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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. : 39

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NOTIFICATION

In exercise of the policy directions issued by Government of India in Ministry of Shipping, Road Transport & Highways (MSRTH) under Section 111 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby notifies the following revised guidelines for tariff fixation:

Preamble

The Tariff Authority for Major Ports (TAMP) had organized a national level Workshop in February 1998 at Chennai to deliberate upon the concepts, principles, approaches and modalities of Tariff Regulation for major ports as well as private terminals at these ports. As a result of the deliberations in the Workshop, a set of guidelines for tariff regulation was adopted. These guidelines are generally followed by this Authority so far and various other principles have also been evolved through subsequent tariff orders.

2. An exercise for review of the existing guidelines was initiated after the end of about six years. During this period TAMP gained considerable experience and also confronted various issues. All this was considered during the review.

3.1. To begin with, preliminary session was held in Mumbai on 22 April 2003 with selected persons from the port and shipping industry to identify various issues concerning regulation of port tariff which need to be studied for bringing about further improvement in the tariff setting process. A list of persons who attended the preliminary discussion is attached as **Annex - I**.

3.2. Chairman (TAMP) had also subsequently inter-acted with all port Chairmen in this regard in a meeting organized by the Indian Ports Association on 2 July 2003. Based on the varied views and opinions emerged in these meetings, a detailed discussion paper was prepared.

4.1. Besides hosting the paper in the official website of this Authority, the discussion paper was also circulated to all major port trusts, private terminal operators, representative bodies of port users, major port users and other relevant organisations for their comments.

4.2. A list of various organisations consulted is attached as **Annex-II**.

4.3. Subsequently, consultation meetings were organized at Kolkata, Chennai and Mumbai as per the following schedule:-

Ports	Venue	Date
Chennai, Tuticorin, Visakhapatnam and Cochin	Chennai	September 16, 2003
Kolkata and Paradip	Kolkata	September 23, 2003
Mumbai, Kandla, Jawaharlal Nehru, Mormugao and New Mangalore.	Mumbai	September 30, 2003 & October 1, 2003

4.4. Joint Secretary (Port), Ministry of Shipping, attended the consultation meeting held in Chennai and Secretary (Shipping) participated in the meeting held in Mumbai.

4.5. Written comments on various issues received from different organisations as well as the submissions made at the consultation meetings held were taken on record.

5.1. The Authority had independently commissioned the following studies:

- (i). Study on allowable return on investments in major port tariffs by Crisil Advisory Services.
- (ii). Cross-subsidisation in port tariffs by Crisil Advisory Services.
- (iii). Working Group on Efficiency Linked Tariff Scheme for container terminals under the Chairmanship of Shri S. Machenderanathan, formerly Chairman of Tuticorin Port Trust.
- (iv). A Working Group on Cargo handling workers' levy on major ports under the Chairmanship of Shri R.J. M. Pillai, formerly, Director of National Institute of Port Management, Chennai.

5.2. The salient points of the recommendations made in these Study Reports were included in the discussion paper circulated for comments. Besides, the reports on 'Study on allowable Return on investments' and 'cross-subsidisation in port tariff' were circulated separately to the concerned organisations. A meeting to discuss the recommendations on allowable return on investment was held on 1 July 2003. The issues relating to cross-subsidisation was deliberated in an interactive session organised by Indian Port Association on 20 September 2003.

6. Taking into consideration the comments and suggestions received during the consultation process and the recommendations made in the reports of the studies mentioned above, the existing guidelines for tariff regulation were reviewed. The Authority finalised draft set of revised tariff guidelines in its meeting held on 20 January 2004.

7. In order to ensure that the revised draft guidelines would be in consonance with the Government policy, the draft guidelines along with a summary of comments furnished by different organizations were submitted to the Government for its consideration. The draft guidelines were discussed elaborately in the meetings chaired by the Secretary (Shipping) on 2 June 2004, 16 June 2004, 28 June 2004, 1 September 2004, 23 November 2004 and 17 December 2004 which were attended by senior officials from the Ministry of Shipping, Chairmen of different Major Port Trusts, Indian Ports Association and Indian Private Port and Terminals Association besides Chairman and Director (TAMP). Written submissions filed by IPA and IPPTA were also duly considered. Based on the decisions of the Government taken in these meetings, the draft guidelines were revised and firmed up. The Government of India in Ministry of Shipping, Road Transport & Highways (MSRTH) vide their letter No.PR-14019/5/2003-PG dated 14 March 2005 in exercise of power conferred on it by Section 111 of the Major Port Trust Act, 1963 has issued revised guidelines for tariff fixation and directed the Tariff Authority for Major Ports to notify the same.

GUIDELINES FOR REGULATION OF TARIFF

I. GENERAL

1. PRELIMINARY

- 1.1. These guidelines may be called 'Guidelines for Regulation of Tariff at Major Ports, 2004'.
- 1.2. These shall come into effect from the date of their publication in the Gazette of India, and unless reviewed earlier or extended by the TAMP, shall remain in force for a period of 5 years.
- 1.3. These shall apply to all the Major Ports to whom the provisions of MPT Act, 1963, as amended from time to time, are applicable or extended and private terminals operating at these ports (herein after referred to as ports) under BOT / BOOT or any other privatisation arrangement adopted by the Government and other service providers authorised under section 42 of the said act.
- 1.4.1. These Guidelines will generally apply, inter-alia, in respect of the following:
 - (i). regulation of tariff levied by the port for services rendered or facilities provided as specified under section 48 of the MPT Act, 1963.
 - (ii). fixation of charges, under section 49 of the said Act, for the use of properties belonging to, or in possession or occupation of, the port or any place within the limits of the port or the port approaches.
 - (iii). fixation of fees under Section 49(A) and 49(B), respectively, of the said Act, for pilotage, hauling, mooring, re-mooring, hooking and measuring and other services rendered to the vessels and port dues on vessels entering the port.
 - (iv). fixation, under Section 50 of the said Act, of consolidated Scale of Rates for combination of services.
 - (v). the conditionalities governing application of the tariff/charges/fees/dues.
- 1.4.2. The earlier guidelines adopted in Feb.1998 stand superseded. The principles evolved through various tariff orders will, however, continue to apply to the extent they are consistent with and not specifically superseded by these guidelines. A compendium or digest of principles evolved will be published periodically.
- 1.5. Unless the context otherwise requires, various terms used herein will have the same definition as in the MPT Act, 1963, and the Indian Ports Act, 1908, as amended from time to time.
- 1.6. If any difficulty arises in giving effect to these guidelines, the TAMP may, of its own motion or otherwise, after giving a reasonable opportunity to those likely to be affected, make such orders, not inconsistent with these guidelines, as may appear to be necessary for removing the difficulty.
- 1.7. The TAMP, for reasons to be recorded in writing, may relax application of any of the provisions of these regulations to a port or group of ports, on its own or on an application made before it by the concerned parties.

2. ROLE AND OVERALL APPROACH

2.1. TAMP shall rationalize the tariff structures and streamline tariff setting system.

2.2. In prescribing tariff, TAMP will be guided by the following:

- (i). Safeguarding the interest of shippers/consignees and other port users.
- (ii). Ensuring just and fair return to ports.
- (iii). The factors which will encourage competition, economical use of resources, efficiency in performance and optimum investment.
- (iv). The established costing methodologies (including cost plus approach) and pricing principles.
- (v). The policy directions issued by the Central Government under section 111 of the MPT Act.
- (vi). Ensuring transparency and participative approach while discharging its functions.
- (vii). Tariff leverage will be used to improve operational efficiency of the ports.
- (viii). Overall long term objective will be to move to competitive pricing and to push performance of Indian Ports to internationally competitive levels.

2.3. TAMP will normally apply uniform norms, concepts, principles and approach of tariff setting at all ports.

2.4.1. TAMP will continue with the existing portwise Cost Plus return on capital employed approach. Attempts will be made to evolve normative cost of each component of port operations. In order to encourage cost reduction due to improvement in efficiency / productivity of the same operator, at the time of every periodic review of tariff, the actual cost reduction achieved due to efficiency improvement in the previous cycle will be considered. The benchmark for efficiency will be the average of the past performance of the same operator at the same terminal achieved in the immediately preceding tariff validity cycle. This would, therefore, naturally exclude any comparison of an operator at a terminal with that of the same or different operators at other terminals whether or not in the same port. Only 50% of such cost reduction will be considered in the relevant estimates of expenditure to be relied upon for fixing tariff for the succeeding tariff validity period. It is noted that this approach may result in the quantum of ROCE exceeding the maximum permissible limit set in these guidelines elsewhere and no moderation thereof will be effected.

Illustration :

Let us assume expenditure on item 'A' is reduced from the earlier level of Rs 1000/- to Rs 900/- and it was established that this cost reduction was due to efficiency improvement. For estimation of expenditure under item 'A' for the next tariff cycle, the base will be considered as Rs 950/- [900+50% of (1000-900)] and not Rs 900/-.

2.4.2. TAMP will examine the reasonableness of the costs and investments to ensure that inefficiencies, uneconomic uses/practices or excesses are not passed on to users.

2.5.1. Traffic projections should be in line with the projections in the five year / annual plan and the current / expected growth. Income projections should be made accordingly taking into account effect of foreign exchange fluctuations on income from dollar denominated tariff items. The expenditure projections should also be in line with traffic adjusted for price fluctuation with

reference to current movement of Wholesale Price Index for All Commodities announced by the Ministry of Finance, Govt. of India.

- 2.5.2. One time expenses such as, arrears of wages/pension, VRS compensation, contributions to Pension Fund for past liability, etc. will not be allowed as admissible cost while determining the tariff. If it is found that the accumulated surpluses / reserves other than specifically earmarked funds or provisions made cannot adequately cover them or for any other justifiable reasons, a special rate for a limited period may be prescribed to meet such liabilities.
- 2.6.1. Cost of manpower rendered surplus due to change in cargo mix or technological changes be apportioned against non-traffic revenue sources like (a) estate rentals / premium, (b) accumulated reserves, etc. The balance of surplus manpower cost, if any, will be allowed to be spread over all the traffic revenue in a transparent manner.
- 2.6.2. Manning scales / Datum for different services / operations will be reckoned at the levels followed by ports based on various settlements. With the technological changes in operations, the major port trusts should take necessary action to conduct time and motion study of different operations and regularly adjust manning scales/datum accordingly after due process of law. In the case of private terminal operators, the relevant provisions in the Concession Agreement and policies of the Government will be applicable.
- 2.6.3. When cargo-handling equipment, floating craft and other assets are replaced by any port trust, the tariff for such assets will be fixed considering the least cost option between the actuals and the expenses that may be incurred if the equipment/craft/other assets were to be hired and operated. Likewise, the ports have to examine on continuous basis cost based analysis for getting the repairs done in-house vis-à-vis outsourcing on case-to-case basis.
- 2.7.1. For the purpose of depreciation of assets, straight line method following the life norms adopted as per the Companies Act will be allowed in the case of port trusts. In the case of private terminals, depreciation will be allowed, on straight-line method, with life norms adopted as per the Companies Act or *based on* the life norms prescribed in the concession agreements whichever is higher.
- 2.7.2. In the case of private terminals, if the assets are replaced during the concession period in accordance with the Agreement, depreciation of the entire capital cost will be allowed over the remaining concession period if (i) assets would have residual life at the end of concession period and (ii) no compensation is payable by the landlord port to licensee when such assets are taken over at the end of the concession period.
- 2.8.1. 'Royalty/Revenue share' payable to the landlord port by the private operator will not be allowed as an admissible cost for tariff computation as decided by the Govt. in the Ministry of Shipping vide its Order No.PR-14019/6/2002-PG dt. 29th July 2003. In those BOT cases where bidding process was finalised before 29 July 2003, the tariff computation will take into account royalty / revenue sharing as cost for tariff fixation in such a manner as to avoid likely loss to the operator on account of the royalty / revenue share not being taken into account, subject to maximum of the amount quoted by the next lowest bidder. This would, however, be allowed for the period upto which such likely loss will arise. This would not be applicable if there is provision in the concession agreement on treatment of 'Royalty/Revenue share'.
- 2.8.2. The 'Technical Services Fee' payable by the private terminals to their promoters or to their 'associate entity' (as defined under section 92 (A) of Income Tax Act as amended from time to time) will not be considered as admissible item of cost for tariff purposes if its reasonableness is not established applying the yardstick of 'arms length relationship'.
- 2.8.3. The revenue share/royalty receivable by the landlord Port Trust should be applied first to meet cost of surplus labour, if any. At least 50% of the balance should be maintained in an Escrow

Account for the purpose of creation and / or modernization of the port infrastructure facilities within a period of 5 years. The accruals in this Escrow Account will not be treated as revenue of the port trust for tariff fixing exercise. The investment made out of this Escrow Account will not, however, qualify for ROCE when the facilities so funded by this Escrow Account are put into use and tariff thereof is fixed. Provided that the entire accrual will be taken as revenue of the port trust for tariff fixation if the funds in the Escrow Account are found to have been not utilized for the stated purpose within the stipulated time.

- 2.9.1. Return will be allowed on Capital Employed (ROCE), both for Major Port Trusts and Private Terminal Operators, at the same pre-tax rate, fixed in accordance with the Capital Asset Pricing Model (CAPM). Key parameters that determine the Cost of Capital under CAPM are -
- (i). the Risk Free Rate (Rf) based on the transaction - weighted yields on Govt. of India Bonds having a residual maturity of 10 years considered over the period July - Dec., 2004, viz, 6.35%.
 - (ii). the Market Risk Premium (Rm -Rf) based on the a review of the various methods for calculating the risk premium in India's context, presently estimated at 7.15%;
 - (iii). the Equity Beta (Be) based on the review of the asset Betas of port sector and other domestic sector companies, presently estimated at 0.84;
 - (iv). the Debt Risk Premium (Rd) based on the risk profile of the port sector as assessed, presently considered at 5.55% as 'investment grade';
 - (v). the Debt : Equity ratio for the industry, presently factored as 1 :1; and
 - (vi). the Corporate tax rate applicable as per the Income Tax Act and rules there under.
- 2.9.2. The rate so fixed, presently 15% per annum, will be reviewed and revised if necessary, at the beginning of the financial year, i.e. in April every year, in the light of changes in the key parameters. If the resultant variance is less than 1%, the existing rate will continue unaltered.
- 2.9.3. Capital Employed will comprise Net Fixed Assets (Gross Block minus Depreciation minus Works in Progress) plus Working Capital.
- 2.9.4. Working Capital means Current Assets (excluding of Cash/deposit balances of funds) less Current Liabilities.
- 2.9.5. Reasonableness of capital base will be assessed. Cost of fully commissioned Business assets that can be directly identified as created for the port business, and in use will only be considered while computing allowable depreciation and return on capital employed.
- 2.9.6. Reasonableness of fresh investments made/proposed for creation of capacity will be assessed on the basis of (i) reduction in unit operating costs, if any; (ii) additional traffic/business generated / projected, (iii) improvement in operational efficiency (iv) a combination of any or all of these factors. Project / Feasibility report relied upon by Government / Port Trust Boards / Financial Institutions will be referred to, if necessary.
- 2.9.7. On the cost of Business-related assets/facilities, (like quarters/school/ hospital for port employees) which may not be directly used in the business but which have been created for supporting the business, return will be allowed only at the risk free rate. Variable and fixed operating expenses on such assets will be considered as admissible cost for tariff purposes.
- 2.9.8. Social obligation assets/facilities not directly or even indirectly related to port operation but created to meet the social obligations / needs of the community at large of the location at which

port is situated, such as stadium, road widening, street lighting and those assets created to discharge other non-port functions like municipal functions will not qualify for any ROCE. If more than 75% of users of any social obligation asset created are port employees, such asset will be categorised as business-related asset. Even variable and fixed operating expenditure thereon will be allowed as cost for tariff purposes only for a limited period so that efforts to make activities self-sustaining are forthcoming.

- 2.9.9. TAMP will examine the reasonableness of the various items of Working Capital, like, inventory, sundry debtors, cash balances, etc., to ensure that it is not unjustifiably expanded and will, from time to time, set limits up to which such balances will be considered admissible for computing working capital and return thereon. To start with, limit on inventory for capital spares will be one year's average consumption and in case of other items of inventory the limit will be six months' average consumption of stores excluding fuels. This, however, will not be applicable for customized spares. Insurance spares shall be part of the equipment procurement cost. Limit on sundry debtors balances will be two months' Estate income & Railway Terminal charges payable by Indian Railways and the limit on cash balances will be one month's cash expenses.
- 2.9.10. Return allowed will be linked to the utilisation factor of the capacity of the port/terminal as assessed by them considering the berth length and other facilities / equipments provided. In line with the Government policy of ports maintaining spare capacity to avoid congestion and timely development of additional facilities, maximum permissible Return will be allowed for capacity utilisation of 60% and above. When the capacity utilisation is found to be in the region of 50% to 60%, a decision on pro-rata reduction in the maximum permissible return to be allowed will be decided on case to case basis after analysing the factors leading to capacity under utilisation. The method of determining designed capacity of ports will be standardised.
- 2.9.11. In the case of private terminal operator, if the investment made is in accordance with the obligations under the concession agreement it will be considered for ROCE even if full capacity utilisation is *not* achieved.
- 2.10. Differential tariff scheme, if proposed by the port or private operator, will be entertained after analysing the factors leading to congestion or under-utilization of facilities, etc.
- 2.11.1. Bearing in mind the *quid pro quo* principle, tariff/charges leviable shall be commensurate with the services rendered / facilities provided.
- 2.11.2. The cross-subsidies or subsidies in the major ports are not subsidies in the economic sense but arise for meeting deficit in the operating costs and return on capital employed of the concerned activities/sub-activities.
- 2.11.3. A port may propose tariff for any sub-activity/service/facility lower than the permissible cost plus rates. TAMP will not allow increase, in the tariff for any other activity or sub-activity/service/facility showing surplus if such increase is sought to prescribe lower tariff for other any sub-activity/service/facility or otherwise.
- 2.11.4. Cross-subsidisation in cases where it has to continue – totally or partially – shall be governed by total transparency and shall be restricted with the objective to ultimately phasing it out. *The requirement of cross-subsidisation as a result Govt. policy would be accepted.*
- 2.11.5. Estate activity, privatisation proceeds and investment income can be contributor to meeting the deficit in the port operations in the short term. Efficiency improvement and cost reduction, including rationalisation of manning scales, need to be addressed in the long term.
- 2.11.6. Accordingly, the financial position of the port as a whole and for each activity as also sub-activity will be considered while determining the need and extent of revision in tariff necessary

and to ensure that the surplus sub-activity/service/facility is not burdened beyond the existing level while proposing relief /lower tariff for some sub-activity/service/facility.

- 2.11.7. In the context of the current general trend towards elimination of hidden subsidies, fixation of tariff based on the principle of 'what traffic can bear' shall be eventually phased out – over a fixed time frame as may be specified for each port based on their proposal and main activities will be made self-sustaining.
- 2.12. When a new facility is commissioned or existing facilities are privatised by any port trust, the initial tariff to be allowed will not exceed the existing tariff level at the same port for comparable facilities. If such comparison is not available, prevailing tariff at comparable nearby port will be considered as the reference level. The initial tariff so adopted will be valid for the first year of operation whereafter revised tariff will be fixed based on the admissible cost and investment of the private operator. If it is established by the private operator that adopting the existing tariff of port trust will cause hardship to him in view of a higher level of investment made, then a separate cost based tariff will be allowed to him right from the commencement of commercial operations.
- 2.13. The actual physical and financial performance will be reviewed at the end of the prescribed tariff validity period with reference to the projections relied upon at time of fixing the prevailing tariff. If performance variation of more than + or – 20% is observed as compared to the projections, tariff will be adjusted prospectively. While doing so 50 % of the benefit / loss already accrued will be set off while revising the tariff.
- 2.14. The cost of repairs to damages to port property caused by users during the course of normal port operations, if covered from insurance of the property either with outside agency or internally by the Port, the premium payable to the insurance company or contribution to Insurance Fund will be considered as an item of cost for the purpose of tariff computation. The actual cost of damage repairs of such property to the extent admitted by the Insurance Company will not be considered as an admissible item of cost. Likewise, in the event of replacement of such assets due to total damage, return will be limited to the capital cost incurred less amount recovered from insurance.
- 2.15. Users will not be required to pay charges for delays beyond a reasonable level attributable to the port.
- 2.16.1. The rates prescribed in the Scale of Rates are ceiling levels; likewise, rebates and discounts are floor levels. The ports may, if they so desire, charge lower rates and/or allow higher rebates and discounts.
- 2.16.2. The ports may also, if they so desire, rationalise the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalisation gives relief to the user in rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling level.
- 2.16.3. The ports should notify the public such lower rates and/or rationalisation of the conditionalities governing the application of such rates and continue to notify the public any further changes in such lower rates and/or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP.
- 2.17.1. Whenever a specific tariff for a service / cargo is not available in the notified Scale of Rates, the port can submit a suitable proposal.

- 2.17.2. Simultaneously with the submission of proposal, the proposed rate can be levied on an ad hoc basis till the rate is finally notified.
- 2.17.3. The ad hoc rate to be operated in the interim period must be derived based on existing notified tariffs for comparable services/cargo; and, it must be mutually agreed upon by the Port/Terminal and the concerned user(s).
- 2.17.4. The final rate fixed by the TAMP will ordinarily be effective only prospectively. The interim rate adopted in an ad hoc manner will be recognised as such unless it is found to be excessive requiring some moderation retrospectively.
- 2.18.1. Users shall pay interest on delayed payments and the port shall pay interest on delayed refunds at the same rate.
- 2.18.2. The rate of interest will be 2 % above the Prime Lending Rate of the State Bank of India.
- 2.18.3. The delay in payments by user will be counted beyond 10 days after the date of raising the bills. This provision will not apply to the case where payment is to be made before availing of the services / use of port properties as stipulated in the MPT Act, 1963 and / or prescribed as a condition in the tariff.
- 2.18.4. The delay in refunds by the port will be counted beyond 20 days from the date of completion of services or on production of all documents required from the user, whichever is later.
- 2.19.1. All dollar denominated tariff will be recovered in Indian Rupees after conversion of charges in dollar terms into its equivalent Indian Rupees at the market buying rate notified by the Reserve Bank of India, State Bank of India or its associates or any other Public Sector banks as may be specified from time to time.
- 2.19.2. The day of entry of the vessel into port limits shall be reckoned as the day for such conversion. In respect of charges on containers, the day of entry of the vessel in the case of import containers and the day of arrival of containers into the port in the case of export containers shall be reckoned as the day for such conversion.
- 2.19.3. A regular review of exchange rate shall be made once in 30 days from the date of arrival in the cases of vessels staying in the port for longer period. The basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of review.

3. PROCEDURAL ISSUES

3.1. FORMULATION AND SUBMISSION OF PROPOSALS

- 3.1.1. The proposals for fixation of tariffs, along-with conditionalities governing them, for services rendered or facilities provided as well as the charges for use of properties and assets, shall be formulated, in accordance with these guidelines as amended from time to time, in such formats with such supporting details as may be prescribed by TAMP.
- 3.1.2. TAMP will prescribe a timetable specifying when each port should submit tariff proposal for review/revision. Till such a timetable is prescribed, proposals for revision of existing tariff shall be forwarded at least 3 months before these are due for revision. Major Port Trusts, including Private Terminal Operators will be duty bound to send proposal for fixation of tariff within the prescribed time frame. In case of failure on their part to do so, TAMP may for good and sufficient reasons to believe that interests of users are to be protected and / or to rationalise tariff arrangements commonly at ports, *suo motu*, initiate proceedings in any tariff matter, review and, if necessary, revise the tariffs. In such proceedings, opportunity of hearing will be given to the concerned ports.

- 3.1.3 The Major Port Trusts, including Private Terminal Operators at such ports shall initiate tariff proposal and forward the same to TAMP atleast three months before these are due for revision. The Private Operators can submit their tariff proposals directly to TAMP with a copy to the landlord port trust for information.
- 3.1.4. The Port Trusts may send their proposals with the approval of the Board of Trustees of the Port. The views of the Board of Trustees will be considered provided these are received within two months of submission of the proposals.
- 3.1.5. TAMP will not entertain representations filed by individual users, unless it involves fixation of tariff / Scale of Rates.
- 3.1.6. All tariff items of a port should be generally considered together at one time so that the total burden on users is known.
- 3.1.7. Proposal for fixation of rate for use of a new facility or a new service shall be forwarded to the TAMP at least 3 months prior to the expected date of commissioning of the new facility or service.
- 3.1.8. Tariff once fixed shall be in force for three years unless a different period is explicitly prescribed in any individual case by TAMP or in the past concession agreement. For good and sufficient reasons, ports may propose revision ahead-of-schedule. After the specified validity period is over, the approval accorded will lapse automatically unless specifically extended by TAMP.

3.2 PROCESSING OF PROPOSALS

- 3.2.1. The tariff proposal for fixation / revision of rates received will be registered as a case and examined by TAMP.
- 3.2.2. With a view to promote the greatest participation of the greatest number of interested parties, copies of tariff proposals will be forwarded to representative bodies of concerned users and major users of that port for their comments to be received within the stipulated time limit.
- 3.2.3. TAMP will maintain a list of organisations at each port to be consulted on tariff proposals of that port. It will review and update the list from time to time, in consultation with the port.
- 3.2.4. Tariff proposal with all supporting details, as filed by ports, will be circulated as part of the consultative process excepting such details/documents which are requested by the port not to be circulated on the grounds of being commercially sensitive/confidential nature. Such request must adequately explain the reasons for classifying the documents/information as commercially sensitive/confidential and also explain how any irreparable damage will be caused to the port if the request is not acceded to. In any case, traffic projections, consolidated cost statement giving broad details of income / expenditure projections along with the assumptions on which these are based and revised proposed tariff will be circulated to users.
- 3.2.5. As part of the consultative process, if necessary, hearing/s of a case or proposal will be organised, jointly with the port and users of the port, either at the Office of the Authority or at the port.
- 3.2.6. The normal consultative process shall not be followed in a tariff case which is specifically required to be reviewed is to be initiated to implement the Central Government policy directive issued under section 111 of the MPT Act. This would be limited to such items / part of tariff to which directive applies. The normal consultation process shall be followed in respect of such items / part of tariff in respect of which policy directive does not apply.

- 3.2.7. TAMP will pass speaking orders which shall be published in the Official Gazette as required under the MPT Act, 1963, as amended from time to time.
- 3.2.8. Unless otherwise different arrangement is specifically mentioned in the respective tariff orders, revised / modified charges will come into effect after expiry of 30 days from the date of gazette notification. In exceptional cases retrospective effect may be given for reasons to be recorded.

3.3. REVIEW OF ORDERS

- 3.3.1. Application for review of any tariff order will be entertained to the limited extent of errors apparent on the face of records considered in the relevant proceedings, provided such an application is filed within 30 days of the notification in the Official Gazette.
- 3.3.2. TAMP may, *suo motu*, review its orders, for good and sufficient reasons. In such proceedings normal consultative process will be followed.

II. TECHNICAL

4. CARGO RELATED CHARGES.

- 4.1. Cargo-related charges shall continue to be denominated in Indian Rupee terms.
- 4.2.1. Wharfage rates shall be on per unit of either weight or volume of cargo handled than value thereof.
- 4.2.2. Ad-valorem wharfage rates shall be phased out, over a maximum period of 5 years, after rates for all cargo items are fixed on the basis of cost of handling and special care required to be taken while handling and storage of the cargo.
- 4.2.3. Before classifying any cargo under "unspecified" category under the wharfage schedule, the relevant customs classification should be referred to find out whether the cargo could be classified under any of the specific categories mentioned in the wharfage schedule.
- 4.3. Concessional tariff will be prescribed for coastal cargoes / containers, as per the policy directions of the Government. It is prescribed that the cargo/ container related charges for all coastal cargo/ containers, other than thermal coal and POL including crude oil, iron ore and iron ore pellets should not exceed 60% of the normal cargo/container related charges.
- 4.4. Major ports / private terminals will be encouraged to adopt sliding scale of rates to motivate greater performance by bulk/captive facility operators with a view to attract additional cargo. Within the overall ceiling rates prescribed, ports can decide such tariff scheme on non-discriminatory and objective basis. Tariff increase elsewhere shall not be allowed to off set reduction in revenue, if any, arising due to such volume discount schemes.
- 4.5. Demurrage / storage charges free days allowed shall be exclusive of customs notified holidays and port non-working days. The number of free days may, however, be proposed by individual ports.
- 4.6. If operational area is leased on rental to users, storage charges on containers / demurrage on cargo stored therein shall not be levied again.
- 4.7.1. Charges for stevedoring activity undertaken, or for supply of on-board labour, by ports will be included in the Scale of Rates of the port.

- 4.7.2. The rates for stevedoring, wherever undertaken by the port as a separate activity, will be prescribed on per tonne basis. Where only on-board labour is supplied, actual wages plus percentage levy will be prescribed. In either case tariff will be linked to productivity.
- 4.7.3 In the wages plus percentage levy system piece-rate payments will also be recovered in addition to actual wages plus percentage levy. Ports should revise the datum and rates of piece-rate scheme from time to time in terms of the National Wage Settlements.

5. CONTAINER RELATED CHARGES

- 5.1.1. Generally, a composite box-rate, at the option of the port, will be encouraged for basic container handling services such as Ship-Shore transfer, movement between berth and the yard and lift off/lift on at the yard, with rebate to be allowed when any of these services are not provided. Similar approach will be extended in the case of ICD containers.
- 5.1.2. Performance of stowage and lashing/unlashing of containers would be treated as essential part of operations in the interest of efficiency/safety. Charges therefor can be levied by ports, if they provide the service.
- 5.2. Subject to segregation of cargo-related charges (which have to be rupee-denominated) from the composite box rate, container-related charges will continue to be dollar-denominated in the case of foreign-going vessels and rupee denominated in the case of coastal vessels.
- 5.3. Charges for ship-shore handling and storage of loaded and empty containers will continue to be the same and not different. However, higher charges would be allowed for containers having hazardous goods, reefer and for any special services.
- 5.4. While prescribing charges for different sizes of containers, the following ratio will be maintained:

Charge	Containers of Length upto 20'	Containers of Length above 20' but upto 40'	Containers of Length above 40'
Handling Charges	X	1.5 X	2 X
Storage Charges	Y	2 Y	3 Y

- 5.5.1 The handling charges for transshipment containers shall be concessional. Such charges shall not exceed 1.5 times the handling charges for the normal handling operation in loading or unloading cycle. In the case of transshipment of coastal containers, the concession in handling charges prescribed above shall be calculated with reference to the applicable handling charges (which are subject to the concessions specified in clause 4.3 above) for coastal containers for the normal handling operation in loading or unloading cycle.

Illustration

Let X be the handling charges for normal import or export containers and Y be rate for similar operations in respect of coastal containers (where Y is arrived at based on X after giving the concessions specified in clause 4.3 above).

Handling charges for transshipment containers will not exceed 1.5X in case of ex-im containers and 1.5 Y in case of coastal containers.

- 5.6.1. Wharfage on the containerised cargo should be a fixed lump-sum amount *per TEU* without reference to individual classification in the wharfage schedule.

- 5.6.2. Demurrage can be charged separately on containerised cargo in addition to ground rent (storage charges) on loaded container, only if additional services to such cargo are required to be provided.
- 5.7.1. Charges for power supply and monitoring of reefer containers will continue to be dollar denominated and levied on 4-hourly unit to begin with instead of per 8-hourly basis as at present.
- 5.7.2. Charges for other services to reefer containers shall be levied if the port has rendered the service at the request of users.
- 5.7.3. Premium to the extent of 25% on handling and storage charges can be levied in case of hazardous containers.
- 5.8.1. Free dwell-time (storage) allowed shall be exclusive of Customs notified holidays and port non-working days. The number of free days may, however, be proposed by individual port.
- 5.8.2. Free dwell-time (storage) period for import containers shall commence from the day after the day of landing of the container and for export containers the free period shall commence from the time container enter the terminal.
- 5.8.3. The storage charges on abandoned FCL containers/shipper owned containers shall be levied upto the date of receipt of intimation of abandonment in writing or 75 days from the day of landing of the container, whichever is earlier subject to the following conditions:
 - (i). The consignee can issue a letter of abandonment at any time.
 - (ii). If the consignee chooses not to issue such letter of abandonment, the container Agent/MLO can also issue abandonment letter subject to the condition that,
 - (a). the Line shall resume custody of container along with cargo and either take back it or remove it from the port premises; and
 - (b). the line shall pay all port charges accrued on the cargo and container before resuming custody of the container.
 - (iii). The container Agent /MLO shall observe the necessary formalities and bear the cost of transportation and destuffing. In case of their failure to take such action within the stipulated period, the storage charge on container shall be continued to be levied till such time all necessary actions are taken by the shipping lines for destuffing the cargo.
 - (iv). Where the container is seized/confiscated by the Custom Authorities and the same cannot be de-stuffed within the prescribed time limit of 75 days, the storage charges will cease to apply from the day the Custom order release of the cargo subject to lines observing the necessary formalities and bearing the cost of transportation and de-stuffing. Otherwise, seized/confiscated containers should be removed by the line/consignee from the port premises to the Customs bonded area and in that case the storage charge shall cease to apply from the day of such removal.
- 5.9. Tariff for container handling will be linked to the benchmark levels of productivity, both for gate-side and vessel-side operations. It may provide incentive to the port for better performance and disincentive for performance below the benchmark levels. The TAMP will also take into account the contingencies / local factors relevant to the port and seasonal variations while fixing bench mark levels.

6. VESSEL RELATED CHARGES.

- 6.1.1. Vessel-related charges for foreign-going vessels will continue to be denominated in dollars and recovered in Indian rupees.
- 6.1.2. However, in case of coastal vessels the vessel related charges should not exceed 60% of the corresponding charges for other vessels. Further, these charges should be denominated and collected in Indian Rupees only and restatement of coastal rates with reference to prevailing exchange rate at the time of each general revision of Scale of Rates will not be resorted to.
- 6.2 Status of a vessel as borne out by its certification is the relevant factor to decide whether vessel is 'foreign-going' or 'coastal'. Efforts will be made by the Ministry of Shipping in consultation with Ministry of Finance [Deptt. Of Revenue] to get the Customs Act amended for the purpose.
- 6.3 Reduced Gross Tonnage as per the International Tonnage Certificate will be reckoned with for levy of port dues in case of oil tankers with segregated ballast tank.
- 6.4 Pilotage-cum-towage fee will continue to be composite and shall include one inward and one outward movement with required number of tugs/launches of adequate capacity and shifting/s of vessels for 'Port convenience.' Only shifting at the request of vessels will attract separate shifting charges.
- 6.5.1. Berth hire charges shall be prescribed by grouping berths having comparable services/facilities with rebate for major components of services / facilities not provided.
- 6.5.2. Composite berth hire charges for general cargo or multi purpose berths will continue to include charges for use of wharf cranes (other than special purpose cranes / handling systems) during the course of import/export operations with a provision for grant of rebate if on any occasion *no* wharf crane could be made available due to breakdown, planned maintenance, or any other reason.
- 6.5.3. Unit for levy of berth hire charges as well as anchorage fee, mooring fee, roadstead charges, etc. which are linked to the duration of stay of a vessel shall be hourly.
- 6.6.1. Berth hire shall stop 4 hours after the time of the vessel signalling its readiness to sail. The time limit prescribed for cessation of berth hire shall exclude the ship's waiting time for want of favorable tidal conditions or on account of inclement weather or due to absence of night navigation facilities.
- 6.6.2. There shall be a penal berth hire equal to berth hire charges of one days berth hire charge for a false signal.
- 6.6.3. The Master/Agents of the vessel shall signal readiness to sail only in accordance with favourable weather conditions and tidal movements.
- 6.7. Objective criteria or loading/unloading norms to be achieved shall be specified failing which penal berth hire charges will become payable. The norms will have to take into account cargo type, handling equipment and other facilities at the berth.
- 6.8. Tariff will be linked to the benchmark levels of productivity. It may provide incentive to the port for better performance and disincentive for performance below the benchmark levels. While fixing such benchmark levels, local factors relevant to the port and seasonal variations will be borne in mind.

- 6.9. Hire charges of equipment / craft need not be specified individually for the concerned equipment / craft; they should be prescribed for a group of craft/equipment based on different capacity ranges.
- 6.10. The unit for levying vessel related charges will be Gross Registered Tonnage (GRT) of the concerned vessel. In case of port dues and berth hire, there will be a single slab of GRT. Pilotage and shifting charges will be prescribed in three slabs as mentioned below:
- (1). Upto 30,000 GRT
 - (2). 30,001 to 60,000 GRT
 - (3). Above 60,000 GRT

A reduction of 20% on the unit rate of the first slab will be effected for the second slab and a reduction of 30% on the unit rate of the first slab will be effected for the third slab on the incremental GRT.

7. REGULATION OF CHARGES LEVIED BY OTHER AUTHORISED SERVICE PROVIDERS

- 7.1. Charges levied by various service providers authorised by the Major Port Trust, under Section 42 (3) of the MPT Act, 1963, to provide port services specified in clauses (a) to (e) of section 48 ibid shall be regulated by TAMP.
- 7.2. In cases where authorisation arrangement u/s 42(3) is other than by way of a BOT concession agreement, ceiling rates will be prescribed for such services to be applied commonly at the concerned ports without reference to individual service provider. For this purpose, proposals for regulating these charges should be initiated by the concerned Major Port Trust after identifying such authorised services coming under the ambit of tariff regulation.
- 7.3. The Port Trust concerned will ensure, by suitably including necessary condition in the authorisation arrangement that the authorised service providers do not charge more than the prescribed ceiling rates.

8. LEASE OF PROPERTY

Guidelines issued by Government in these matters from time to time will be followed by TAMP.

(A.L. Bongirwar)
Chairman

Annex - I

LIST OF PARTICIPANTS IN THE PRELIMINARY DISCUSSION MEETING ON REVIEW OF GUIDELINES FOR TARIFF REGULATION HELD ON 22 APRIL 2003.

1. Shri. S. Sathyam, Former Chairman, TAMP.
2. Shri. R.K. Jain, Joint Secretary (Ports).
3. Shri. S.R. Rao, Chairman, Visakhapatnam Port Trust.
4. Shri. P.K. Mohanty, Chairman, Mormugao Port Trust.
5. Capt. A.N.M. Kishore, Managing Director, Indian Ports Association.
6. Shri. P.C. Parida, FA & CAO, Chennai Port Trust.
7. Capt. Nikhil Naik, Regional Manager, P&O Ports.
8. Shri. Sudhir S. Rangnekar, Director, Shipping Corporation of India.
9. Shri. Arun C. Patankar, Principal Advisor, Confederation of Indian Industry.
10. Shri. Mark S. Fernandes, Partner, Sylvester & Co.
11. Shri. Ian Claxton, Managing Director (India & Nepal), APL (India) Private Limited.
12. Shri. K.P. Desai, Executive Director, Seaworld Shipping & Logistics Pvt. Ltd.
13. Capt. Suresh Amirapu, Senior Vice President, United Liner Agencies of India (P) Ltd.
14. Shri. Ashok R. Thakkar, Executive Director, STP Services Pvt. Ltd.
15. Shri. K.V. Krishna Kumar, Director, M/s. K. Ramabraham & Sons Pvt. Ltd.
16. Shri. R.N. Shetty, Director, Goa Mineral Ore Exporters Association.
17. Shri. S. Sridhar, Secretary, Goa Mineral Ore Exporters Association.
18. Shri. S. Venkiteswaran, Senior Advocate.
19. Shri. Malleswar Rao, Chairman-cum-Managing Director, IMC Limited
20. Shri. Anil Devli, CEO, M/s. Shreyas Shipping
21. Shri. Umesh Vishwekar, Chief Manager, Hindustan Petro Chemicals Ltd.

Annex - II

LIST OF VARIOUS ORGANISATIONS CONSULTED ON REVIEW OF GUIDELINES FOR TARIFF REGULATION

I. Major Port Trusts

1. Chennai Port Trust
2. Tuticorin Port Trust
3. Visakhapatnam Port Trust
4. Cochin Port Trust
5. Kolkata Port Trust
6. Paradip Port Trust
7. Mumbai Port Trust
8. Kandla Port Trust
9. Jawaharlal Nehru Port Trust
10. Mormugao Port Trust
11. New Mangalore Port Trust
12. Ennore Port Limited
13. Indian Ports Association.

II. Private Terminal Operators

14. Nhava Sheva International Container Terminal Limited
15. PSA SICAL Terminal Limited
16. Chennai Container Terminal Limited
17. Visakha Container Terminal Private Limited,
18. ABG Heavy Industries Limited
19. Indian Private Port Terminals Association

III. Chambers of Commerce and Industry

20. Calcutta Chamber of Commerce & Industry
21. Bengal Chamber of Commerce & Industry
22. Utkal Chamber of Commerce & Industry
23. Visakhapatnam Chamber of commerce & Industry
24. Madras Chamber of commerce & Industry
25. Southern India Chamber of Commerce & Industry
26. Hindustan Chamber of Commerce
27. Tamil Chamber of Commerce
28. Tuticorin Chamber of Commerce & Industry
29. Indian Chamber of Commerce & Industry
30. All India Chamber of Commerce & Industry
31. Cochin Chamber of Commerce & Industry
32. Kanara Chamber of Commerce & Industry
33. Goa Chamber of Commerce & Industry
34. Bombay Chamber of Commerce & Industry
35. Indian Merchant Chamber
36. Maharashtra Chamber of Commerce and Industry
37. Gandhidham Chamber of Commerce & Industry

IV. All India Associations

38. Indian National Shipowners Association
39. Federation of Indian Exports Organisation
40. All India Shippers Council
41. Federation of Ship Agents' Association of India
42. Confederation of Indian Industry
43. Associated Chamber of Commerce & Industry
44. Federation of Indian Chamber of Commerce & Industry
45. Association of Multimodal Transport Operators of India
46. Container Shipping Lines Association
47. Federation of Freight Forwarders' Association
48. Federation of Indian Mineral Industries Limited

49. Federation of All India Sailing Vessels Industry Association.
50. All India Liquid Bulk Importers & Exporters Association.
51. Indian Chemical Manufactures Association,
52. Society of Indian Automobile Manufactures Association
53. Agriculture Products Export Development Authority
54. All India Rice Exporters Association
55. Chemicals & Allied Products Export Promotion Council
56. Iron Steel Scrap and Ship Breakers Association of India,
57. PHD Chamber of Commerce and Industry
58. Petroleum Federation of India Limited, New Delhi
59. Engineering Export Promotion Council

V. Steamship / Steamer Agents Association

60. Association of Shipping Interest in Calcutta
61. Kalinga Steamship Agents' Association
62. Visakhapatnam Steam Ship Agents' Association
63. Chennai & Ennore Port Steamer Agents' Association
64. Tuticorin Steamer Agents' Association
65. Cochin Steamer Agents' Association
66. Mangalore Steamer Agents' Association
67. Mormugao Ships Agents' association
68. Mumbai and Nhava-Sheva Ship Agents' Association
69. Kandla Port Steamship Agents' Association

VI. Stevedores Association

70. Master Stevedores' Association
71. Visakhapatnam Stevedores' Association
72. Chennai Port Stevedores Association
73. Tuticorin Stevedore Association
74. United Stevedores' Association of Cochin (Pvt.) Ltd.,
75. Association of New Mangalore Port Stevedores
76. Mormugao Stevedores Association
77. Bombay Stevedores Association Limited
78. Kandla Stevedores' Association Limited

VII. Custom House Agents' Association

79. Visakhapatnam Custom Clearing Agents' Association
80. Visakhapatnam Port Clearing & Forwarding Agents Association
81. Chennai Custom House Agents' Association
82. Tuticorin Custom House Agents' Association

83. Cochin Custom House Agents' Association
84. Mangalore Custom House Agents' Association
85. New Mangalore Port Clearing & Forwarding Agents' Association
86. Bombay Custom House Agents' Association
87. Kandla Custom House Agents' Association
88. Calcutta Custom House Agents' Association
89. Calcutta Clearing Agents' Association
90. Goa Custom House Agents' Association
91. Mormugao Handling Agents' Association

VIII. Major Port Users (National Level)

92. Metals and Minerals Trading Corporation
93. State Trading Corporation
94. Steel Authority of India Limited
95. Indian Oil Corporation
96. Food Corporation of India
97. Shipping Corporation of India
98. Central Warehousing Corporation
99. Bharat Petroleum Corporation Limited
100. Hindustan Petroleum Corporation Limited
101. Container Corporation of India
102. Tamil Nadu Electricity Board
103. National Mineral Development Corp. Ltd

IX. Other users / local Associations / others

104. Eastern India Shippers Association
105. Tata Iron & Steel company Limited
106. Hind Lever Chemicals Limited,
107. Haldia Petrochemicals Limited,
108. Steel Authority of India Limited, Visakhapatnam
109. Rashtriya Ispat Nigam Limited,
110. Southern Petro Chemical Industries Corp. Limited
111. Sterlite Industries India Limited
112. Tuticorin Port Handling Agents' Association
113. Tuticorin Thermal Power Station
114. Tuticorin Port Transport and Equipment Owners Association
115. Fertilizers And Chemicals Travancore Limited
116. Cochin Refineries Limited
117. Cochin Port Lease Holders Association
118. Mangalore Refinery & Petrochemicals Limited

119. Kudremukh Iron Ore Company Limited
120. Goa Mineral Ore Exporters Association
121. Jindal Vijayanagar Steel Limited,
122. Western India Shippers' Association
123. J.N.P.T. Liquid Chemicals Berth Users' Association.
124. Indian Barge Owners' Association
125. Larsen & Toubro Limited.
126. Chennai Petroleum Corporation Limited
127. Paradip Phosphate Limited
128. Mahanadi Coal Fields Limited
129. Oswal Chemical & Fertilisers Limited
130. National Aluminium Company Limited
131. Indian Farmers Fertilisers Cooperative Limited
132. Federation of Port Users & Customs House Agents', Kandla
133. Kutch Small Scale Salt Manufacturers Association,
134. Deloitte Touche Tohmatsu India Private Limited
135. TM International Logistics Limited, Kolkata
136. EU-Maritime India,
137. Ministry of Commerce,

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