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TARIFF AUTHORITY FOR MAJOR PORTS

G No. 160

New Delhi

11 June , 2010

NOTIFICATION

In exercise of the powers conferred under Section 49 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal received from the Cochin Port Trust for revision of lease rentals for port lands including the lands at Vallarpadam, Puthuvypeen, Bolgatty and Goshree (GIDA) areas as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports

Case No. TAMP/33/2007-COPT

The Cochin Port Trust

Applicant

ORDER

(Passed on this 4th day of May 2010)

This case relates to the proposal dated 4 June 2007 received from the Cochin Port Trust (COPT) for revision of lease rentals for most of the lands under its control and to the proposal dated 17 August 2009 from COPT for fixation of lease rent of port lands at Vallarpadam, Puthuvypeen, Bolgatty and Goshree (GIDA) areas.

2.1. It has been reported that the lease rentals of Cochin Port Trust (COPT) lands were last revised by the Government with effect from 1 January 1996. The Leaseholders' Association and others challenged the revision before the Honourable High Court of Kerala and the Court ordered COPT to change the effective date from 1 January 1996 to 1 October 1996, which was the date of Notification of lease rent in the Kerala Gazette. The lease rent now in force is with effect from 1 October 1996 with a 5% annual escalation till March 2004 and with a 2 % escalation per annum thereafter.

2.2. The annual escalation of 5% was also challenged and the Honourable High Court by a common judgment dated 10 July 2003 held that the 5 % annual escalation should be on base rent and not on cumulative basis. The Government of India and COPT have moved Special Leave Petitions (SLP) before the Hon'ble Supreme Court. Three lessees have also moved separate SLPs. As informed by the COPT, these cases are still pending.

2.3. The general rate revision proposals submitted by COPT in 2002 and 2006, included revisions of lease rentals. However, on both the occasions, the port did not formulate its proposals following the extant policy of the Government. This Authority, therefore, had to advise the port on both the occasions to file separate proposals for revision of lease rentals adhering to the Government guidelines. In this backdrop, on 4 June 2007, COPT filed its proposal for revision of lease rentals for most of the lands under its control. The salient points of the proposal dated 4 June 2007 are summarised below:-

- (i). Proposal is based on the average valuation of land obtained from revenue authorities for the years 2003 to 2005.
- (ii). On land allotted/renewed prior to 1 January 1996 at Willingdon Island the increase in the lease rentals is limited to 100% of the original rate mentioned in the lease agreement.
- (iii). On land allotted / renewed for residential and commercial purposes after 1 January 1996 at Willingdon Island the increase proposed is 140% over the rates prevailed on 1 April 2007. The increase in respect of lands allotted / renewed for industrial purpose is 145% over the rates prevailed on 1 April 2007.
- (iv). For lands at South End Reclamation, Fort Cochin, Ernakulam Foreshore and at Palluruthy lease rentals have not been fixed. Based on the average registered price available for commercial activity at Palluruthy for the years 2003 to 2005, a rate of Rs.13, 66,068 per hectare per annum has been proposed for the lands at South End Reclamation. Considering the average registered price for the years 2003-2005, the per annum per hectare rates of Rs.18,27,305 and Rs.13,66,068 have been proposed for the lands at Fort Cochin and Palluruthy respectively. Stating that the lease rent, if calculated based on the market value, would be very much on the higher side, rental for lands at Ernakulam Foreshore has been proposed at Rs. 45,36,756 per hectare.

- (v). The license fee for hard surfaced open storage area and for other open storage areas are proposed to be increased by 100% and 20%, respectively over the rates prevailed on 1 April 2007. The covered storage space rentals are proposed to be increased by 50%. Incremental licence fees depending upon the number of days the open and covered storage areas are used are also proposed.
- (vi). The rate of sub-lease is proposed to be increased by 100%.
- (vii). The rent for fumigator for storage of export cargo is proposed to be retained at the rate as prevailed on 1 April 2007. The way leave charges for laying pipelines through port's land and water have been proposed to be increased by 140% over the rates prevailed on 1 April 2007.

3. In accordance with the consultative procedure prescribed, the COPT's proposal was forwarded to the user organisations seeking their comments. The comments received from the user organisations were forwarded to COPT as feedback information. COPT has responded to the comments furnished by the users on its proposal.

4.1. Based on the preliminary scrutiny of the proposal, COPT was requested to furnish information/clarification on the following points vide this Authority's letter dated 30 November 2007. The COPT furnished its replies vide letter dated 4 February 2008. Some of the main queries raised and the replies furnished by COPT thereon are tabulated below:

Sr.No.	Queries raised by TAMP	Reply given by COPT
1.	The latest position of the Special Leave Petitions moved by the Government of India and the COPT before the Hon'ble Supreme Court on the common judgment dated 10 July 2003 of the Hon'ble High Court of Kerala may please be informed.	Special Leave Petitions filed by Cochin Port Trust and some of the lessees are still pending.
2.	A copy of the rate revision Committee's report along with the supporting documents may please be furnished.	A copy of the Minutes of the Meeting held by the Committee on 8 January 2007 is furnished.
3.1.	Kindly furnish the location-wise information of the total area of land under COPT's control.	A statement depicting relevant details is submitted.
3.2.	<p>COPT is requested to furnish the following details:</p> <p>(a).Total area of land available with COPT.</p> <p>(b).A layout plan of the port land showing location wise details of the areas allotted for different purposes.</p> <p>(c).Areas allotted for port related activities and non-port related activities.</p> <p>(d). Areas earmarked for port operations – utilised.</p> <p>(e). Areas earmarked for port operations – unutilised.</p> <p>(f).Areas allotted for residential purposes – utilised.</p>	<p>(i) A layout plan of the port land showing location wise details of the areas allotted for different purposes is furnished.</p> <p>(ii) Total area of land available with COPT - 862.90 HA</p> <p>(iii) Area utilized for port activities - 157.123 HA</p> <p>(iv) Land leased to parties - 305.026 HA</p> <p>(v) Surplus land earmarked for future expansion - 466.50 HA</p> <p>(vi) Surplus land not required for future Expansion - 4.047 HA</p> <p>(The aggregate of (iii) to (vi) above does not tally with the area shown against (ii) above.)</p>

	<p>(g).Areas allotted for residential purposes – unutilised.</p> <p>(h).Areas allotted for industrial purposes and commercial purposes.</p> <p>(i).Land allotted for less than a year and for more than a year.</p>																	
4.1.	COPT is requested to furnish the location-wise details of rate fixed by State Government of Kerala for the purpose of Stamp Duty pertaining to the relevant period.	Copies of the correspondence and statements received from the Sub-Registrar's office are furnished.																
4.2.	In case any auction was held earlier, the basis on which the upfront rates, if any, were fixed may be informed.	No auction has been held earlier.																
5.1.	Kindly furnish a separate cost statement for the estate activity in the prescribed format based on the actual income and expenditure for 2002-03 to 2006-07 and based on estimates for the next 5 years.	A cost statement has been furnished which is for assessing the financial statements of the Port and not for the purpose of fixing charges for lease rentals.																
5.2.	Kindly furnish the location wise revenue presently collected by COPT.	<p>The location-wise revenue presently collected for the year 2006-07 is furnished below:</p> <table border="1"> <thead> <tr> <th>Particulars</th> <th>Amount (Rs. in lacs.)</th> </tr> </thead> <tbody> <tr> <td>Rent from land</td> <td>1485.82</td> </tr> <tr> <td>Estate warehouse rent</td> <td>0.98</td> </tr> <tr> <td>Estate building rent</td> <td>98.37</td> </tr> <tr> <td>Lease of wharf-Open area</td> <td>68.89</td> </tr> <tr> <td>Lease of wharf-Closed area</td> <td>120.69</td> </tr> <tr> <td>Lease of wharf-Office accommodation</td> <td>0.24</td> </tr> <tr> <td>Total</td> <td>1774.99</td> </tr> </tbody> </table>	Particulars	Amount (Rs. in lacs.)	Rent from land	1485.82	Estate warehouse rent	0.98	Estate building rent	98.37	Lease of wharf-Open area	68.89	Lease of wharf-Closed area	120.69	Lease of wharf-Office accommodation	0.24	Total	1774.99
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5.3.	The financial implications including the additional revenue that would be generated per annum on account of the proposed rate revision may be furnished.	<p>The proposed tariff would generate additional income as under:-</p> <table border="1"> <thead> <tr> <th>Year</th> <th>Additional Revenue (Rs. In Lakhs)</th> </tr> </thead> <tbody> <tr> <td>2008 – 09</td> <td>4947</td> </tr> <tr> <td>2009 – 10</td> <td>5053</td> </tr> <tr> <td>2010 – 11</td> <td>5161</td> </tr> <tr> <td>2011 - 12</td> <td>5268</td> </tr> </tbody> </table>	Year	Additional Revenue (Rs. In Lakhs)	2008 – 09	4947	2009 – 10	5053	2010 – 11	5161	2011 - 12	5268						
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6.	For each category of land the original cost and the cost of development incurred subsequently may be furnished. Also please state whether the development cost has been allocated to the areas of lands used by the port as well as to the rentable land. The basis of allocation, whether at actuals or on pro-rata, may also be furnished.	The land was handed over to the Cochin Port Trust by the State Government years back and Port Trust had developed the land over the years. The original cost of land is Rs. 23.33 crores. COPT is purchasing electricity from the Kerala State Electricity Board and water from Kerala Water Authority and distributes the same to the various Port users in Willingdon Island. Separate tariff are fixed for electricity and water.																
7.	A comparative statement showing the existing and proposed rates along with conditionalities governing allotment of land/lease rental may be furnished.	A comparative statement showing the existing and proposed rates is furnished.																

8.	<p>Please furnish the following details:</p> <p>(a).The expenditure incurred in developing the landed estates;</p> <p>(b).Whether the expenditure has been treated as capital or revenue; and</p> <p>(c).The basic amenities like water, road, lightening, etc provided by COPT and the year wise expenditure incurred thereon may be informed.</p>	Kindly see the reply at Sr.No.6 above.
9.	<p>The proposal of COPT is based on the average valuation of land obtained from revenue authorities for the years 2003 to 2005. COPT has stated that the revised market price from the local revenue bodies would be available by June 2007. Port is requested to revise its proposal if the revised market valuation of land is now available from the revenue authorities.</p>	The revised market rates have not been received from the revenue authorities till date.
10.1.	<p>On the proposed rate for lease of land allotted at Willingdon Island prior to 1.1.1996, kindly clarify the following:</p> <p>(a) It has been stated that as per the lease deed executed, lease rentals should be limited at 100% of the original rate mentioned in the lease agreement and hence revision based on market value cannot be resorted to. Different rates per hectare has been proposed for the land allotted under four categories, viz., (i) land with water frontage and/or railway siding, (ii) land without water frontage and/or railway siding and for office etc., (iii) land for residence and (iv) special category lands. It is not clear whether the original lease rental mentioned in all the lease agreements falling under each category is uniform. COPT is therefore, requested to furnish a statement showing the category-wise allotment of land with original rate mentioned in the lease agreements.</p> <p>(b) It is stated that the proposed rate will be applicable only upto the expiry of the tenure of existing lease and once the lease period expires, the rate in force would be applicable. A statement detailing the expiry dates of the different lease agreements executed may please be provided.</p>	<p>(i) The rate for land with water frontage and with railway siding ranged between Rs. 3600 per acre per annum to Rs. 1,63,800 per acre per annum during the period 1960 to 2000.</p> <p>(ii) The rate for land without water frontage or railway siding and land for office, banks, shops etc ranged between Rs. 2400 per acre per annum to Rs. 1,09,800 per acre per annum during the period 1960 to 2000.</p> <p>(iii) The rate for land for residence ranged between Rs. 1800 per acre per annum to Rs. 46,800 per acre per annum during the period 1960 to 2000.</p> <p>Majority of the lease agreements will expire by 2012. In November 2025, the last of this lot will expire.</p>
10.2.	<p>COPT has furnished the working assumptions as regards to the proposed rate of Rs.30,24,504/- per hectare for the lease of land allotted/renewed at Willingdon Island after 1.1.1996 for commercial purpose. Although rates have been proposed at Rs.15,12,252 and</p>	<p>Willingdon Island being away from the main land no commercial activities other than port related activities are carried out here. The nearby main land with commercial activity is 'Thoppumpady Junction', where, as per revenue records, the registered price for the years 2003 to 2005 is as follows:</p>

	<p>Rs.22,68,378 per hectare for lease of land for residential purpose and for industrial purpose respectively the working details thereon with assumptions have not been furnished. COPT is requested to comply.</p>	<p style="text-align: center;">(Rate per cent in Rs.)</p> <table border="1" data-bbox="834 197 1457 387"> <thead> <tr> <th>Year</th> <th>Registered rate</th> <th>Registered rate with 2% escalation</th> </tr> </thead> <tbody> <tr> <td>2003</td> <td>100000</td> <td>102000</td> </tr> <tr> <td>2004</td> <td>200000</td> <td>204000</td> </tr> <tr> <td>2005</td> <td>300000</td> <td>306000</td> </tr> <tr> <td>Average</td> <td>200000</td> <td>204000</td> </tr> </tbody> </table> <p>2. As per the provisions in the Land Policy Scale of Rates shall be arrived at, taking 6% of the market value as rent per annum.</p> <p>3. Since the rates relates to the years 2003 to 2005, for calculation purpose, the escalated rates are considered. Applying 6% on the average market value of Rs.204,000 per cent, the lease rent will come to Rs.12,240 per cent per annum or Rs.12,24,000 per acre per annum, which when converted to standard measurement will be Rs.30,24,504 per hectare and Rs.30245 per are.</p> <p>4. Considering the fact that only 75% and 50% of the rate proposed for commercial purpose has been proposed for industrial and residential purpose respectively, the rates are summarised below:</p> <table border="1" data-bbox="818 936 1528 1160"> <thead> <tr> <th rowspan="2">Purpose</th> <th colspan="3">Rate per acre</th> <th colspan="2">Proposed rate</th> </tr> <tr> <th>SOR rate (1.1.96)</th> <th>Existing rate (30.4.07)</th> <th>6% on market price (Land Policy)</th> <th>Per acre</th> <th>Per hectare</th> </tr> </thead> <tbody> <tr> <td>Residential</td> <td>170000</td> <td>255000</td> <td>1224000</td> <td>612000</td> <td>1512252</td> </tr> <tr> <td>Industrial</td> <td>250000</td> <td>375000</td> <td>1224000</td> <td>918000</td> <td>2268378</td> </tr> <tr> <td>Commercial</td> <td>340000</td> <td>510000</td> <td>1224000</td> <td>1224000</td> <td>3024504</td> </tr> </tbody> </table>	Year	Registered rate	Registered rate with 2% escalation	2003	100000	102000	2004	200000	204000	2005	300000	306000	Average	200000	204000	Purpose	Rate per acre			Proposed rate		SOR rate (1.1.96)	Existing rate (30.4.07)	6% on market price (Land Policy)	Per acre	Per hectare	Residential	170000	255000	1224000	612000	1512252	Industrial	250000	375000	1224000	918000	2268378	Commercial	340000	510000	1224000	1224000	3024504
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10.3.	<p>COPT has proposed the rate for lease of land at Ernakulam Foreshore at Rs.45,36,756 per hectare per annum by escalating the present lease rent of Rs.10,20,000 at 6% over a period of 30 years stating that if the lease rent based on the market value is calculated it would be on the higher side. COPT is requested to furnish a statement showing the lease rent taking the market value as the base.</p>	<p>Lease rent at Foreshore Road at Market Rate</p> <table border="1" data-bbox="818 1193 1528 1384"> <thead> <tr> <th rowspan="2">Area</th> <th colspan="3">Rate per acre</th> <th colspan="2">Proposed rate</th> </tr> <tr> <th>SOR rate (1.1.96)</th> <th>Existing rate (30.4.07)</th> <th>6% on market price (Land Policy)</th> <th>Per acre</th> <th>Per hectare</th> </tr> </thead> <tbody> <tr> <td>Foreshore</td> <td>No rate</td> <td>1020000</td> <td>6000000</td> <td>6000000</td> <td>14826000</td> </tr> </tbody> </table> <p>As per revenue records of Ernakulam village, the market value of land adjacent to Foreshore is Rs.10,00,000 per cent (D.H. Road). Applying 6% on this value, the lease rent will come to Rs.60,000 per annum or Rs.60,00,000 per acre per annum whereas the lease rent at present collected is only Rs.10,20,000. Since the lease rent calculated based on the market value was on the higher side, the rate was fixed based on the lease rent collected instead of the market rate.</p>	Area	Rate per acre			Proposed rate		SOR rate (1.1.96)	Existing rate (30.4.07)	6% on market price (Land Policy)	Per acre	Per hectare	Foreshore	No rate	1020000	6000000	6000000	14826000																											
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10.4.	<p>COPT has proposed Rs.60 per sq.metre per month as the rate for covered space stating that this rate is arrived at at double the rate applicable to open storage space. It is however not clear why a rate of Rs.60 per sq.metre per month has been proposed for hard surface area which falls in the open area. Kindly clarify.</p>	<p>In the case of hard surface area, the ground has been made hard using concrete, extra mud etc. for bearing the weight of the cargo stored on it. Since there is heavy congestion of land area for storing cargo in Willingdon Island, a higher rate has been fixed to discourage the unnecessary dumping of cargo. Also expenses are incurred for repairing and maintaining this hard surfaced area i.e. even though the hard surface area is open land, the expenditure incurred for the creation and maintenance of these lands are more or less equal to that of covered storage area. Hence, a rate of Rs.60/- is proposed as license fee.</p>																																												

11.1.	COPT is requested to confirm that the present proposal is in conformity with the land policy for Major Port Trusts approved by the Central Government and communicated to the ports under letter No.PT-17011/55/87-PT dated 8 March 2004.	In the case of lease of land allotted/renewed prior to 1.1.96, the lease deed executed provides that the ceiling increase in lease rentals should be limited to 100% of the original rate mentioned in the lease agreement. Hence revision based on market value has not been resorted to in this case due to this condition in the lease agreement and the hike in rate proposed for this category is limited to 100% of the original rate. In the case of land allotted after 1.1.1996, the revision proposal strictly adheres to the land policy guidelines issued by the Government. In the case of foreshore, since the market value is very high, the existing lease rentals were considered for revision.
11.2.	Also confirm that the rate structure proposed is in accordance with end use as reflected in the Land Use Plan referred to above	Confirmed.
11.3.	If on any matter the present proposal deviates from the land use plan referred to at Sr.No.11.1. above, please furnish the details thereof and the reason therefor.	It is confirmed that the rate structure proposed is in accordance with the end use as reflected in the land use plan.
11.4	Kindly confirm that the present proposal is submitted only after the COPT identifying its land requirements and the land which the port can spare.	It is confirmed that the present proposal is submitted after COPT identifying its land requirement and the land which the port can spare.
11.5.	The location-wise areas of land, if allotted on licence basis, the details thereof may please be furnished.	The COPT is allotting open and covered space, bunks etc. on licence basis for a maximum period of 11 months in accordance with the Government guidelines dated 8.3.2004 at various locations at Willingdon Island. A statement showing the relevant details is furnished.
11.6.	The details of land, if any, leased on upfront basis and on annual basis and the security amount received per lease/licence may be furnished.	The details of land under lease at various locations are furnished. The Cochin Port Trust has been allotting land on annual lease following the land policy guidelines issued by Government of India from time to time, and in case of annual lease, security deposit equivalent to 5 years lease rentals is levied.
12.	As per Govt. letter dated 8 March 2004 any or all of the following factors can be taken into consideration to determine the market value of the port land :(i)Land value as per State Govt's ready reckoner.(ii) Average rate of actual relevant transactions registered in last three years in the port's vicinity, adding 2% escalation per annum,(iii) Highest accepted tender of Port land for similar transactions,(iv) Rate arrived at by an approved valuer and (v) Any other relevant factor as may be identified by the port. In the absence of the Committee's report it is not clear which of the factors mentioned above have been taken into consideration to determine the market value. In this context, therefore, the below mentioned issues require clarification/ compliance from COPT.	<p>The revision proposal has been prepared strictly adhering to the land policy guidelines except in the following 2 cases narrated at 12(a) below:</p> <ol style="list-style-type: none"> 1. <u>In the case of lease of land allotted/renewed prior to 1.1.96.</u> <p>The lease deed executed provides that the ceiling in increase in lease rentals should be limited to 100% of the original rate mentioned in the lease agreement. Hence revision based on market value has not been resorted to in this case due to this condition in the lease agreement and the hike in rate proposed for this category is limited to 100% of the original rate.</p> <ol style="list-style-type: none"> 2. <u>Ernakulam foreshore</u> <p>As per revenue records of Ernakulam village, the market value of land adjacent to foreshore is Rs.10,00,000 per cent (D.H. Road). Applying 6% on this value, the lease rent will come to Rs.60,000 per cent per annum or Rs.60,00,000 per acre per annum whereas the lease rent at present collected is only Rs.10,20,000. Since the lease rent calculated based on the market value was on the higher side, the rate was</p>

	<p>(a). Kindly confirm that the approach adopted to arrive at the proposed rate is uniform for the entire estate. If the approach differs for any location the reasons therefor may please be explained.</p> <p>(b). Whether an approved valuer for determining the market value was appointed is not clear. Kindly clarify.</p> <p>(c). A statement detailing the actual relevant transactions registered in the last three years in the port's vicinity may be furnished</p> <p>(d). A statement showing the relevant details of tenders, if any, floated and accepted for the port land during the last 5 years may be furnished.</p> <p>(e). The rate of return on investment, if any, considered by the Committee while recommending the revised scale of rates may be indicated.</p>	<p>fixed based on the lease rent collected instead of the market rate.</p> <p>The procedure for revision of land lease rental given in land policy guidelines dated 8.3.2004 under clause no.5.3(1) is as follows:</p> <p>(i) SOR for land will be recommended to the competent/TAMP by a Committee headed by the Chairman of the Port Trust. The Committee will take into account any/all of the following factors to determine the market value of port lands:</p> <p>(a) State Government ready reckoner of the land in the area if available.</p> <p>(b) Average rate of annual/relevant transactions registered in the last three years in ports vicinity, adding 2% escalation per annum as may be necessary.</p> <p>(c) Highest accepted tender of port land for similar transactions.</p> <p>(d) Rate arrived by the approved valuers appointed for the purpose by the port.</p> <p>(e) Any other relevant factor as may be identified by the port.</p> <p>Since it is mentioned in the land policy guidelines that any of the above factors need to be considered for determining the market value of port land, only the 2nd point i.e., "Average rate of annual/relevant transactions registered in the last three years in ports vicinity, adding 2% escalation per annum as may be necessary" which was readily available, was considered for fixing lease rentals.</p>
		<p>No approved valuer was appointed for determining the market value.</p> <p>A statement showing the actual relevant transactions registered during 2003 to 2005 in port's vicinity is furnished.</p> <p>The required statement is furnished.</p> <p>No ROI has been considered by the Committee while recommending the revised scale of rates.</p>

4.2 By letter dated 26 February 2008 COPT was requested to furnish few more details. COPT furnished its reply under letter dated 29 April 2008. The clarification sought and the replies received are furnished below:

Sr.No.	Queries raised by TAMP	Reply given by COPT
1.	Cochin Port Trust has furnished the original cost details of its landed estate as on 31.3.2007. It is presumed that the subsequent cost of development incurred thereon (after the State Government's handing over of the landed estate to the port) is also included in this cost. If not, the development cost details may also please be furnished.	The development has also been included in the Original Cost.
2.	The Cochin Port Lease Holders' Association (CPLHA), the Cochin Chamber of Commerce and Industry (CCCI), the Cochin Steamer Agents' Association (CSAA) and the Cochin Custom House Agents' Association (CCHAA) have all raised certain legal issues. According to CPLHA and CCCI, the long term leases being statutory contracts, in the absence of statute specifically providing for a variation of the rent, it is not legally permissible to vary the rent during the currency of the lease. The CSAA and the CCHAA have contended that on long term lease the base rent cannot be changed legally during the existence of the period of lease and it can be achieved only at the time of renewal of the lease. COPT is requested to examine the legal issues raised by these user bodies and furnish its views thereon to this Authority.	A specific clause stating that "the base lease rent will undergo upward revision after every block of 5 years based on the then existing Scale of Rates" is incorporated in all the Lease Deeds entered into after 1.1.1996 and in the case of land allotted before 1.1.1996 the lease deed clearly states that "the lessor has the right to increase the lease rent after every 5 years by an amount not exceeding 100%". Hence the contention made by the Users that the base rent cannot be changed during the existence of the lease period is not correct.

5. The policy announced by the Government in March 2004 on land and water management of Major Port Trusts clearly lays down the procedure to be adopted for determining the market value and the lease rental of the port lands. The market value of land can be determined taking into consideration any or all of the factors like (i) State Government's ready reckoner value, (ii) the average rate of actual relevant transactions took place in last three years for the lands in the port's vicinity, adding 2% escalation per annum, (iii) highest accepted tender value of port lands for similar transaction, (iv) rate arrived at by an approved valuer and (v) any other relevant factors as may be identified by the port. The lease rent has to be fixed at 6% of the market value of the land so determined. Since the port's proposal was based on the average valuation of the land obtained from revenue authorities for the years 2003 to 2005, by letter dated 8 May 2008, the COPT was advised to reassess the market values of its landed estates under all options given in the Government guidelines and derive lease rentals based on the one which is most beneficial to it.

6.1. A joint hearing in this case was held on 20 June 2009 at Cochin Port Trust where the COPT and the concerned users made their submissions. At the joint hearing, COPT informed that despite best efforts, it could not get current market valuation of its landed estates from the Revenue Authorities and hence a professional valuer had been appointed whose report would be available within two weeks.

6.2. By letter dated 29 June 2009, COPT was requested to furnish a copy of the valuation report alongwith its revised proposal, if any, based on the valuation report. The port was reminded to comply in this respect vide letters dated 9 July 2009 and 5 August 2009.

7.1. In the meanwhile, the COPT under letter dated 17 August 2009 requested this Authority to fix rentals for leasing of land owned by it at Vallarpadam, Puthuvypeen, Bolgatty and Goshree (GIDA) areas. According to COPT since the areas owned by it at Vallarpadam and Puthuvypeen are notified as Special Economic Zone and the activities of ICTT project at Vallarpadam and LNG project at Puthuvypeen are picking up, many business entities have approached the Port for allotment of land in these areas for establishing their business units.

7.2. Based on the approved valuer's interim report, COPT proposed the lease rents for lands at different areas as under:-

Sl. No.	Land at	Market Value of the land assessed by Approved Valuer (Rs. Per acre)	Annual Lease Rent 6% of Market Value (Rs. Per acre)	Lease Rent per Hectare p.a. (Rs.)	Lease Rent per Are p.a. (Rs.)
1	Vallarpadam	25000000	1500000	3705000	37050
2	Puthuvypeen	20000000	1200000	2964000	29640
3	GIDA area	30000000	1800000	4446000	44460
4	Bolgatty	25000000	1500000	3705000	37050
One Hectare = 2.47 Acres, One Hectare = 100 Are					

7.3. COPT proposed to lease the plots of land available in the abovementioned areas on competitive tender basis and by fixing the upfront premium (reserve basis) as per the rates proposed above.

8. The proposal dated 17 August 2009 of COPT was registered as a separate tariff case on 9 September 2009. The concerned user organizations were requested vide letter dated 16 September 2009 to offer their comments on the proposal. The comments received from the user organizations were forwarded to COPT for remarks, which the port complied with.

9. Based on the preliminary scrutiny of the proposal dated 17 August 2009, COPT was requested to furnish the following information / clarifications vide letter dated 6 November 2009. COPT furnished its reply thereon vide letter dated 18 November 2009. The details called for and the replies received from COPT are juxtaposed below:

Sl.No.	TAMP's queries	COPT's comments
1	Kindly inform whether the proposal for fixation of lease rent at Vallarpadam, Puthuvypeen, Bolgatty and Goshree (GIDA) areas was considered by the Board of Trustees of COPT and if so, provide a copy of the Trustees Resolution in this regard	Since the approved valuer has not yet submitted the final report, we were not able to place the proposal before the Board. The valuer has assured to submit the final report in December 2009. The Board Meeting is scheduled to be held in December 2009 and the views of the Board will be communicated to TAMP thereafter.
2	Kindly confirm that the State Government's ready reckoner of the land value at Vallarpadam, Puthuvypeen, Bolgatty and GIDA areas are not available	It is understood that the state government has not published such a document for the last five years.
3	Kindly confirm that no land transactions have been registered in the last three years in the vicinity of the areas referred to above.	As per the information obtained from the approved valuer there were a number of land transactions registered during the past three years in the vicinity. The details of such transaction will be available only in the final report of the valuer.
4	Kindly confirm that no tender was floated and hence no accepted tender value of the port lands for similar transactions are available.	It is confirmed that no tender was floated by the Port so far for the lands mentioned in the proposal.

5	We have only received an interim report submitted by the land valuer. Since the lease rents to be approved are co-related to the market value of the port lands, it is necessary to have the correct market value. COPT is, therefore, requested to furnish the final approved report of the land valuer immediately.	The report shall be furnished as soon as the valuer submits it to the port.
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10.1 By letter dated 29 December 2009, COPT submitted a copy of the final report of the approved land valuer. In its subsequent letter dated 8 January 2010, COPT stated that in the final report, the market value shown is lesser than the market value shown by the valuer in the interim report and hence there will be a reduction in the lease rent proposed in August 2009. Port also stated that it will submit a revised proposal incorporating the rates as per the final report submitted by the Valuer.

10.2. The market values of different areas covered in the COPT's proposal dated 17 August 2009 as per the final report of the valuer vis-à-vis the interim report are as under:-

Sl. No.	Land at	Market Value as per the interim report (Rs. Per acre)	Market Value as per the final report (Rs. Per acre)
1	Vallarpadam Vallarpadam (SEZ)	25000000 -----	21000000 24150000
2	Puthuvypeen Puthuvypeen (SEZ)	20000000 -----	14500000 16675000
3	GIDA area	30000000	23000000
4	Bolgatty	25000000	21000000

10.3. By letter dated 28 January 2010, COPT was requested to furnish its revised proposal along with a revised SOR as prescribed under para 5.3 (I) of the Land Policy for Major Ports vide Ministry's letter No. PT-17011/55/87-PT dated 8 March 2004.

11. A joint hearing on the Port's proposal dated 17 August 2009 was held on 23 February 2010 at Cochin Port Trust where the COPT and the concerned users made their submissions.

12. Based on the market value assessed by the approved land valuer in 2009, COPT vide letter dated 16 February 2010 submitted a revised proposal for fixation / revision of lease rentals for its entire landed estate including the areas at Vallarpadam, Puthuvypeen, Bolgatty and Goshree areas. Port amongst other things stated in the revised proposal as under:-

- (i) There is no ready reckoner available for the land area.
- (ii) In spite of frequent requests, no information as regards the average rate of actual relevant transactions registered in last three years in the Port's vicinity was forthcoming from the Revenue Authorities.
- (iii) As regards the highest accepted tender value of port lands for similar transaction, CoPT had floated few tenders for the areas at South End Reclamation Area and Near South Coal Berth area in Willingdon Island and at Puthuvypeen, GIDA and Vallarpadam. Only the tenders floated in the Willingdon Island area were taken up as the tender floated for the Puthuvypeen area had to be discharged and there were no takers for the tenders floated for the GIDA and Vallarpadam areas.
- (iv) Since no information against item nos. (i) & (ii) above were forthcoming and the information under item no. (iii) above was not sufficient to arrive at any prudent decision, it was decided to consider the market value given by the approved valuer for the calculation of the lease rentals.

- (v) The committee headed by Chairman (COPT) which was constituted as per the Land Policy Guidelines has decided to adopt the market value submitted by the valuer and to propose the rentals based on the same.
- (vi) The lease rent has been proposed after taking 6% of the market value assessed by the valuer.
13. (i) The valuer in the final report has furnished different market prices for different localities viz. Willingdon Island, Vallarpadam, Puthuvypeen, Palluruthy, Fort Kochi, Bolgatty, Ernakulam, GIDA adjacent, Pachalam and Thevara with sub-divisions within the location, wherever necessary for different purposes i.e water front land used for Port operation, for commercial purposes – office etc, for warehouse purposes and for special residential and for different parcel sizes (upto 2 acres, 2 to 10 acres, 10 - 50 acres and above 50 acres of land). The market values of the land have been prepared based on the income approach, after collecting information / data from the district revenue office / land registrar's office etc.
- (ii) For finalizing the report the valuer has considered the Kerala Development Control Rules, the Fair Value of Land published by the Government of Kerala under the Kerala Stamp Act, 1959 (the fair value of land published by the Government is not yet implemented as reported by the valuer) Coastal Regulation Zones Rules, Special Economic Zone Act and The rent control Act. The valuer has also considered the population statistics of Ernakulam District. In addition to conducting market survey by collecting recent sales details and trends from builders, traders, local real estate agents, brokers, local residents and from property owners, the valuer has also obtained the details of relevant sales and lease deeds recorded in the offices of the relevant sub-registrars to analyze the sale considerations. At the joint hearing, the valuer, however stated that the actual sale value of lands, wherever available, were not fully considered. In respect of the properties not let out, the valuer has obtained the details of the annual rateable value from property assessment registers maintained in the revenue department of the respective panchayat / corporation office to arrive at the appropriate fair market rent/ fair value of the estate.
- (iii) Considering the area of plot, distance from central business district, distance from highway, distance from railway station, distance from market and shopping mall, access road width and distance from the port, appropriate weightages have been assigned by the valuer for determining the market value of the landed estate.
- (iv) The different market prices for different localities and for different purposes as assessed by the land valuer are furnished below:-

No	Location	Village	VALUE ARRIVED AT		RECOMMENDED VALUE FOR DIFFERENT TYPES OF PORT'S LAND							
			Rate per measure of land		Water front land which can be used for port operation				For Commercial Purpose - Office etc			
			For one acre (4047 Sqm)	For one sqm	Variation in rate on increase in size				Variation in rate on increase in size			
					Up to 2 Acres of land	2 to 10 Acres of land	10 to 50 Acres of land	Above 50 Acres of land	Up to 2 Acres of land	2 to 10 Acres of land	10 to 50 Acres of land	Above 50 Acres of land
1	W. Island	Thoppumpady	Rs15,000,000	3706	18000000	16200000	15300000	14400000	15,000,000	13,500,000	12750000	12000000
	a)W.Island SER	Rameswaram			The variation in rate is not reflected in the study -to be finalized after scrutiny							
	b)Landing cone of Naval Airport		Rs9,750,000	2409					9,750,000	8,775,000		
2	Vallarpadam	Mulavukadu	Rs21,000,000	5189	25200000	21420000	20160000	18900000	21,000,000	18,900,000	17850000	16800000
	a)SEZ Area		Rs24,150,000	5967	28980000	24633000	23184000	21735000	24,150,000	21,735,000	20527500	19320000
3	Puthuvypu	Puthuvypu	Rs14,500,000	3583	17400000	14790000	13920000	13050000	14,500,000	13,050,000	12325000	11600000
	a)SEZ Area	Elamkunnappuzha	Rs16,675,000	4120	20010000	17008500	16008000	15007500	16,675,000	15,007,500	14173750	13340000
4	PalluruthyDLB	Palluruthy	Rs13,000,000	3212								
	a)Waterfront		Rs17,702,958	4374								
5	FortKochi-Hotel	Fortkochi	Rs16,000,000	3954					16,000,000	14,400,000		
	Laweral Club		Rs8,000,000	1977					8,000,000	7,200,000		
	Customs/Kalvathi		Rs16,000,000	3954	19200000							
	Fort kochi Wharf		Rs16,000,000	3954	19200000	16320000						
6	Bolgatti	Mulavukadu	Rs21,000,000	5189	25200000	22680000	21420000	20160000	21,000,000	18,900,000	17850000	16800000
7	Ernakulam	Ernakulam										
	tankerberth		Rs23,000,000	5683	27600000							
8	GIDA Adjacent	Ernakulam	Rs23,000,000	5683					23,000,000	20,700,000	19550000	18400000
9	Pachalam	Ernakulam	Rs23,000,000	5683					23,000,000	20,700,000	19550000	
10	Thevara	Elamakulam	Rs18,000,000	4448	23400000				18,000,000	16,200,000	15300000	14400000

- Note: 1) For Activities for which CRZ is applicable suitable reduction in value should be considered depending on the length of water front
- 2) For SEZ area an increase in rate of 15 % should be considered
- 3) The land coming under HT Line should be excluded in the consideration.

No	Location	Village	RECOMMENDED VALUE FOR DIFFERENT TYPES OF PORTS LAND							
			For Ware House purpose				Special Residential			
			Variation in rate on increase in size				Variation in rate on increase in size			
			Up to 2 Acres of land	2 to 10 Acres of land	10 to 50 Acres of land	Above 50 Acres of land	Up to 2 Acres of land	2 to 10 Acres of land	10 to 50 Acres of land	Above 50 Acres of land
1	W. Island	Thoppumpady	12000000	10800000	10200000	9600000	11250000	10125000	9562500	9000000
	a)W.Island SER	Rameswaram	The variation in rate is not reflected in the study to be finalized after scrutiny.							
	b)Landing cone of Naval Airport									
2	Vallarpadam	Mulavukadu	16800000	15120000	14280000	13440000	15750000	13387500	12600000	11812500
	a)SEZ Area		19320000	17388000	16422000	15456000				
3	Puthuvypu	Puthuvypu	11600000	10440000	9860000	9280000				
	a)SEZ Area	Elamkunnappuzha	13340000	12006000	11339000	10672000				
4	PalluruthyDLB	Palluruthy					11700000			
	a)Waterfront						14162366	12038011		
5	FortKochi-Hotel	Fortkochi					12800000	10880000		
	Laweral Club									
	Customs/Kalvathi									
	Fort kochi Wharf									
6	Bolgatti	Mulavukadu	16800000	15120000	14280000	13440000	15750000	14175000	13387500	12600000
7	Ernakulam tankerberth	Ernakulam								
8	GIDA Adjacent	Ernakulam	18400000	16560000	15640000	14720000	17250000	15525000	14662500	13800000
9	Pachalam	Ernakulam					18400000			
10	Thevara	Elamkulam	14400000	12960000	12240000	11520000	13500000	12150000	11475000	10800000

- Note: 1) For Activities for which CRZ is applicable suitable reduction in value should be considered depending on the length of water front
- 2) For SEZ area an increase in rate of 15 % should be considered
- 3) The land coming under HT Line should be excluded in the consideration.

14. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details are also available at our website <http://tariffauthority.gov.in>

15. With reference to the totality of information collected during the proceedings of the two cases, the comments received from the users and the deliberations at the two joint hearings, the following points emerges:

- (i) As a part of its comprehensive tariff revision proposal filed in 2002, the COPT had included its proposal for revision of lease rentals also. This Authority in its Order No. TAMP/75/2002-COPT dated 16 December 2003, however, advised the port to submit a separate proposal for revision of lease rentals after following the procedure prescribed by Government for revision of lease rentals. Despite this specific advice, the port did not submit a proper proposal for revision of lease rentals in line with the government guidelines even when it filed its subsequent rate revision proposal in 2006. This Authority while revising its Scale of Rates in 2007 again directed COPT to file a proposal for revision of lease rentals within a period of three months after adhering to the procedure prescribed in the Government guidelines. The lease rental schedule as notified in the Kerala Gazette in 1996 was allowed to continue by this Authority in the Scale of Rates by COPT with a condition that the existing conditionalities governing estate related charges shall apply to the extent they are not inconsistent with the Government land policy guidelines announced in March 2004. Accordingly, the then existing annual escalation of 5 percent per annum was revised to two per cent escalation per annum with effect from March 2004.

- (ii) For the purpose of determining lease rentals for the lands belonging to the Port Trusts, this Authority is mandated to follow the land policy guidelines issued by the Government from time to time vide clause 8 of the tariff guidelines issued by the Government in March 2005. The policy announced by the Government in March 2004 on land and water management of Major Port Trusts clearly lays down the procedure to be adopted for determining the market value and the lease rental of the port lands. The market value of land can be determined taking into consideration any or all of the factors like (i) State Government's ready reckoner value, (ii) the average rate of actual relevant transactions took place in last three years for the lands in the port's vicinity, adding 2% escalation per annum, (iii) highest accepted tender value of port lands for similar transaction, (iv) rate arrived at by an approved valuer and (v) any other relevant factors as may be identified by the port. The lease rent has to be fixed at 6% of the market value of the land so determined and the rate is to be escalated by 2% per annum till such time the rate is revised with approval of this Authority.
- (iii) COPT in June 2007 submitted its proposal for some of its landed estate based on the average valuation of land obtained from revenue authorities for the years 2003 to 2005. While according approval to the lease rental proposals of KPT and VPT, this Authority had taken the view that it would be appropriate for a Port Trust to assess the market value under all options given in the Government guidelines. By letter dated 8 May 2008, COPT was, therefore, requested to reassess the market value of its landed properties under all options and derive lease rentals based on the one which is most beneficial to the Port. The port has reported that the State Government Ready Reckoner value is not available and the transaction value of lands is not forthcoming from the State authorities. It has also pointed out that the limited tendering / auction done by the port in the recent past may not be representative enough to base its proposal covering the entire estate. Therefore, valuation by the approved valuer has been relied upon.
- (iv) At the time of the Joint hearing held on 20 June 2009, the port informed that it has already appointed a professional valuer for determining scientifically the market value of its estates. Based on the valuer's interim report, KPT submitted an altogether new proposal dated 17 August 2009 to fix rentals for leasing of lands owned by it at Vallarpadam, Bolgatty, Puthuvypeen and Goshree areas stating that the lease rentals in respect of these areas were not included in the initial proposal dated 4 June 2007 of the Port. Thereafter, based on the market value furnished in the final report of the land valuer, COPT submitted a revised, combined proposal on 16 February 2010 for fixation / revision of lease rentals of its entire landed estate including Vallarpadam, Bolgatty, Puthuvypeen and Goshree areas. In the stated circumstances, a combined Order covering the entire landed estate of COPT is being issued.
- (v) The final valuation report furnished by the COPT proposes the different market prices for different localities (i.e. Willingdon Island, Vallarpadam, Puthuvypeen, Palluruthy, Fort Kochi, Bolgatty, Ernakulam, GIDA adjacent, Pachalam and Thevara with sub-divisions within the location, wherever necessary) for different purposes (viz. water front land used for Port operation, for commercial purposes – office etc, for warehouse purposes and for special residential) and for different parcel sizes (upto 2 acres, 2 to 10 acres, 10 - 50 acres and above 50 acres of land). It is seen from the valuation report that the market values of the land have been assessed based on the income approach, after collecting information / data from the district revenue office / land registrar's office etc. Evidences of the various documents / records used by the valuer for arriving at the market price have been considered and accepted by the committee headed by the Chairman of COPT as stipulated in the Government's land policy guidelines. It is noteworthy the committee included revenue authorities viz. the sub-collector of Fort Cochin, Ernakulam and Town Planner, GCDA, Ernakulam.
- (vi) The valuation report claims to have considered the Kerala Development Control Rules, the Fair Value of Land published by the Government of Kerala under the Kerala Stamp Act, 1959 (the fair value of land published by the Government is not yet implemented as reported by the valuer) Coastal Regulation Zones Rules, Special Economic Zone Act and The rent control Act. The valuer has also considered the population statistics of Ernakulam District. In addition to conducting market survey by collecting recent sales details and trends from builders, traders, local real estate agents, brokers, local residents and from property owners, the valuer has also obtained the details of relevant sales and lease deeds recorded in the offices of the relevant sub-registrars to analyze the sale considerations. In respect of the properties not let out, the

valuer has obtained the details of the annual rateable value from property assessment registers maintained in the revenue department of the respective panchayat / corporation office to arrive at the appropriate fair market rent/ fair value of the estate.

- (vii) Considering the area of plot, distance from central business district, distance from highway, distance from railway station, distance from market and shopping mall, access road width and distance from the port, appropriate weightages have been assigned by the valuer for determining the market value of the landed estate. As per the valuation report for activities for which CRZ is applicable, suitable reduction in value is considered depending on the length of water front. Further, for SEZ area an increase in rate of 15% is considered.
- (viii) Although the valuer has given market value for different parcel sizes (upto 2 acres, 2 to 10 acres, 10-50 acres and above 50 acres of land), for computation of the lease rentals, the COPT has relied upon the assessed market value of the land upto 2 acres for proposing the lease rents.
- (ix) To sum up, the COPT has stated that the valuation report has been prepared after identifying the properties, stating assumptions and limitations, giving pertinent facts about the property, the result of investigations, analysis and explaining the reasoning leading to estimation of market value of the landed estates. At the joint hearing, it was also submitted that value of the lands in some pockets is considered lower than the market value available. In any case, the valuation is accepted by the Port and endorsed by the Committee headed by Chairman of COPT which included representatives of State Revenue Authorities. This Authority is, therefore, inclined to consider the proposal framed by the port based on the valuation report.
- (x).(a) The Cochin Port Leaseholders Association and the Cochin Chamber of Commerce and Industry have contended that the base rent of the leases executed for a period of thirty years cannot be varied legally during the existence of the period of lease. They have also contended that the long term leases being a statutory contract, in the absence of the statute specifically providing for a variation of the rent, it is not legally permissible to vary the rent during the currency of the lease. The port in reply to this contention has stated that a specific clause stating that " the base lease rent will undergo upward revision after every block of 5 years based on the then existing Scale of Rates" is incorporated in all the lease deeds entered into after 1 January 1996 and in the case of land allotted before 1 January 1996 the lease deed clearly states that "the lessor has the right to increase the lease rent after every 5 years by an amount not exceeding 100%".
- (b) The lease agreements on the lands allotted / renewed prior to 1 January 1996 at Willington Island reportedly contain a clause to the effect that the ceiling in increase in rentals should be limited to 100% of the original rate mentioned in the agreements. Since revision based on market value cannot be resorted in these cases, the port has proposed to hike the rate in rentals at 100% of the original rates as of 1 January 1996 and has accordingly proposed a separate section in the draft SOR in this regard. In this context it is worth mentioning that the rates to be prescribed in the SOR are ceiling levels. The revised rates approved by this Authority are to be applied in the existing leases as per the provisions of periodic revision of rents agreed in the surviving lease agreements. It is, therefore, not considered necessary to fix separate lease rentals for the lands allotted / renewed prior to 1 January 1996 at Willingdon Island as proposed by the Port.
- (xi) DP World has contended that the Vallarpadam SEZ is a reclamation site and the soil thereat is extremely poor. According to it, any party taking land thereat will have to invest considerably on soil stabilization prior to building any physical infrastructure to benefit from the lease. COPT has countered this argument by stating that several benefits like exemption from various duties, taxes etc. are available for the commercial establishments and hence the lease rent will not be the factor which decides the coming up of commercial establishments at these areas.
- (xii) The Petronet LNG Limited has stated that most of the land at Puthuvypeen falls within CRZ restricted area which can be used mainly for storage of oil and gas products and other allied facilities. It has also contended that these storage facilities would not generate the revenues as

has been projected in the valuation report. According to Petronet LNG any increase in rental midway would further make the projects planned at Puthuvypeen unviable. In reply, COPT has stated that as against the market price of Rs. 2 crores per acre initially indicated in the interim valuation report, it has been assessed at Rs. 1.06 crores per acre as per the final report treating the land area leased to Petronet LNG Limited as for warehouse purposes. It is noteworthy that as per the valuation report, for activities for which CRZ is applicable, suitable reduction in value has been considered depending on the length of the water front.

- (xiii) In the existing SOR, port lands allotted / leased out after 1 January 1996 have been categorized under residential purpose, industrial purpose and commercial purposes. Based on the valuation report, the port has proposed to categorise the land with water frontage for berth and backup, commercial / office (other than warehouse) purposes, warehouse purposes and special residence purpose. COPT has proposed to fix rentals in respect of the lands at Vallarpadam, Puthuvypeen, Bolgatty and GIDA areas also under the various categories mentioned above. At Vallarpadam SEZ area, Puthuvypeen, Puthuvypeen SEZ area, Fort Kochi-Laurel club, Fort Kochi Customs and Fort Kochi Wharf, land is not proposed to be leased out for residential purpose. The market value and the annual rental derived therefrom varies substantially depending on the purpose for which the land is put to use. In order to ensure that no unnecessary dispute is raised on classification of lands, the port should immediately put in place transparent parameters in accordance with its land use plans for declaring its landed estates spread over different areas under the four different groups mentioned above.
- (xiv) In the Order No. TAMP/11/2009-COPT dated 23 February 2010 pertaining to the general rate revision proposal of COPT, this Authority has accorded approval to a rate of Rs. 10/- per square meter per week for open area and Rs. 12.50 per square meter per week for covered area as a new tariff item under the nomenclature "charges for storage of cargoes at the specified transit areas on license basis" vide Section 3.2.3 of the SOR of KOPT. For licensing of covered and open areas for a period of upto 11 months at areas other than the specified transit areas referred to above, the port has proposed to levy a rate of Rs.45/- and Rs. 35/- per square meter per month respectively. The rates prevailing with effect from 1 October 1996 (with no annual escalation) for temporary lease of covered space is Rs 400 per 10 square meter per month and for open space the rate is Rs. 170/- for 10 square meter per month for commercial purpose, Rs. 100/- for 10 square meter per month for industrial purpose and Rs. 200/- for 10 square meter per month for hard surface area. The proposed rates of Rs. 45 and Rs. 35 per square meter per month for covered and open areas respectively are not to the extend of market value of land as assessed by the valuer. Since the proposed land rates show an increase of about 558 % over the rates prescribed in 1996, the rate increase of 10% and 106% respectively proposed by the port for open area and covered area appears to be in order.
- (xv) In the existing SOR, a rate of Rs. 70 per square meter per month is provided for office accommodation leased to parties on area basis. The rate prevailed as on 31 March 2010 was Rs. 102.90 after considering the annual escalation factor. The proposed rates of Rs. 150 per square meter per month for covered office accommodation is not to the extend of market value of land as assessed by the valuer. Since the proposed land rates show an increase of about 558 % over the rates prescribed in 1996, the rate increase of about 114% proposed by the port for office accommodation appears to be in order.
- (xvi) The existing Scale of Rates of COPT which was earlier approved by the Government sanction provides for sub-lease. For subleasing of godown and office space accommodation, the rates prevailing with effect from 1 October 1996 (with an annual escalation of 5% till March 2004 and with a 2% escalation thereafter) is Rs. 100/- and Rs. 125/- respectively per 10 square meter per month. The Port has now proposed to revise the rate of sub-lease as Rs. 25 per square meter per month or part thereof. As per the earlier policy guidelines for land / water front management for major ports issued by the Government under No. PT-17011/55/87-Pt, dated 1 April 1995, the leased property shall not be transferred by the lessee to any third party either by way of sub-lease, rent or any other means. The same policy guidelines also state that any sub-letting assignment without the prior approval of the authority which sanction the lease shall make the lease liable for cancellation. As a corollary it means that the sub-letting is permissible, if the COPT approves it. As per the Government's land policy for Major Ports, issued in March 2004, subject to the fulfillment of the conditions specified therein, lessees can be permitted to transfer the lease (in case of leases granted on upfront basis) on payment of a fee to the Port equal to

50% of the difference between the current upfront premium and the original upfront premium, weighted for the balance lease period. In case of leases which were originally granted on annual lease rent basis, in addition to the charges stated above, as per Government's land policy, transfer can be allowed subject to the payment of an upfront premium, equivalent to the NPV of the lease rent calculated as prescribed in the policy document for the remaining period in accordance with the prevailing SOR / Rates approved by the competent authority. On the issue of transfer fees, this Authority has already clarified under its earlier Orders dated 4 February 2000 and 31 August 2000 in case No.TAMP/10/2000-Gen that TAMP does not have the authority to approve levy of lease transfer fee/mortgage fee by the Major Ports in the absence of a specific provision in the MPT Act, 1963. In the Order dated 31 August 2000 it has also been clarified that TAMP does not have the power to disapprove such levies and the Port Trusts can, at their discretion and responsibility, take their own decision in this matter without involving this Authority.

- (xvii) As per the existing SOR, the rent for fumigatorium for storage of export cargo is Rs. 20/- per 10 square meter or less per day. COPT in its proposal dated 4 June 2007 has suggested a rate of Rs. 3 per square meter per month or part thereof. Informally, the port has confirmed that its proposal in fact is for a rate of Rs. 3 per square meter per day and not per month. The rate levied as on 31 March 2010, based on the annual escalation factor, is Rs. 29.40 per 10 Square meter or less per day. This Authority, therefore, approves a rate of Rs. 3 per square meter per day or part thereof as rent for fumigatorium for storage of export cargo.
- (xviii) The way leave charges for laying pipelines through port's land has been Rs.100/- per square meter per year for the area occupied by the pipeline with effect from 1 October 1996. The levy as per the existing rate with the escalation factor is Rs. 147 per square meter per year as on 31 March 2010. COPT in its proposal dated 4 June 2009 has suggested a rate of Rs. 30/- per square meter per month as way leave charges. Considering the increase in land rates by about 558 % over the rates prevailed in 1996, the rate increase of 260 % proposed by the port in the way leave charges appears to be in order. It is to be mentioned herein that this Authority in its Order No. TAMP/41/2003-JNPT dated 10 August 2004 has clarified that for the purpose of way leave charges, the area occupied by single pipelines should be calculated based on the diameter and length of those pipelines. In case of multi-layer pipeline stacks, the physical area occupied by the multilayer pipeline stacks should be considered and the respective users should be billed for pro-rata area on the basis of the diameter and length of their pipelines passing through that area. With respect to the area shared with road, rails, jetties, etc., the respective users should be billed pro-rata for 50% of concerned area assuming that they do not have exclusive possession of land and what they have is only 'Right of Way'. As far as underground pipes are concerned if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines should be counted 50% of the product of diameter and length, for the purpose of levy of way leave charges.
- (xix) When the lease rentals were earlier approved by the Government, it was with a 5% annual escalation on cumulative basis. This annual escalation of 5% was challenged by the lease holders association and others and the Honourable High Court of Kerala by a common judgment dated 10 July 2003 has held that the 5 % annual escalation should be on base rent and not on cumulative basis. As understood from the Port, the Government of India, COPT and some lessees have moved Special Leave Petitions (SLP) before the Hon'ble Supreme Court and these cases are still pending for decision of the Hon'ble Supreme Court. It is, therefore, clarified that the Order being passed on the COPT's proposal by this Authority for revision of lease rentals shall apply to the extent it is not inconsistent with the orders to be passed by the Hon'ble Supreme Court. Further, the revised rates approved by this Authority, which are in any case ceiling rates, are to be applied in the existing leases strictly as per the provisions of the surviving lease agreements about periodic revision of the lease rents.
- (xx) As per the Government guidelines, the lease rent fixed is subject to an automatic annual escalation at 2% with effect from 1 April 2011.
- (xxi) As per the information furnished by COPT, an additional income of about Rs. 377 lacs per annum would be generated from the existing leases due to the rate revision.

- (xxii) COPT has sought approval to revise the rates only prospectively as is evident from the note of discussion preambled to the Trustees Resolution No. 53, dated 29 June 2007 wherein it has been clarified in reply to a trustee's enquiry that the revision would have only prospective effect. This Authority, therefore, accords approval to the proposal to revise the rentals prospectively. The revised rates and conditionalities will, therefore, become effective after expiry of 30 days from the date of notification of the Order in the Gazette of India and shall be in force for five years. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.

15. In the result, and for the reasons given above and based on a collective application of mind, this Authority in supersession of the existing Chapter VII – Estate Rentals to the COPT's Scale of Rates accords approval to the rates of lease rental for allotment of land of COPT as per the **ANNEX** attached hereto.

(Rani Jadhav)
Chairperson

CHAPTER –VII**ESTATE RENTALS****7.1. Lease of Port land at various locations**

Amount in Rs.

Sl. No.	Location	Land with water frontage for berth & back up	Commercial/office (other than warehouse) purposes	Warehouse purposes	Special Residence Purpose
		Per Hectare per annum	Per Hectare per annum	Per Hectare per annum	Per Hectare per annum
1	Willingdon Island	2667600	2223000	1778400	1667250
	" " - Landing cone of	----	1444950	---	---
	Naval airport	-----	-----	-----	-----
2	Vallarpadam	3734640	3112200	2489760	2334150
	" " - SEZ Area	4294836	3579030	2863224	---
3	Puthuvypeen	2578680	2148900	1719120	-----
	" " - SEZ Area	2965482	2471235	1976988	-----
4	Palluruthy - DLD	---	---	---	1733940
	" " - Water front	---	---	---	2098863
5	Fort Kochi - Hotel	---	2371200	---	1896960
	" " - Laurel Club	---	1185600	---	---
	" " - Customs	2845440	---	---	---
	" " - Wharf	2845440	---	---	---
6	Bolghatty	---	3112200	2489760	2334150
7	Ernakulam - Foreshore				
	" " - GIDA Land	---	3408600	2726880	2556450
	" " - Pachalam	---	3408600	---	2726880
	" " - Thevara	---	2667600	2134080	2000700

Note:- To arrive at the rate per Are per annum, the rate per hectare per annum may be divided by 100.

7.2 The License fee for the covered & open area licensed for a period up to 11 months at areas other than that specified under transit area vide Section 3.2.3 of the SOR.

Particulars	Rs. per sq. metre. or part thereof per month or part thereof from the date of allotment
Covered Space	45
Open Storage	35

7.3 Charges for Office Accommodation

Particulars	Rs per sq.metre per month or part thereof
Covered Space – Office Accommodation	150

7.4. Rent for fumigatorium for storage of export cargo : Rs. 3 per sq.meter per day or part thereof.

7.5. Way leave charges for laying pipelines through ports land : Rs. 360 per sq. meter per annum for the area occupied by pipeline.

Note to Section 7.5 above: For the purpose of way leave charges, the area occupied by single pipelines should be calculated based on the diameter and length of those pipelines. In case of multi-layer pipeline stacks, the physical area occupied by the multilayer pipeline stacks should be considered and the respective users should be billed for pro-rata area on the basis of the diameter and length of their pipelines passing through that area. With respect to the area shared with road, rails, jetties, etc., the respective users should be billed pro-rata for 50% of concerned area assuming that they do not have exclusive possession of land and what they have is only 'Right of Way'. As far as underground pipes are concerned if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines should be counted 50% of the product of diameter and length, for the purpose of levy of way leave charges.

General Notes to Chapter VII Estate Rentals:

- (1) All the base rates mentioned above are subject to an automatic annual escalation of 2 %.
- (2) All the conditions governing lease rentals shall be in line with the government guidelines.

SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARNG BEFORE THE AUTHORITY.

No. TAMP/33/2007-COPT - Proposal received from the Cochin Port Trust for revision of lease rentals of port land

A Summary of the comments received from the user organizations on the proposal dated 4 June 2007 are summarized below:

Sl.No.	Comments by users / user organisations	Reply of Cochin Port Trust
1 and 2.	Cochin Port Lease Holders' Association and Cochin Chamber of Commerce & Industry	
(i).	With Port revenues set to increase with the commissioning of the new projects, we fail to understand why the Cochin Port would contemplate a proposal to increase the lease rentals at an exorbitant manner.	No comments
(ii).	We assume that the reason for the proposed enhancement is to earn returns on investment. To this we would like to respond by saying that no actual investment has been made by the Port Trust on these lands that has not already been recovered by them from the lessees several times over in the intervening years.	No comments
(iii).	So long as the lessees are engaged in Port related commercial activities concession should be allowed to them. These activities contribute towards the national interest by promoting exports etc.	No comments
(iv).	The proposal to increase the rental rates will instantly render the carrying on of business activities on the Willingdon Island uneconomical.	No comments
(v).	The new proposal envisages a doubling of the sublease levies. The restrictions on height etc. imposed by the Navy make it difficult to exploit the potential that really exists at Willingdon Island.	No comments
(vi).	The leases have been executed for long durations of 30 years. The lease provides for a base rent. The base rent cannot be varied legally and factually during the existence of the period of lease. The base rent can be modified or changed only at the time of renewal of lease.	A specific clause stating that " the base lease rent will undergo upward revision after every block of 5 years based on the then existing Scale of Rates" is incorporated in all the Lease Deeds entered into after 1.1.1996 and in the case of land allotted before 1.1.1996 the lease deed clearly states that "the lessor has the right to

		increase the lease rent after every 5 years by an amount not exceeding 100%". Hence the contention made by the Users that the base rent cannot be changed during the existence of the lease period is not correct.
(vii).	Power of fixation of rent by the Board with Government approval and notification contemplated under Section 49(1)(c) of the Major Port Trusts Act can apply only to new leases to be entered into after such notification. In other words, any variance in the base rent cannot apply to the leases entered into prior to the notification and can have only prospective application that too to leases entered thereafter.	Please see remarks at (vi) above
(viii).	Section 49(1)(c) applies only to temporary leases of short duration and not to long term leases. Long term leases are governed by Sections 33 and 34 of the Major Port Trusts Act as has been held by the Hon'ble Court of Bombay in 1990 (92) Bombay Law Reporter 596 at page 609. Thus long term leases being a statutory contract, in the absence of the statute specifically providing for a variation of the rent, it is not legally permissible to vary the rent during the currency of the lease.	Please see remarks at (vi) above
(ix).	The proposal of COPT to revise the rent is also legally unsustainable. Under Section 17 of the Indian Registration Act 1908, all leases for more than one year are to be registered mandatorily. Accordingly, the lease deeds have been registered. While registering under the Kerala Stamp Act 1959, stamp duty is liable to be paid on the average annual rent fixed in the lease deed. As per Article 33(v) of the Schedule to Stamp Act, the stamp duty payable for leases of thirty years is calculated on three times the amount or value of the average annual rent fixed in the deed. On the basis of the annual rent fixed which is the base rent, stamp duty has been paid and it is valid for the period of 30 years mentioned therein.	It is a fact that the lessee has to execute a lease-deed within the stipulated time for the leased land on observance of due formalities for the period of allotment. However the contention put forth does not seem to be relevant, in as much as (a) the lease deed duly entered into clearly specifies that the base lease rent will undergo upward revision after every block of 5 years based on then existing Scale of Rates (b) the Government guidelines dated 8.3.2004, vide serial no. 5.3. (1) (d), clearly stipulate the Scale of Rates will be revised every 5 years.
(x).	In February 2007, the Cochin Port Trust vide its Circular No. CAD/COSTING/SOR-TAMP/2007 dated 17 February 2007 informed us that the Tariff Authority for Major Port Trusts vide its Notification No.TAMP/64/2006-COPT dated 9 February 2007 had approved a general revision of the Scale of Rates of the Cochin Port Trust. It was also mentioned that the revised	COPT, while submitting the Tariff Revision Proposal to TAMP in 2002, had also included the revision of Lease Rent in it. But TAMP vide Notification No. TAMP/75/2002 – COPT dated 9 th January 2004 specifically instructed that the lease rent revision proposal should be prepared as per the Land Policy Guidelines and asked COPT to

	<p>Scale of Rates and conditionalities of the Cochin Port Trust will become effective after the expiry of 30 days from the date of Notification of the Order in the Gazette of India and shall be in force till 31 March 2009. As per this Circular, one would understand that the rates notified by the Tariff Authority for Major Port Trusts shall be effective till March 2009 and there would be no change in the interim. We therefore fail to understand the rationale behind the new proposal for an increase in lease rentals. As per the notification mentioned above the change that was effected by the Tariff Authority for Major Port Trusts was to the effect that the annual 5% increase in rent shall be effected till March 2004 and that thereafter the annual increase shall be at the rate of 2% per annum. TAMP's Order pertaining to this has not to date been implemented by the Port Trust. We are still subject to the 5% increase per annum.</p>	<p>continue with the existing rates prevalent since 1996. As per the Land Policy Guidelines, the lease rentals have to be revised once in every 5 years (Clause no. 5.3 (1)(d)) and Port has not revised the lease rentals for Port lands for the last 10 years. Hence Port has submitted a proposal after complying with all the provisions in the Land Policy Guidelines dated 08.03.2004.</p>
(xi).	<p>The facts and figures mentioned in the proposal submitted by Cochin Port Trust are highly unreasonable. No market value for these lands has been fixed by the government till date to the best of our knowledge. The COPT has adopted a rate pattern that is not based on any reasonable rationale.</p>	<p>It is a fact that no market value has been fixed by Government for the land at Willingdon Island. Due to this, the market value for the 3 years from 2003-05 of adjoining areas with commercial activity like 'Thoppumpady Junction' was obtained from the Revenue Authorities and on the basis of the same lease rent was calculated</p>
(xii).	<p>The big question is whether a revision as suggested is warranted at this stage. With the rates of the COPT for all categories being on the highest in the country, it is a fact that business is being diverted through other ports like Tuticorin. Our cost competitiveness has taken a beating and many times we find ourselves unable to compete with other ports. In such a situation, it would be suicidal to consider an increase in any existing rates let alone the lease rentals.</p>	<p>The last revision of Lease Rent for COPT land was effected from 1.1.1996. As per the Land Policy Guidelines, the lease rentals have to be revised once in every 5 years (Clause no. 5.3 (1)(d)) and Port has not revised the lease rentals for Port lands for the last 10 years. Hence Port has submitted a proposal after complying with all the provisions in the Land Policy Guidelines dated 08.03.2004.</p>
3.	Indian Chamber of Commerce and Industry.	
(i).	<p>The new proposal envisages a steep increase in the sub-lease levies. The office accommodation, godown space and warehouses are used for port related activities. There are strict restrictions which stand in the way of utilising the land allotted to private parties to the full extent. Moreover, the area of open space within the port limits available for the construction of office</p>	<p>The last revision of Lease Rent for COPT land was effected from 1.1.1996. As per the Land Policy Guidelines, the lease rentals have to be revised once in every 5 years (Clause no. 5.3 (1)(d)) and Port has not revised the lease rentals for Port lands for the last 10 years. Hence Port has submitted a proposal after complying with all the provisions in</p>

	accommodation/ godown space is not increasing. As a result the port is getting maximum revenue out of the available land. There is no chance of getting land at competitive prices and the allottees have no other alternative than to pay the stipulated levies and to agree to the terms and conditions dictated by the COPT.	the Land Policy Guidelines dated 08.03.2004.
(ii).	If the present proposal is approved it will further push up the rates of Port levies which will, in turn, add to the cost of exports as well as imports effected through this port vis-a-vis the consorted efforts for a sustained growth in cargo traffic.	COPT has introduced many concessions in tariff like 50% reduction in the vessel related charges of mainline vessels, an overall concession of 30% in the vessel related charges of feeder vessels, reduced wharfage and storage charges for export of timber etc. Other proposals of the like are also in the pipeline.
4.	Cochin Steamer Agents' Association	
(i).	The proposal to revise the lease rental will result in additional administrative costs for steamer agents as well as a steep increase in container storage costs. This will adversely affect the competitiveness of shipping companies at Cochin. Cochin presently enjoys the advantage of having virtually all shipping related offices and institutions located on the Willingdon Island. These include the offices of the Cochin Port Trust, Customs, IGTP, shipping agencies, clearing & forwarding agencies etc. This gives the shipping trade at Cochin an edge as it assists in closer interaction between the trade which in turn helps increase business activity. Unfortunately, the steep increase in lease rentals proposed by the port could, if implemented, result in several shipping offices having to relocate in other parts of the city.	The last revision of Lease Rent for COPT land was effected from 1.1.1996. As per the Land Policy Guidelines, the lease rentals have to be revised once in every 5 years (Clause no. 5.3 (1)(d)) and Port has not revised the lease rentals for Port lands for the last 10 years. Hence Port has submitted a proposal after complying with all the provisions in the Land Policy Guidelines dated 08.03.2004.
(ii).	Lease holders contribute to the overall business of the port. Rather than making their presence in the port uneconomical, the port should in fact take steps to provide them concessions so that they continue to contribute to the growth of the port.	A specific clause stating that " the base lease rent will undergo upward revision after every block of 5 years based on the then existing Scale of Rates" is incorporated in all the Lease Deeds entered into after 1.1.1996 and in the case of land allotted before 1.1.1996 the lease deed clearly states that "the lessor has the right to increase the lease rent after every 5 years by an amount not exceeding 100%".
(iii).	Most lease agreements with the Cochin Port are on a long term basis. Accordingly, there should be no change in the rental amount till the expiry of the lease period. We feel proposal to	COPT has introduced many concessions in tariff like 50% reduction in the vessel related charges of mainline vessels, an overall concession of 30% in the

	substantially increase rentals would only contribute to making the operations at Cochin Port more expensive and less competitive than other locations. We would request that the proposal by the port to increase rentals is turned down.	vessel related charges of feeder vessels, reduced wharfage and storage charges for export of timber etc. Other proposals of the like are also in the pipeline.
5.	The Cochin Custom House Agents' Association	
(i).	Recently, Cochin Port Trust has revised its tariff by about 40% and the new rates have come into effect from 11.3.2007. As per the licensing agreement entered into between M/s.DP World and Cochin Port Trust, Cochin Port Trust is getting 33% of the share of income generated by M/s.IGTPL. In effect Cochin Port Trust is equally benefited by the increase being made by M/s.IGTPL every year. These increases are adding on to the cost of exports/imports made through Cochin Port.	No comments
(ii).	Some of our members and port users have their own land taken on lease for 30 years from Cochin Port and constructed their own building while some other members are running their export/import business from the rented out buildings at Willingdon Island. The steep increase as proposed by Cochin Port would detrimentally affect their business prospects.	No comments
(iii).	Cochin Port Trust has entered into lease agreements with various Port users and these lease agreements are executed for duration of 30 years. The lease deed provides for a base rent. The base rent cannot be changed legally during the existence of the period of lease. It can be done so only at the time of renewal of the lease.	A specific clause stating that "the base lease rent will undergo upward revision after every block of 5 years based on the then existing Scale of Rates" is incorporated in all the Lease Deeds entered into after 1.1.1996 and in the case of land allotted before 1.1.1996 the lease deed clearly states that "the lessor has the right to increase the lease rent after every 5 years by an amount not exceeding 100%".
(iv).	We do not agree with the facts and figures mentioned in the proposal submitted by Cochin Port Trust pertaining to the market value adopted by Cochin Port Trust. No market value has been fixed by the Government so far. Cochin Port in its proposal has mentioned that the revenue authorities of the Government in its meeting with port officials held on 19 May 2007 reported that it would take some more time to finalise the current market price of the land. Yet the port authorities have gone ahead and adopted a rate pattern at their whims and fancies which is not based on any reasonable rationale and cannot be accepted at all.	It is a fact that no market value has been fixed by Government for the land at Willingdon Island. Due to this, the market value for the 3 years from 2003-05 of adjoining areas with commercial activity like Thoppumpady Junction' was obtained from the Revenue Authorities and on the basis of the same lease rent was calculated. A detailed proposal for revision of lease rentals were prepared based on the information collected from the District Revenue Authorities and was placed before the Committee in the meeting held in January 2007. While

		<p>deliberating, the RDO stated that the details of market price available with the local revenue bodies are old and that they do not represent the current market price. R.D.O. also stated that process is on to revise the market price and a draft copy of the same will be made available to COPT as and when it is ready.</p> <p>At the meeting held by the Port with the Revenue Authorities in May 2007, the Revenue Authorities reported that it would take some more time to finalise the current market price. Also TAMP vide Order no. TAMP/63/2005 - COPT dated 25th January 2007 had directed COPT "to file its proposal in line with the Government guidelines within 3 months from the date of notification of this Order". Hence Port decided to submit the proposal without further delay with the details of market price available with it.</p>
(v).	We would request TAMP not to accept the proposal of Cochin Port for revision in the lease rentals of Cochin Port.	COPT has introduced many concessions in tariff like 50% reduction in the vessel related charges of mainline vessels, an overall concession of 30% in the vessel related charges of feeder vessels, reduced wharfage and storage charges for export of timber etc. Other proposals of the like are also in the pipeline.
6.	DP World(India Gateway Terminal Private Ltd.)	
	<p>Major portion of hard surfaced area is that of CFS. As no other CFS facilities are presently available in and around Cochin, the proposed 100% increase in rental for hard surface area will severely affect the work.</p> <p>We also have our reservations in increasing the rent in other areas as well, as this will cause adverse impact on the end customers.</p>	No comments received
7.	The Tea Trade Association of Cochin.	
	Our members extensively use the Cochin Port land and buildings for warehousing, blending, packing etc. of the export cargo. The steep increase in land lease rental in Cochin Port area in Willingdon Island will very adversely affect the export/import trade in general and tea industry in particular. The warehouse rent is almost directly proportional to the land rentals. Any substantial increase in warehouse rental cost will inevitably force the tea	No comments received

	industry out of the port area. The tea trade in Cochin is historically concentrated in Willingdon Island due to its proximity to the port. If the proximity, however, results in unviable handling cost, bare economic factors will force the trade away from the area.	
8.	United Stevedores Association	
	The increase in sub-lease levy will become a heavy burden on our members as they have taken on sub-lease office space from the lease holders. Therefore, our members feel that an increase in rent is not warranted as there is an increase in land rent at 5% of the basic every year under the previous order.	The last revision of Lease Rent for COPT land was effected from 1.1.1996. As per the Land Policy Guidelines, the lease rentals have to be revised once in every 5 years (Clause no. 5.3 (1)(d)) and Port has not revised the lease rentals for Port lands for the last 10 years. Hence Port has submitted a proposal after complying with all the provisions in the Land Policy Guidelines dated 08.03.2004.

2. A joint hearing in this case was held on 20 June 2009 at Cochin Port Trust where the COPT and the concerned users made their submissions. The gist of the joint hearing held is as under:-

COPT

- (1) Power Point presentation of the proposal.
- (2) Despite our best efforts, we could not get current market valuation from the Revenue Authorities. Since the existing rates were fixed nearly 14 years ago, it is necessary to revise them early and, therefore, we could not indefinitely wait for the valuation to be done by the State Revenue Authorities.
- (3) As advised by TAMP, we have appointed professional Valuers whose report will be available in the next two weeks.

Cochin Port Lease Holders' Association

- (4) The proposal lacks the basis. Recorded transaction at a far away place in the town cannot be the guide to assume the same value for port estates.
- (5) We have given our written comments. Please consider them.

3. A Summary of the comments received from the user organizations on the proposal dated 17 August 2009 are summarized below

(Tamp/31/2009-COPT):

SI.No.	Users	Reply furnished by COPT
1	Petronet LNG Limited	
(a)	<p>TAMP vide No. TAMP/33/33-COPT dated 6 January 2000 had fixed the lease rent for land needed for PLL terminal at Puthuvypeen in the Cochin Port area for 50 Ha. Of land at rate of Rs. 2,06,000/- per hectare per annum (1999 base) with 5% escalation every year. COPT however allotted us only 33.4 Ha. Of land. The existing rent is Rs. 3,09,000 per Ha. While fixing the above rate of rent, TAMP also recognized that high cost of lease rent at Puthuvypeen would affect the financial viability of the project adversely.</p> <p>If the lease rent is increased, the project viability will be drastically affected.</p>	<p>The extract of the said corrigendum is given below.</p> <p>“2(v) The Board of Trustees of the Cochin Port Trust (COPT), however, decided to fix the base price of land at Rs. 25,000/- per cent for the reason that high cost of lease rent would affect the financial viability of the project adversely. The lease rent on the base price of land at Rs. 25,000/- per cent has been approved by the Board subject to the following conditions:</p> <ul style="list-style-type: none"> (i) To provide for a uniform 5% annual increase in rent with an option to re-fix the base rate after every five years till the land connection to Vypeen is ready. (ii) To revise the lease rent when construction of the link bridge from Ernakulam to Vypeen is completed. <p>The link bridge between Ernakulam and Vypeen has already been commissioned on 30 April 2004. The land was handed over to LNG on the following dates:-</p> <ol style="list-style-type: none"> 1. 32.3611 Ha on 12.06.2005 2. 1.0404 Ha on 20.07.2007 <p>Since the handing over of land has happened after the commissioning of the link bridge, the port has the right to revise the lease rent as per item no. (b) above, which the Port is proposing now.</p>
(b)	<p>The existing lease rent (for PLL land) with 5% escalation every year is already exorbitant considering that the lease rent for the facility created by BPCL-KRL facility at the same location is fixed at Rs.2,50,000 per Ha. Without any escalation for 30 years.</p>	<p>The rates fixed for BPCL-KR is Rs. 2.5 lakhs per Ha per annum and is without any escalation for 30 years. The lease rent fixed was as per a separate MoU signed on 11 June 2003 between BPCL-KR and COPT. Hence it is not reasonable to compare the lease rent fixed for BPCL KR with that of the lease rent fixed for PLL.</p> <p>Article 1 of the License Agreement clearly stipulates that COPT has the right to revise the lease rent rates. The clauses envisaging the same is reproduced below.</p>

		<p>(i). The Lessee shall pay the Lessor during the said Term yearly lease rent clear of all deductions corresponding to the base lease rent @ Rs.2,06,000/- (Rupees two lakhs six thousand only) per hectare per annum for the base date of 29-10-1999 with 5% annual cumulative increment in the lease rent during the block of 5 (five) years.</p> <p>(ii). The base lease rent will undergo upward revision after every block of 5 (five) years based on the Scale of Rates approved and notified from time to time by TAMP or any such other competent authority under the provisions of the MPT Act, as applicable.”</p>												
<p>(c).</p>	<p>The valuation carried out by an independent valuer of COPT, which is leading to the proposal for revision of rent, is impracticable and based upon erroneous assumptions. The valuation is based by calculating the income receivables from business, which are not feasible at the location. In fact most of the land at Puthuvypeen falls within CRZ restricted area, and can be used mainly for storage of oil and gas products and other allied facilities. These storage facilities would not generate the revenues as has been projected in the valuation report. Since no other projects are envisaged to be coming up at this site, COPT seems to compensate itself by using high lease rent as a means of income, which cannot justify the basis for rent revision. Being a developer of the Puthuvypeen SEZ, it is expected from COPT to ensure that whatever project is planned at the site is allowed to run at its full term and not become financially un-viable in the mid way.</p>	<p>The appointment of Approved valuer is in line with the Land Policy Guidelines. The lease rent proposed as per the Market Price given for Puthuvypeen area in the Interim Report submitted by the Valuer is as follows: Rs.</p> <table border="1" data-bbox="976 1016 1474 1330"> <tr> <td>Market Price assessed by the valuer</td> <td>2,00,00,000</td> </tr> <tr> <td>Lease Rent per acre p.a. (6% of Market Price)</td> <td>12,00,000</td> </tr> <tr> <td>Lease Rent Per Hectare p.a.</td> <td>29,64,000</td> </tr> <tr> <td>Lease Rent per Are p.a.</td> <td>29,640</td> </tr> </table> <p>The Valuer has submitted the Final Report on 12.12.2009, in which different Market Prices for different localities (Puthuvypeen, Vallarpadam, W. Island etc.) for different purposes (water front land used for Port operation, for commercial purposes, for warehouse purposes, for special residences) and for different areas (upto 2 acres, 2 to 10 acres, 10-50 acres etc.) have been given. Considering the land used for storage tank as 'land for warehouse purpose', the revised lease rent proposal for Puthuvypeen will be as follows:-</p> <p style="text-align: right;">Rs.</p> <table border="1" data-bbox="976 1850 1422 2033"> <tr> <td>Market Price assessed by the valuer</td> <td>1,06,72,000</td> </tr> <tr> <td>Lease Rent per acre p.a. (6% of Market Price)</td> <td>6,40,320</td> </tr> </table>	Market Price assessed by the valuer	2,00,00,000	Lease Rent per acre p.a. (6% of Market Price)	12,00,000	Lease Rent Per Hectare p.a.	29,64,000	Lease Rent per Are p.a.	29,640	Market Price assessed by the valuer	1,06,72,000	Lease Rent per acre p.a. (6% of Market Price)	6,40,320
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		Lease Rent Per Hectare p.a.	15,81,590
		Lease Rent per Are p.a.	15,816
(d).	At Dahej, an area of 48.60 hectares of land has been leased for a period of 75 years commencing from April, 1999 and the lease rent is fixed at Rs. 2,25,000/- per Ha. P.a. The lease rent is revised every three years by 10% of the previously revised rent. The current lease rent rate is Rs. 2,99,475/- per Ha.p.a, which is below the lease rent already being paid by PLL to COPT.	The lease rent at Cochin cannot be compared with the lease rent at Dahej as the supply, demand and usage of land differs from place to place. COPT has proposed the lease rent rates based on the Land Policy Guidelines. The basis of lease rent and the period & rate of escalation for the land at Dahej as mentioned by PLL is not as per the Land Policy Guidelines. Hence the lease rent at Cochin and Dahej cannot be compared.	
(e).	As per Concession Agreement executed by PLL with COPT, in addition to the lease rent, COPT will also receive from PLL water front royalty of Rs. 103.68 per tonne of cargo unloaded at the LNG Port with an escalation of 20% every three years. At the initial throughput of 2.5 mmtpa, CoPT will generate additional revenue of Rs.25.92 crores every year. This additional revenue could be possible only by leasing the land at Puthuvypeen for LNG Terminal. In view of the facts as mentioned above, we are of the view that the existing lease rental being paid by PLL for Puthuvypeen land should not be increased keeping in view the project viability and its National importance	The Comments put forward is not agreeable.	
2.	DP World, Cochin		
(a).	India Gateway Terminal Private Limited is in the process of constructing the International Container Terminal at Vallarpadam. In our experience, the ICTT Project site – Vallarpadam SEZ – is a reclamation site and the soil is extremely poor. DP World Cochin is spending considerable amount of effort and money in developing this land and making it suitable for commercial use. Some of the deepest piles ever installed in India are part of this project. The land in possession of the Cochin Port Trust elsewhere at Vallarpadam and Puthuvypeen can reasonably be assumed to be reclaimed land, as is the ICTT Project site. It is our definite understanding and knowledge that any party taking land on lease at Vallarpadam from Cochin Port Trust will have to invest considerably on soil stabilization prior to building any physical infrastructure to benefit from the lease.	The land at Puthuvypeen & Vallarpadam area has been declared as a Special Economic Zone (SEZ) on 2.11.2006. Since many benefits like exemption from various duties, taxes etc are available for the commercial establishments coming up in these areas, it can be said with certainty that the lease rent will not be a factor which decides the coming up of commercial establishments at these areas.	
(b).	The present rate of lease rent charged by the Cochin Port Trust for Category – C, Commercial Purpose land at Willingdon Island is Rs.	The comments of DP World regarding cross subsidization by commercial lease to substantiate the loss in revenue due to commissioning of SPM	

	<p>3,40,000 per acre per annum. The new rates proposed by Cochin Port Trust are between Rs. 12 lakhs per acre and Rs. 18 lakhs per acre, which is five times the present rate. In fact, there is a case for reduction from the existing rates charged by COPT on the Willingdon Island, since the soil is totally unstable and unfit for any commercial use without substantial investment in soil improvement measures. Moreover, the linkage between any loss due to the SPM project should not and cannot be cross subsidized by commercial lease at unreasonable rates, which will jeopardize the future growth prospects of COPT.</p>	<p>project is not correct. The lease rent at Puthuvypeen & Vallarpadam lands has been proposed as per the Land Policy Guidelines and it is not based on any cost workings.</p>																																
(c).	<p>The use of land in possession of the COPT at Vallarpadam and Puthuvypeen is extremely crucial to the development of the ICTT. At unreasonably high lease rates business will stay away from the ICTT and result in consequential losses to COPT and direct loss to DP World. Hence, the lease rate at Vallarpadam and Puthuvypeen should be a rebate over what is prevalent at Willingdon Island.</p>	<p>There is huge scarcity of land at Ernakulam and adjoining places for commercial purposes. Hence it is certain that commercial establishments are surely to be attracted to the Puthuvypeen & Vallarpadam areas on a large scale in the near future</p>																																
3.	<p>Cochin Steamer Agents' Association The land in question at Vallarpadam is undeveloped and in remote area. On comparison of the rates at Willingdon Island with that of Vallarpadam, Puthuvypeen, Bolgatty and Goshree areas, the rates proposed by Cochin Port for fixation of lease rent of Port land in these areas are exorbitantly high, and we are of the opinion that the rates should be brought down substantially to make them viable.</p>	<p>No comments received</p>																																
4.	<p>The Cochin Custom House Agents' Association</p>																																	
(a).	<p>A comparison of lease rates at W. Island and the proposed rates at Vallarpadam, Puthuvypeen, Bolgatty & Goshree (GIDA) areas is reproduced below:-</p> <p>(i) Lease of land allotted / renewed at W. Island.</p> <table border="1"> <thead> <tr> <th>S No</th> <th>Location</th> <th>Rate per Hectare per annum (In Rs.)</th> <th>Rate per Acre per annum (In Rs.)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Residential Purpose</td> <td>1512252</td> <td>15123</td> </tr> <tr> <td>2</td> <td>Industrial Purpose</td> <td>2268378</td> <td>22684</td> </tr> <tr> <td>3</td> <td>Commercial Purpose</td> <td>3024504</td> <td>30245</td> </tr> </tbody> </table> <p>(ii) . Lease Rent Proposals of COPT</p> <table border="1"> <thead> <tr> <th>S. No</th> <th>Area</th> <th>Lease Rent per Hectare p.a. (Rs.)</th> <th>Lease Rent per Acre p.a. (Rs.)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Land at Vallarpadam</td> <td>3705000</td> <td>37050</td> </tr> <tr> <td>2</td> <td>Land at Puthuvypeen</td> <td>2964000</td> <td>29640</td> </tr> <tr> <td>3</td> <td>Land at GIDA</td> <td>4446000</td> <td>44460</td> </tr> </tbody> </table>	S No	Location	Rate per Hectare per annum (In Rs.)	Rate per Acre per annum (In Rs.)	1	Residential Purpose	1512252	15123	2	Industrial Purpose	2268378	22684	3	Commercial Purpose	3024504	30245	S. No	Area	Lease Rent per Hectare p.a. (Rs.)	Lease Rent per Acre p.a. (Rs.)	1	Land at Vallarpadam	3705000	37050	2	Land at Puthuvypeen	2964000	29640	3	Land at GIDA	4446000	44460	<p>As per the Land Policy Guidelines, the Lease rentals will be revised in every five years. The last revision of Lease Rent for COPT land was effected from 1.1.1996. After that, due to various reasons the lease rentals were not revised and only the annual hike of 5% - 2% was added to the base rate. A revision is long overdue(as nearly 14 years have passed without any revision</p>
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	area		
	4	Land at Bolgatty	3705000 37050
(b).	<p>The rates as proposed by Cochin Port Trust at Vallarpadam, Puhuvypeen, Bolgatty & Goshree (GIDA) areas are very much higher than the rates at Willingdon Island. Willingdon Island is already a developed place with all basic infrastructure facilities such as road, electricity, water and sewage etc. where as the land at Vallarpadam, Puthuvypeen, Bolgatty and Goshree (GIDA) area is a virgin land and there is tremendous expenditure to be incurred for creating the above basic amenities, and cost of construction of any building, godown, storage facilities is bound to increase due to silt and the mud banks. As such we are of the view that the rate proposed at Vallarpadam, Puthuvypeen, Bolgatty and Goshree (GIDA) should be brought down to a reasonable level.</p>		<p>Port had complied with the procedures laid down in the Land Policy Guidelines to arrive at the proposed rate while submitting the proposal dated 4 June 2007 for revision of lease rentals of Port's land at Willingdon Island. Since there were no sale proceeds in Willingdon Island, the market price registered for the years 2003, 2004 & 2005 in the nearby area like Thoppumpady was considered to arrive at the proposed rates. The land value in Cochin is increasing day-by-day and the current market price of land at Thoppumpady is much higher as compared to the market price in 2003 to 2005. If the current market price was considered for the revision of lease rentals for the same land, the proposed rates would have been much higher.</p>
(c).	<p>It is the first time in India that an exclusive International Container Transshipment Terminal is being set up at Vallarpadam, and it is absolutely essential that the cost of exports and imports routed through ICTT should be on par or if not lower with the other ICTTs such as Colombo and Dubai to make the ICTT at Vallarpadam economically viable. Hence it is imperative that basic allied infrastructure facilities should come up near the ICTT such as operational offices of Shipping Companies, Freight Forwarders, Custom House Agents, Empty Container Depots, Godown, Warehouses etc.</p>		<p>(b) The comparison between the existing rates and the proposed rate is not justifiable as the existing rate is only a figure based on the annual hike whereas the proposed rate is based on the Report submitted by the approved Valuer after conducting a thorough market study. As per the Land Policy Guidelines of the GoI, the Port had appointed an Approved Land Valuer for arriving at the market price of land at Puthuvypeen, Bolgatty, Vallarpadam and GIDA. The Valuer has submitted the Report based on a detailed market study and the current proposal for those areas has been prepared based on the Report submitted by the Valuer and is not based on any cost workings. Regarding the concerns expressed by CCHAA on the conditions of the land, connectivity etc. it is submitted that an array of major projects viz. LNG Terminal, SPM storage tanks and Multi User Liquid Terminal at Puthuvypeen, International Container Transshipment Terminal at Vallarpadam etc are to be commissioned in the near future. Road and rail connectivity is in progressive stage and will be established before these projects are commissioned. Infrastructural facilities like power, water, communication etc. will be provided by / arranged by the Port. The area has been transformed into a prime land for multiple business ventures and is in high demand. In addition to that,</p>

		these areas are having water frontage. Hence the apprehensions of the CCHAA with regard to the backwardness of the land at Puthuvypeen, Vallarpadam etc is misplaced.
(d).	The land rates at Vallarpadam, Puthuvypeen, Bolgatty and Goshree (GIDA) should be brought down or reasonable concessions may be granted to direct port users, such as Exporters, Importers, Custom House Agents, Freight Forwarders, Steamer Agents so that they could afford to setup the above facilities at the vicinity of ICTT.	The lease rent proposed by the Port which is in line with the Land Policy Guidelines of the GOI is justified.
5.	<p>Indian Chamber of Commerce</p> <p>The proposed lease rent rates of Port Land at Vallarpadam, Puthuvypeen, Bolgatty & Goshree (GIDA) areas are much higher than the present rates of lease rent on Willingdon Island. The proposed rates need to be brought down to a reasonable level so as to make them affordable for the purpose of setting up offices of various exim trade related sections. The reason that Willingdon Island is a developed place whereas the areas for which the proposal for fixation of lease rent has now come from the Cochin Port are not so, substantiates the request for a reasonable reduction in the proposed rates.</p> <p>In this connection, we would also request you to kindly consider granting required land to Chambers of Commerce / Trade Associations rendering services for the promotion of exim trade at a fixed concessional rate of lease rent.</p>	No comments received

4. A joint hearing on the Port's proposal dated 17 August 2009 was held on 23 February 2010 at Cochin Port Trust. The COPT and the concerned users made their submissions. The gist of the joint hearing held is as under:-

COPT

- (1) COPT made a Power point presentation.
- (2) This is the first fixation of lease rentals for these areas. The existing Scale of Rate does not contain rates for these zones.
- (3) Vallarpadam and Puthuvypeen SEZs are the first port based SEZs in the country. There is a huge demand for these lands.
- (4) Port is in serious financial crisis. We need to commercially exploit the lands to augment our revenue to the extent permitted by rules.

COPT Valuer

- (5) Explains the methodology of valuation and confirms that all relevant transactions are studied.

COPT

- (6) We have since revised the proposal based on the final report of the valuer submitted in December 2009. Though the methodology followed is the same, land is categorized into waterfront, commercial, warehousing and special residential purpose. Revised proposal is already submitted on 18 February 2010.
- (7) The final report also takes into account annual rateable value of lands which moderate the interim rates.

DP World

- (8) We can't adopt the same approach for Willingdon Island and Vallarpadam. Willingdon inland had been developed for the past 60-70 years.
- (9) Vallarpadam development requires not only finances but also time. Please recognize. A developer does not get any return for the time lost.

PETRONET LNG

- (10) TAMP earlier gave special consideration to us while fixing the rate in 2000. Our viability was taken into account. Please consider again.
- (11) Most of the lands fall under CRZ. Therefore, the utility is restricted. Valuation should factor this aspect.

Cochin Custom House Agents Association

- (12) No comments

M/s. Bharat Petroleum Corporation Limited

- (13) No comments

COPT VALUER

- (14) A recent transaction of 8.3 hectares in Vallarpadam fetched about Rs. 40 crores / hectare. We have considered only Rs. 6 crores. This is a pointer to the reasonableness of our proposal.

COPT

- (15). Allotment to Petronet contains a provision for revision of the earlier rates when bridge is completed. DP World will not be affected by the new rates. Likewise, the rates for BPCL are governed by a MOU. Therefore, the proposed rates will generally affect only the new allotments to be made in future.
