Standards, on the basis of the highest notified tariff during the previous 5 year period for that commodity at that Major Port Trust or if no tariff has been fixed for that commodity in that Major Port Trust, it will notify the highest notified tariff for that commodity in the nearest Major Port Trust. Detailed guidelines in this regard will be issued separately.
- 2.8. Bids for award of PPP projects will be invited and evaluated on the basis of Reference Tariff prevalent at that time. Reference Tariff when periodically revised as per para 2.7 above will apply prospectively and will not have effect on the earlier operators who will be governed throughout the concession period by the conditions of their Concession Agreement.

(B). Performance Linked Tariff for PPP operators

- 2.9. From the date of Commercial Operation (CoD) till 31st March of the same financial year, the tariff would be limited to the indexed Reference Tariff relevant to that year, which would be the ceiling. The aforesaid Reference Tariff shall be automatically revised every year based on an indexation as provided in para 2.2 above which will be applicable for the entire concession period.

However, the PPP operator would be free to propose a tariff along with Performance Standards (the "**Performance Linked Tariff**") from the second year of operation onwards, over and above the indexed Reference Tariff for the relevant financial year, at least 90 days before the 1st April of the ensuing financial year. Such **Performance Linked Tariff** shall not be higher than 15% over and above the indexed Reference Tariff for that relevant financial year (and this will be the **Tariff Cap**). The Performance Linked Tariff would come into force from the first day of the following financial year and would be applicable for the entire financial year.

- 2.10. The proposal shall be submitted to TAMP along with a certificate from the independent engineer appointed under the Concession Agreement of the Project indicating the achievement of Performance Standards in the previous 12 months as incorporated in the Concession Agreement or for the actual number of months of operation in the first year of operation as the case may be.
- 2.11. On receipt of the proposal, TAMP will seek the views of the Major Port Trust on the achievement of Performance Standards as outlined in para 5, within 7 days of receipt.
- 2.12. In the event of Operator not achieving the Performance Standards as incorporated in the Concession Agreement in previous 12 months, TAMP will not consider the proposal for notifying the Performance Linked Tariff for the ensuing financial year.
- 2.13. After considering the views of the Major Port Trust, if TAMP is satisfied that the Performance Standards as incorporated in the Concession Agreement have been achieved, it shall notify the performance linked tariff by 15th of March to be effective from 1st of April of the ensuing financial year.
- 2.14. While considering the proposal for Performance Linked Tariff, TAMP will look into the Performance Standards and its adherence by the Operator. TAMP will decide on the acceptance or rejection of the Performance Linked Tariff proposal based on the achievement or otherwise of the Performance Standards by the operator. An illustration showing determination of indexed Reference Tariff and Performance Linked Tariff is at **Appendix**.

3. Payment of Revenue Share by PPP operators

- 3.1. The PPP operator shall pay a revenue share at the rate indicated in the Concession Agreement on the indexed Reference Tariff or the notified Performance Linked Tariff whichever is applicable for that financial year.
- 3.2. In the event of the tariff charged by the PPP Operator being lower than the indexed Reference Tariff or the notified Performance Linked Tariff as the case may be, the revenue share will be payable at the indexed Reference Tariff or the notified Performance Linked Tariff respectively.
- 3.3. In case of a multipurpose berth, the tariff whether indexed Reference Tariff or Performance Linked Tariff may be different for different types of cargo. Fixation of Performance Linked Tariff for each commodity will be regulated as per provisions of Clause 2.9 to 2.14 above, separately in respect of each commodity.

4. **Performance Linked Tariff for the Major Port Trust Owned Berths**

4.1. Major Port Trusts, while proposing a Reference Tariff for a port owned berth, will also intimate TAMP Performance Standards which will be on the same lines as would be applicable for any comparable PPP berth.

4.2. From the date of Commercial Operation (CoD) till 31st March of the same financial year, the tariff would be limited to the indexed Reference Tariff which would be the ceiling. The aforesaid Reference tariff shall be automatically revised every year based on an indexation as provided in Clause 2.2 above which will be applicable for the economic life of the Project.

However, the Major Port Trust from second year of operation would be free to propose a Performance Linked Tariff over and above the indexed Reference Tariff for the relevant financial year. Such Performance Linked Tariff shall not be higher than 15% over and above the indexed Reference Tariff for that relevant financial year. The Performance Linked Tariff would come into force from the first day of the following financial year and cannot be changed during that financial year.

4.3. In case the Major Port Trust proposes a Performance Linked Tariff for the ensuing financial year which is higher than the applicable indexed Reference Tariff, then it will submit a proposal to TAMP to notify the Performance Linked Tariff. Such proposal for notification shall be forwarded to TAMP by the Major Port Trust atleast 90 days before the beginning of the next financial year. The proposal shall be submitted along with a certificate from a qualified independent engineer drawn from a panel prepared by Indian Ports Association (IPA) indicating the achievement of Performance Standards, as notified by TAMP, in the previous 12 months or for the actual number of months of operation in the first year of operation.

4.4. While sending the proposal, the Major Port Trust would publish the proposal in its website as outlined in para 5.

4.5. In the event of Major Port not achieving the Performance Standards, TAMP will not consider the proposal for notifying the Performance Linked Tariff for the ensuing financial year.

4.6. If TAMP is satisfied that the Performance Standards as notified by TAMP have been achieved, it would notify the Performance Linked Tariff by 15th of March to be effective from 1st of April of the ensuing financial year.

4.7. While considering the proposal for Performance Linked Tariff, TAMP will look into the Performance Standards and its adherence by the Major Port Trust. TAMP will decide on the acceptance or rejection of the Performance Linked Tariff proposal based on the achievement or otherwise of the Performance Standards by the Major Port Trust.

5. **Procedure for processing the Performance Linked Tariff proposal:**

PPP Projects:

5.1. On receipt of the proposal from the PPP Operator, TAMP will refer the proposal to the Major Port Trust concerned, seeking its views on the achievement of Performance Standards within 7 days of receipt.

5.2. The concerned Port Trust will host the proposal in its website seeking comments, if any, within 21 days from port users on the achievement of the Performance Standards. While notifying the proposal, the details of the designated e-mail address of the Port as well as of TAMP to which the comments are to be sent would be indicated.

- 5.3. The Port Trust shall submit its comments to TAMP on the achievement of the Performance Standards by the PPP Operator and also its comments on the representations received from Port users, not later than 15 days from the last date for receipt of comments from port users.

If the Port Trust does not submit its response within the aforesaid period, TAMP shall proceed to determine the acceptability or otherwise of the Performance Linked Tariff proposal based on available details.

- 5.4. TAMP shall, not later than 30 days from the date of receipt of the comments from the Major Port Trust under para 5.3 above or 90 days from the date of receipt of the proposal under para 2.9 above, whichever is earlier, notify the Performance Linked Tariff applicable for that Project for the ensuing financial year. This notification will, in any case, not be later than 15th March of the year of the Proposal and would be operational from the 1st day of the following financial year i.e. 1st April.

Major Port owned Project:

- 5.5. While forwarding the Performance Linked Tariff proposal to TAMP, the Major Port Trust shall simultaneously host the proposal in its website giving the details of designated e-mail address of the Port as well as of TAMP to which the representations under para 5.6 below, may be sent.
- 5.6. The Port Trust shall submit its comments on the representations received from Port users to TAMP, not later than 15 days from the last date for receipt of comments from the Port users.
- 5.7. On receipt of the comments from the Major Port Trust, TAMP shall proceed to notify the Performance Linked Tariff of that year and as outlined in para 5.4 above. If the Port Trust does not submit its response within the aforesaid period, TAMP shall proceed to determine the acceptability or otherwise of the Performance Linked Tariff proposal based on available details.

6. Captive Berths

- 6.1. In the event a captive berth is awarded following the PPP tendering process, these guidelines will be applicable. In all other cases, the captive project would be governed by the respective agreement arrived at between the concerned parties.

6.2. Grievance Redressal

In the event any user has any grievance regarding non-achievement by the PPP operator/ Major Port Trust of the Performance Standards as notified by the TAMP, he may prefer a representation to TAMP which, thereafter, shall conduct an inquiry into the representation and give its finding to the concerned Major Port Trust. The Major Port Trust will be bound to take necessary action on the findings as per the provisions of the respective Concession Agreement. Similarly, in the case of Major Port Trust owned berth, TAMP shall forward its findings to the concerned Port Trust with a direction to comply with the Performance Standards as notified by the TAMP.

6.3. Mandatory disclosures by operators

- 6.3.1. Within 15 (fifteen) days of the signing of the Concession Agreement, the concerned operator will forward the Concession Agreement to TAMP which will host it on its website. In case of Major Port Trust owned terminal, the concerned Major Port Trust will forward the details of the proposed berth along with the Performance Standards applicable to that berth atleast 15 (fifteen) days before the commissioning of the berth which will also be hosted on the Website of TAMP.

- 6.3.2. All the PPP operators as well as the Major Port Trusts for their own berth shall furnish to TAMP quarterly reports on cargo traffic, ship berth day output, average turnaround time of ships, average pre-berthing waiting time as well as the tariff realized for each berth. In addition, for the container berths, quarterly reports shall also be provided on average moves per crane hour and average dwell time for containers. The quarterly reports shall be submitted by the PPP operators within a month following the end of each quarter. Any other information which may be required by TAMP shall also be furnished to them from time to time.
- 6.3.3. TAMP shall publish on its website all such information received from PPP operators and Major Port Trusts. However, TAMP shall consider a request from any PPP operator or Major Port Trust about not publishing certain data/information furnished which may be commercially sensitive. Such requests should be accompanied by detailed justification regarding the commercial sensitiveness of the data/information in question and the likely adverse impact on their revenue/operation of upon publication. TAMP's decision in this regard would be final.

(T.S. Balasubramanian)
Member (Finance)

Illustration of Performance Linked Tariff

Assumed Reference Tariff (2013-14):
Indexed Tariff (Assumed inflation of WPI @ 10% per annum)

Year	Indexed Reference Tariff – 60% of WPI	On the achievement of Performance Standards, entitled Performance Linked Tariff ceiling @ 15% over and above the Indexed Tariff
2014-2015	106.00	121.90
2015-2016	112.36	129.21
2016-2017	119.10	136.97
2017-2018	126.25	145.19
2018-2019	133.82	153.89
2019-2020	141.85	163.13
2020-2021	150.36	172.91
2021-2022	159.38	183.29
2022-2023	168.95	194.29
2023-2024	179.08	205.94

- Note:** (a). If in any financial year the PPP Operator does not achieve the Performance Standards as incorporated in the Concession Agreement, he will be entitled to charge only the indexed Reference Tariff and not eligible to apply for Performance Linked Tariff for the ensuing financial year.
- (b). Similarly, for the Major Port Trust owned berth if the Major Port Trust does not achieve the Performance Standard as notified by TAMP, it will be entitled to charge only the indexed Reference Tariff and not eligible to apply for Performance Linked Tariff for the ensuing financial year.
