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TARIFF AUTHORITY FOR MAJOR PORTS

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New Delhi,

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NOTIFICATION

In exercise of the powers conferred by Sections 48, 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby notifies refinement on certain areas of the existing approach / practice followed in tariff setting exercise of major port trusts and private terminals operating at the major port trusts as in the Order appended hereto.

(Brahm Dutt)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/23/2003-WS

ORDER

(Passed on this 30th day of September 2008)

In the tariff proceeding concerning a review petition filed by a private terminal operator, this Authority observed the need to improve / refine on certain areas of the existing approach adopted and practice followed for tariff fixation, under cost plus approach, bearing in mind the tariff guidelines notified by this Authority on 31 March 2005 vide Gazette No. 39, dated 31 March 2005.

2. The following areas of the existing approach adopted and practice followed in fixation of tariff under cost plus method emerged for improvement / refinement:

- (A). Submission of tariff proposals;
- (B). Application of Wholesale Price Index (WPI) and Return on Capital Employed (ROCE);
- (C). Foreign Exchange Rate;
- (D). Level of Sundry Debtors to be considered as part of Working Capital;
- (E). Submission of actual and physical performance details;

Since the issues confronted are general in nature, they may equally apply to other private terminals and port trusts.

3. The issues listed above are analyzed below:

(A). Submission of Tariff Proposals:

- (i). Clause 3.1.2 of the tariff guidelines requires this Authority to prescribe a time table for submission of tariff proposals for revision. Till such a time table is prescribed, proposals for revision of the existing tariff shall be forwarded atleast 3 months before the due date for revision. No specific timetable for submission of proposals is prescribed so far.
- (ii). It is observed that in most of the cases, the tariff proposals are not filed before 3 months of the expiry of the current tariff validity cycle. Since proposals are filed on different dates, it becomes difficult to apply a uniform Wholesale Price Index (WPI) rate for escalation, Return on Capital Employed (ROCE) and foreign exchange rate. Besides, actuals for the immediate preceding year are also not furnished by the proposers. For example, a proposal filed in February 2008 and decided in May/June 2008 contains actuals only for the year upto 2006-07, even though the revised rates are applicable from the financial year 2008-09. This leaves the financials for the year 2007-08 not being assessed based on actuals.
- (iii). It is, therefore, necessary to prescribe a cut off time for filing tariff proposals in a financial year. The ports and terminals should file tariff proposals by 30 June of the financial year in which tariff revision falls due. Such proposal should furnish actuals upto the previous financial year. To illustrate, the tariff fixed for ABC port in December 2005 will fall due for revision in December 2008. ABC port should, therefore, file its tariff proposal before 30 June 2008 giving actuals upto the previous financial years 2007-08 and projections for the next tariff validity period of 3 years.
- (iv). Request for extension of validity of the tariff shall not be entertained unless sufficient justifiable reasons are advanced for not filing tariff proposal in time. Even in exceptional cases where such requests are entertained, this Authority will effect an ad hoc reduction in the existing rate and allow it to apply for the extended period which in any case shall not exceed 3 months. Grant of extension will also

be subject to the condition that additional surplus, if any, accrued during the extended period will be fully set off in the next tariff revision.

(B) Application of WPI & ROCE

- (i). Clause 2.5.1. of tariff guidelines of 2005 stipulates, inter alia, that the expenditure projections should be in line with traffic adjusted for price fluctuation with reference to current movement of WPI for all commodities announced by the Government of India. Clause 2.9.2. of the tariff guidelines prescribes that the permissible return on capital employed will be reviewed at the beginning of the financial year in the light of changes in the key parameters.
- (ii). This Authority will apply the WPI and ROCE as applicable for the year in which the revised tariff approved will come into force.
- (iii). In exceptional cases, when a change in financial year occurs between the time this Authority decides a case and the date of notification of such decision, and if the values of WPI and ROCE undergo a revision as per the tariff guidelines in the intervening period, the concerned tariff Order will be reviewed to the extent of correctly reflecting the applicable value of ROCE and annual escalation factor.

C. Foreign Exchange Rate

- (i). In the existing arrangement, the foreign exchange rate prevailing at the time of conclusion of the cost analysis of a tariff case by the Authority is considered for drawing up the cost estimates. Even though the tariff guidelines permit the port trusts and the private terminals to prepare their income estimates duly factoring the possible variation in foreign exchange over the next tariff validity period, it is observed that generally income estimates are not drawn considering future changes in foreign exchange. It may be difficult to reliably foresee the fluctuations in foreign exchange market over the next 3 year period.
- (ii). This Authority has already requested the Government to review its policy of denominating certain port tariff items in dollar terms but collected in Indian Rupee. Pending a revised policy decision to be taken by the Government, it may be necessary to atleast account for the fluctuations in foreign exchange that may take place between the time this Authority concludes its analysis and notification of the revised tariff in the Gazette of India. This Authority will carry out a review of the cost estimates considered based on the foreign exchange rate prevailing on the date of notification of the revised tariff, if the variation between the rate relied upon in the analysis and that prevailing on the date of notification is more than (+)/(-)2%. Such a review proceeding can be initiated based on an application made by the concerned port trusts / private terminal or by this Authority *suo motu*.

D. Level of Sundry Debtors to be considered as part of working capital

- (i). Clause 2.9.9. of the tariff guidelines prescribes a limit of two months' estate and railway terminal charges payable by Indian railways as the sundry debtor level to be considered as part of working capital. Since the private terminal operators do not lease out the estate under their possession, no estate related income accrue to them. Likewise, they also do not carry out the railway activity and hence no terminal charges are payable to them by the Indian railways. Consequently, the sundry debtors balance always become zero in the case of private terminal operators. On the contrary, there are certain prepayments and advances which are to be made by the private terminal operators as required by the concerned license agreement. Even though such payments are shown under sundry debtors and advance in the books of accounts of the private operators, they are not recognised for tariff fixing purpose in view of the tariff guidelines.

- (ii). It is noteworthy that clause 2.9.9. of the tariff guidelines permits this Authority to examine the reasonableness of the various items of working capital. The prepayments and advance to be made by the private operators as per the license agreement are inevitable contractual obligation. It is, therefore, reasonable to recognise such payment as the limit for sundry debtors to the extent they are otherwise permissible as pass through. In order to avoid any ambiguity, it is clarified that advance payment of revenue share / royalty to the landlord port will be recognised as a part of sundry debtors only if and to the extent such revenue share/royalty is considered as pass through in tariff.

E. Submission of actual physical and financial performance details :

- (i). Clause 2.13. of the tariff guidelines requires the actual physical and financial performance to be reviewed at the end of the prescribed tariff validity period and adjust the variation prospectively in the prescribed manner. It is observed that carrying out such a review after three years period may not provide early relief to the major port trust / private terminals operating thereat or the users, as the case may be, if significant variation is observed in the early phase of the tariff validity cycle. It may, therefore, be a better arrangement to put in place a system for continuous monitoring.
- (ii). The port trusts and private terminal operators are required to furnish a report of the actual physical and financial performance within 15 days of completion of each quarter of a year. Such quarterly reports are to be filed for the period ending 30 June, 30 September, 31 December and 31 March of each of the year in the same format in which the cost statement for the tariff proposals are filed. The report should also be accompanied with the reasons for variation from the estimates relied upon for fixing the tariff in force. If a variation of (+)/(-)20% is observed between the actual and the estimates for two consecutive quarterly period, this Authority will call upon the concerned port trust / private terminal operators to submit their proposal for an ahead of schedule review of tariff. If the concerned port trust or private terminal operator fails to file a tariff proposal within the time limit to be stipulated by this Authority, *suo motu* proceeding will be initiated to review the tariff.

4. Since the issues analyzed above are only refinement of the existing approach adopted and practices followed for tariff fixation and do not amount to resetting of any of the provisions of the tariff guidelines, no separate consultation process with the stakeholders was undertaken.

5. In the result, and for the reasons given above, and based on a collective application of mind, this Authority decides the following:

- (i).
 - (a). The major port trusts and private terminals should file tariff proposals by 30 June of the financial year in which tariff revision falls due. Such proposal should be accompanied by actuals upto the previous financial year.
 - (b). Request for extension of validity of the tariff will not be entertained unless sufficient justifiable reasons are advanced for not filing tariff proposal in time. Even in exceptional cases where such requests are entertained by this Authority, an ad hoc reduction in the existing rates will be effected for the extended period which in any case cannot exceed 3 months. Grant of extension will also be subject to the condition that additional surplus, if any, accrued during the extended period would be fully set off in the next tariff revision.
- (ii). WPI and ROCE as applicable for the year in which the revised tariff approved will come into force will be reckoned with.

In exceptional cases, when a change in financial year occurs between the time this Authority decides a case and the date of notification of such decision, and if the values of WPI and ROCE undergo a revision as per the tariff guidelines in the intervening period, a review of the earlier tariff Order will be undertaken to the extent of correctly reflecting the applicable value of ROCE and annual escalation factor. Such a review proceeding will be initiated based on an application made by the concerned Port Trust / Private Terminal or by this Authority *suo motu*.

- (iii). The financial position considered in a tariff Order will be reviewed based on the foreign exchange rate prevailing on the date of notification of the revised tariff, if the variation between the rate relied upon in the analysis and that prevailing on the date of notification is more than (+)/(-)2%. Such a review proceeding will be initiated based on an application made by the concerned Port Trust / Private Terminal or by this Authority *suo motu*.
- (iv). The prepayments and advance to be made by the private operators as per the license agreement will be recognized as the limit for sundry debtors to the extent they are otherwise permissible as pass through. Advance payment of revenue share / royalty to the land lord port will be recognized as a part of sundry debtors only if and to the extent such revenue share / royalty is considered as pass through in tariff.
- (v). The major port trusts and private terminal operators should furnish a report of the actual, physical and financial performance within 15 days of completion of each quarter of a year. Such quarterly reports are to be filed for the period ending 30 June, 30 September, 31 December and 31 March of each of the year in the same format in which the cost statements for the tariff proposals are filed. The report should also be accompanied with the reasons for variation from the estimates relied upon for fixing the tariff in force. If a variation of (+)/(-)20% is observed between the actual and the estimates for two consecutive quarterly period, this Authority shall call upon the concerned major port trusts / terminal operators to submit their proposal for an ahead of scheduled review. If the concerned port trust or terminal operator fails to file a tariff proposal within the time limit to be stipulated by this Authority, *suo motu* proceeding will be initiated to review the tariff.

(Brahm Dutt)
Chairman