

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

**G.No. 150**

**NEW DELHI,**

**23 July 2007**

**NOTIFICATION**

In exercise of the powers conferred under Sections 48 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal of the Central Warehousing Corporation for the revision of tariff for services rendered by it at the Container Freight Station in the Kandla Port Trust as in the Order appended hereto.

**(A.L. Bongirwar)**  
Chairman

**TARIFF AUTHORITY FOR MAJOR PORTS**  
**Case No. TAMP/35/2006 – CWC (KPT)**

**Central Warehousing Corporation**

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**Applicant**

**ORDER**

(Passed on this 28th day of June 2007)

This case relates to the proposal dated 7 July 2006 received from Central Warehousing Corporation (CWC) for revision of tariff for the services rendered by it at the Container Freight Station (CFS) in the Kandla Port Trust (KPT).

2.1. The existing tariff at CWC-CFS was approved by the Authority in August 2004 which was valid for two years. The tariff was, accordingly, due for revision in August 2006.

2.2. The CWC had earlier in July 2005 requested for an ahead of schedule revision of its tariff, but, it could not furnish any justifiable reasons to support its request. The CWC was, therefore, advised to formulate appropriate proposal giving projections for 3 years in line with the revised tariff guidelines. Subsequently, when the CWC filed the cost statements, they were not found to be in accordance with the prescribed format. The CWC was again advised to submit a comprehensive proposal alongwith draft proposed Scale of Rates (SOR).

3.1. In this back-drop, the CWC has filed the instant proposal on 7 July 2006 for revision of its tariff in the prescribed cost format. The main points made by the CWC in its proposal are summarised below:

- (i). (a). Income for the years 2006-07, 2007-08 and 2008-09 are projected on the basis of the prevailing tariff as approved by the Authority.
- (b). The income from storage charges and ground rent has been restricted to the level of 2007-08 as with the availability of improved infrastructure, change in the Custom laws and business scenario, factory stuffing and de-stuffing of containers is being encouraged by the Customs. Moreover, additional importers and exporters are being awarded star status by the Customs, which will result in decrease in the CFS stuffing and de-stuffing activity.
- (ii). The Market Facilitation (MF) payment in respect of services outsourced is estimated by loading additional liability of 11.26% per annum towards diesel price escalation for the years 2006-07 to 2008-09.
- (iii). The royalty payment to KPT is considered as cost since the agreement with the KPT was signed before 23 July, 2003 viz. on 6 February 2002 when the CWC was the only technically qualified tenderer in the competitive bidding process.
- (iv). The expenses on account of royalty, lease rentals and upfront fee have been projected on the basis of agreement between the CWC and KPT.
- (v). The management and administrative overheads have been projected with 20% annual escalation over the overheads incurred/estimated in the respective previous year to meet the cost towards annual increments, payment of dearness allowance and consequential increase in other allowances.
- (vi). All other expenses have been estimated after providing escalation @ 4.50% per annum as per TAMP guidelines.
- (vii). Depreciation on assets is provided on straight line basis commensurate to the balance period of agreement with the KPT (i.e. 28 years).

- (viii). Additional investment of Rs.914 lakhs is proposed on civil works during 2008-09 when the throughput crosses 1,20,000 TEUs per annum.
- (ix). The actual operating losses for the year 2004-05 and 2005-06 is reported to the tune of Rs.556.55 lakhs and 406.41 lakhs respectively and the pro-rata losses for the year 2006-07 (for first 7 months) is estimated at Rs.152.60 lakhs. Thus total loss of Rs.634.08 lakhs is proposed to be set-off in the following manner as per tariff guidelines of TAMP:
- (a). 50% of the accumulated losses for the year 2004-05 and 2005-06 and  
 (b). 100% of the pro-rata losses for the first seven months of 2006-07 i.e. Rs.152.60 lakhs.

3.2. At the projected traffic of 96,000 TEUs, 1,20,000 TEUs and 1,44,000 TEUs for the years 2006-07 to 2008-09 respectively, the net surplus / deficit position at the existing tariff level as reflected in the cost statements submitted by the CWC is summarised as under:

(Rs. in Lakhs)

Sr. No.	Particulars	2006-07	2007-08	2008-09
(i).	Income (at existing tariff)	2219.87	2705.56	3403.35
(ii).	(a). Operating Expenditure	1729.80	2148.63	2795.33
	(b). Depreciation	103.42	103.42	141.50
	(c). Overheads	347.99	398.61	458.61
	<b>Sub-total (a) to (c)</b>	<b>2181.21</b>	<b>2650.66</b>	<b>3395.44</b>
(iii).	Operating surplus/deficit	<b>38.66</b>	<b>54.90</b>	<b>7.91</b>
(iv).	Capital Employed	2052.01	2106.91	2011.40
(v).	ROCE	305.29	312.43	300.01
(vi).	Net Surplus/ Deficit	<b>-266.63</b>	<b>-257.53</b>	<b>-292.10</b>
(vii).	Net Surplus/Deficit as % of Income	<b>-12.01%</b>	<b>-9.52%</b>	<b>-8.58%</b>

3.3. The CWC has proposed 23% increase in its existing tariff. Though the CWC has mentioned about setting off the past period losses, it has not made any adjustment in the cost statement in this regard. At the proposed tariff, it has estimated to generate additional revenue of Rs.1590 lakhs for all the three years taken together.

4.1. In accordance with the consultative procedure prescribed, the proposal of CWC was forwarded to the Kandla Port Trust and the concerned users / user organisations seeking their comments.

4.2. The comments received from the Kandla Port Trust and various user organisations were forwarded to the CWC as feedback information. The CWC has responded to the comments of the KPT and user/user organisation.

5.1. Based on a preliminary scrutiny of the proposal, the CWC was requested to furnish additional information / clarifications. The CWC has furnished its reply. Subsequently, on scrutiny of the reply furnished by the CWC it was found that there are still some gaps in the information furnished. The CWC were, therefore, requested to clarify few points. The CWC has furnished the requisite information/clarification. A summary of the queries raised by us and clarification furnished by the CWC is tabulated below:

Sr. No.	Queries raised by us	Reply furnished by the CWC
1. (i).	Furnish actuals for the nine months upto January 2007 duly certified by the Chartered Accountant and the estimates for the remaining three months. The cost statements may also be modified accordingly to reflect position for this year. Consequent to this modification, the estimates for the subsequent years may be modified, if necessary.	It has furnished the financial statement as on 31 December 2006 for nine months of year 2006-07 duly certified by its Chartered Accountant.

(ii)	The estimates of repairs and maintenance, equipment hire charges (MF payments), management and administration overheads for the year 2007-08 may be justified with reference to the actuals/estimates for the year 2006-07 duly certified by its Chartered Accountant.	It has not furnished any reply to this point.
(iii).	Update the cost statements with the estimates for the year 2009-10	It has updated the cost statements with estimates for the year 2009-10.
2.	The revised tariff guidelines stipulate that tariff should be linked to benchmark levels of productivity. The present proposal, however, does not indicate anything about the productivity levels to be maintained for various operations/services. This may be included in the proposed Scale of Rates (SOR) and the level so proposed to be adopted may be justified.	The productivity of any CFS is to be monitored in terms of timely service given to the customers. The CFS always catered to the need of users. There were no shut out/ detention of container at Port and it aims to keep the tempo.
<b>3.</b>	<b>Capacity:</b>	
(i).	(a).The designed capacity assessed by the CWC in its initial tariff fixation proposal (letter No. CWC-CD/II- KANDLAPORT/2004-05/626 E dated 17.5.2004) was at the level of 60000 TEUs, 90000 TEUs and 120000 TEUs per annum for the years 2004-05, 2005-06 and 2006-07 respectively. The capacity of the CFS in the last tariff Order was considered at the level of 79200 TEUs and 96000 TEUs per annum for the years 2004-05 and 2005-06 respectively based on the information furnished by the licensor. As against this, the capacity considered by the CWC in the present proposal is at the level of 51600 TEUs per annum for the years 2004-05 to 2007-08. Explain the reasons for considering the capacity of the CWC -CFS lower than the level considered in the last tariff Order.	(a). Initial proposal by CWC was with the assumption that KPT shall not violate the Article 3.8.1.(ii) of the Licence Agreement which stipulates that licensor shall not permit additional CFS(s) to operate in the Port area unless CWC-CFS attains annual throughput of 1.4 Lakh TEUs. But, the KPT has allowed other CFSs in Port area. More so, after upcoming of Mundra International Container Terminal (MICT), the traffic at KPT has gone down. Therefore, the capacity is considered lower than the level considered in the last tariff Order of TAMP. Moreover, the scrap containers are not allowed to be cleared through CFS because of security risks and KPT is receiving factory stuffed containers directly from shipper which would otherwise be received through CWC-CFS of KPT.  The equipment have been provided at CFS as per the criteria stated in the License Agreement between KPT and CWC. The utilisation level have been taken as 100% as it has been able to meet the minimum throughput requirement as per the LA. (It has, not furnished any detailed computation of capacity assessment based on equipment deployed/hired).
	(b). With reference to the reply it was clarified that the designed capacity of the CFS facilities provided by the CWC will not vary with other CFS facility coming up in the port. It was, therefore, again advised to furnish a detailed computation of capacity assessment based on the equipment deployed /facility provided.	(b). It has subsequently clarified that its CFS was created with capacity of 51600 MT per annum since inception. It would like to increase the capacity to 89100 MT per annum during 2008-09. The capacity assessment for each of the years 2004-05 to 2009-10 is stated to be based on the equipment hired / deployed and facilities provided and also taking in to consideration the efficiency / productivity improvement.
	(c). The CWC has submitted that the proposed additional investments of Rs.914 lakhs estimated in the year 2008-09 is likely to reap benefits during the year 2009-2010. In view of this position, please indicate the increase in the capacity, reduction in per unit	(c). There would not be any much reduction in per unit operation cost. However, the impact of generating additional 20% traffic has been considered in the computation. Besides, the stiff competition with private CFS operators in and around Kandla is going to affect its traffic at Kandla Port. Due to investment only the quality / scenario will improve.

	operating cost or additional traffic likely to be generated in the year 2009-10 on account of the proposed addition.															
	(d). The CWC was advised to modify the capacity utilisation level considered at 100% in the cost statement with reference to the actual/projected traffic over the designed capacity (to be assessed) based on the equipment deployed/facilities provided.	(d). The capacity utilisation is considered at 100% based on the equipment deployed and traffic prevailing at Kandla Port based on the fact of guaranteed traffic to be handled by CWC as per the terms of the MOU.														
4.	<b>Traffic:</b>															
(i).	Clause 3.8(ii) of the License Agreement (L.A) stipulates that the licensee shall guarantee a throughput equivalent to 36% of impex trade container traffic handled by the container operator. Please furnish details of actuals / estimates of the impex container traffic declared by the licensor for the period 2004-05 to 2009-10.	The Actual / Revised estimate of IMPEX container traffic declared by the licensor for the year 2004-05 to 2009- 10 is given below: <table border="1" data-bbox="805 654 1449 943"> <thead> <tr> <th>Year</th> <th>Total container traffic Actuals/ Estimates</th> </tr> </thead> <tbody> <tr> <td>2004-05 (Actuals)</td> <td>1,80,917</td> </tr> <tr> <td>2005-06 (Actuals)</td> <td>1,48,624</td> </tr> <tr> <td>2006-07 (Actuals upto 6 March)</td> <td>1,63,127</td> </tr> <tr> <td>2007-08 (Estimates)</td> <td>2,92,333</td> </tr> <tr> <td>2008-09 (Estimates)</td> <td>3,38,167</td> </tr> <tr> <td>2009-10 (Estimates)</td> <td>3,91,167</td> </tr> </tbody> </table>	Year	Total container traffic Actuals/ Estimates	2004-05 (Actuals)	1,80,917	2005-06 (Actuals)	1,48,624	2006-07 (Actuals upto 6 March)	1,63,127	2007-08 (Estimates)	2,92,333	2008-09 (Estimates)	3,38,167	2009-10 (Estimates)	3,91,167
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2008-09 (Estimates)	3,38,167															
2009-10 (Estimates)	3,91,167															
(ii).	Explain the basis of traffic estimation for the years for the years 2006-07 to 2009-10.	The traffic estimates are based on the conditions of LA, expected general increase of IMPEX traffic considering impact of local conditions in/ around Kandla/Gandhidham.														
5.	<b>Income:</b>															
(i).	(a).The container handling income for the year 2007-08 is estimated to increase by 8% though the throughput is projected to increase by 25% over the respective previous year. Likewise, the container handling income for the year 2008-09 is estimated at the same level of 2007-08 despite projecting 20% growth in the throughput over the estimates of the previous years. Explain the reasons as to why the increase in income estimation does not correspond with the growth projected in the traffic for each of the years 2007-08 and 2008-09.	(a). The handling and transportation operations have been outsourced to a contractor and as per the tender terms, there is a provision for rate escalation on the basis of increase in the rate of fuel after a period of 24 months. As per the formula, the increase comes to 11.26% on the basic rates. Therefore, the estimate of container handling income does not correspond with growth projected in the traffic.														
	(b). With reference to its reply it was pointed out that the impact of escalation factor on the services outsourced has already been considered in the MF payments. This will not have any impact on income estimated on the prevailing tariff level. Our query in this regard was, therefore, reiterated.	(b). The estimation of MF income is based on major operations in import as well as export movements normally carried out at its CFS. The impact of other operations is very less as such the same has been included in the other items of income.														
(ii).	The income estimation from MF receipt takes into account the rates proposed for a few specific services only. For example, the MF receipt in case of a 20' LCL import container destuffed includes rate proposed at Sr.No.1, 2(a) and 10(ii). Likewise, MF receipt rate for direct delivery, carting, stuffing, etc. takes into	It has reiterated that the MF income has been considered for standard operations required to be undertaken for the Customs examination / destuffing of a particular containers. Some operations are undertaken only on the specific instructions of Customs/Users or due to other operational requirements and hence not considered in the income estimation.														

	account the rates mentioned for a few specific items in the SOR. It appears that all the items prescribed in the SOR are not considered while arriving at the income estimation. Please furnish detailed computation of income at the existing tariff level from various other items prescribed in the SOR, which are not included as a part of MF receipt rate for each of the years 2006-07 to 2009-10.	
(iii).	Detailed computation of income from Market Facilitation (MF) receipts furnished in Annex III of the proposal has been computed at the proposed tariff level and not at the existing tariff. Furnish detailed computation of income estimation from MF receipts at the existing tariff level giving reference to the items prescribed in the existing SOR.	It has not furnished detailed computation of income from MF receipts at the existing tariff level.
(iv).	Indicate the average dwell time of cargo/containers for the last two years 2005-06 and 2006-07 and the dwell time considered for the purpose of income estimation.	The average dwell time of import containers / cargo is reported as 7 days for both the years 2005-06 and 2006-07 and for export containers it is 9 hours and 6 hours respectively for the corresponding years. It has further clarified that since the import and export container / cargo are moved out within the free period, the income from this tariff item is almost negligible for most of the containers/ cargo.
(v).	(a).The Annual Accounts for the year 2004-05 and 2005-06 reports income from Dess Charges and Fumigation Charges. The SOR approved by the Authority, however, has not prescribed any separate tariff for these items. Explain under what tariff setting arrangement these charges are being recovered. Also, clarify whether CWC is authorised to offer these services as per the terms of the LA.	(a). It is vested with duty of dis-infection services under the Agricultural Produce (Marketing & Development) Act, 1957 which was later repealed and replaced by Warehousing Corporation Act,1962. The fumigation of export/imported goods is a legal requirement of foreign countries and as such is not a service. The Central Warehousing Corporation is the Fumigation Agency recognised by the Export Inspection Council of India (Govt. of India). This requirement is to maintain the quality of the product and does not fall under purview of TAMP. More so, this is optional on the part of users and as per the requirement of L/C, it is being provided by the other agencies also.
	(b). With reference to the submissions made by CWC it was requested to forward copy of such authorisation from the Govt. of India approving the tariff to be levied by CWC for offering such services. It was pointed out that the fumigation services offered by the CWC forms part of the services listed under Section 48 of the Major Port Trusts Act, 1963. The tariff to be levied by Major Ports for offering this service requires the approval of this Authority. Incidentally, this Authority has approved tariff for this specific item in case of one other private terminal in their recent tariff revision proposal. The CWC was, therefore, advised to seek authorisation of this Authority for levy of charges for	(b). The fumigation service rendered by CWC is authorised under Warehousing Act 1962. But, in CFS the users are free to get fumigation services from any authorised agency. As such, the impact of income of this service is very nominal and the same has been considered in other receipt account. The fumigation charges are being levied based on cost of chemical and labour charges. It has reiterated that the fumigation is carried out by various other agencies in its premises in terms of L/C extended by Exporters. As such TAMP cannot control the tariff for this operation.

	the fumigation services rendered to the users. Also furnish the basis of levy of the charge (to be proposed) by CWC and justify the same with reference to the cost of services provided.																						
<b>6.</b>	<b>Expenditure</b>																						
(i).	(a). The Authority is guided by the revised tariff guidelines for the treatment of royalty in the tariff review/revision process. The tariff computation will take into account royalty as cost for tariff fixation in such a manner as to avoid likely loss to the operator on account of royalty not being taken into account subject to maximum of the amount quoted by the next lowest bidder as per clause 2.8.1. of the revised tariff guidelines. In this regard, indicate the likely loss if royalty is not considered as cost for tariff fixation purpose.	(a). As per License Agreement (LA), CWC as a licensee has to pay royalty on each loaded container either stuffed or destuffed at CFS as per the prescribed rate at Appendix-7of the LA. Accordingly, the likely loss per thousand TEUs handled will be as here under: <table border="1" data-bbox="810 591 1430 824"> <thead> <tr> <th>Year</th> <th>Rate of Royalty (In Rs per TEU)</th> <th>Loss per 1000 TEUs handled (In Rs)</th> </tr> </thead> <tbody> <tr> <td>10/02/04 to 09/02/05</td> <td>100.00</td> <td>1,00,000/-</td> </tr> <tr> <td>10/02/05 to 09/02/06</td> <td>107.50</td> <td>1,07,500/-</td> </tr> <tr> <td>10/02/06 to 09/02/07</td> <td>115.56</td> <td>1,15,560/-</td> </tr> <tr> <td>10/02/07 to 09/02/08</td> <td>124.24</td> <td>1,24,240/-</td> </tr> <tr> <td>10/02/08 to 09/02/09</td> <td>133.55</td> <td>1,33,550/-</td> </tr> <tr> <td>10/02/09 to 09/02/10</td> <td>143.56</td> <td>1,43,560/-</td> </tr> </tbody> </table>	Year	Rate of Royalty (In Rs per TEU)	Loss per 1000 TEUs handled (In Rs)	10/02/04 to 09/02/05	100.00	1,00,000/-	10/02/05 to 09/02/06	107.50	1,07,500/-	10/02/06 to 09/02/07	115.56	1,15,560/-	10/02/07 to 09/02/08	124.24	1,24,240/-	10/02/08 to 09/02/09	133.55	1,33,550/-	10/02/09 to 09/02/10	143.56	1,43,560/-
Year	Rate of Royalty (In Rs per TEU)	Loss per 1000 TEUs handled (In Rs)																					
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10/02/08 to 09/02/09	133.55	1,33,550/-																					
10/02/09 to 09/02/10	143.56	1,43,560/-																					
	(b). As per Clause 5.1. of the License Agreement (LA), the licensee is required to pay royalty to licensor at the rate prescribed in the LA on the actual TEUs handled subject to the minimum guaranteed traffic. The numbers of TEUs considered for estimation of royalty in form 3B are found to be different from the actual traffic/projections for the years 2006-07 to 2009-2010. Please indicate the correct position.	(b). As per LA, the royalty is to be paid on actual TEUs handled subject to minimum guaranteed traffic. The estimation of royalty payment on loaded container is given below: <table border="1" data-bbox="810 987 1445 1193"> <thead> <tr> <th>Particulars</th> <th>2006-07</th> <th>2007-08</th> <th>2008-09</th> </tr> </thead> <tbody> <tr> <td>Minimum throughput (TEUs)</td> <td>40000</td> <td>48000</td> <td>57600</td> </tr> <tr> <td>Royalty per TEU (in Rs.)</td> <td>115.56</td> <td>124.24</td> <td>133.55</td> </tr> <tr> <td>Royalty (Rs. in lakhs)</td> <td>46.23</td> <td>59.63</td> <td>76.92</td> </tr> </tbody> </table>	Particulars	2006-07	2007-08	2008-09	Minimum throughput (TEUs)	40000	48000	57600	Royalty per TEU (in Rs.)	115.56	124.24	133.55	Royalty (Rs. in lakhs)	46.23	59.63	76.92					
Particulars	2006-07	2007-08	2008-09																				
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(ii).	(a). From the cost statement it is understood that the estimate made under the head 'equipment hire charges' is in fact towards Market Facilitation (MF) payment. Please confirm this position.	(a). MF payment is the payment to be given to handling and transportation contractor against the services provided by them to CWC at CFS.																					
	(b). Furnish copies of the agreement entered by the CWC with various outsourcing agencies to substantiate the estimates of MF payments for the years 2007-08 to 2009-10. Please indicate break up of the MF payment rate considered in Annexure III of the proposal co-relating it with the rates specified in the outsourcing contracts/agreement entered by CWC.	(b). It has forwarded a copy of the agreement entered with contractors for handling and transportation services offered at its CFS.																					
	(c). The tender for services outsourced forwarded earlier vide letter No.CWC-CD/II-CFS-Kandla Port/05-06 dated 11 November 2005 stipulate that the escalation in the rate shall be considered 24 months from the date of commencement of contract subject to at least 15% increase in HSD price against the price prevailing at the time of commencement of work. In this regard, please furnish a copy of the	(c). It has not furnished any specific reply to this point.																					

	communication, if any, of the contractor requesting to increase the price along with detailed computation of the HSD rate at commencement of the contract and HSD rate after 24 months thereon. Also, forward a copy of the consent letter given by the CWC to the contractors allowing escalation in the rate.	
	(d). The expenditure of MF payment for the year 2008-09 is estimated to increase by 31% as against traffic growth of 20%. Explain the reasons for estimating the MF payment expenditure for the year 2008-09 to increase more than the increase projected in the throughput in the light of the fact that the unit rate of MF payment and also the ratio of container mix is not estimated to change in the year 2008-09 over the estimates of the corresponding previous year.	(d). As per the provisions of tender/contract clause, the first escalation on the basis of increase in fuel rates, shall be applicable after 24 months and second escalation after next 18 months. The CFS was commissioned on February 2004. Accordingly first escalation is due w.e.f. February 2006 and second escalation will be due w.e.f. August 2008. Hence the estimation of increase in expenditure @ 31% is genuine.
	(e). Explain the reasons for estimating escalation in MF payment higher than the maximum limit of 15% prescribed in the tender.	(e). It has not furnished any specific reply to this point.
(iii).	(a). Please furnish the documentary support to substantiate the insurance premium paid for the year 2006-07.	(a). It has furnished a copy of insurance premium paid in respect of insurance of user's stock (It pertains to the stock of CWC CFS located at various places and not exclusively of the Kandla CFS).
	(b). The insurance cost is estimated to increase by 4.5% in the year 2006-07 and 2007-08 over the actuals/estimates of the respective previous years despite the fact that no additions are proposed to the gross block during these years. The insurance cost should in fact reduce since it is computed on the written down value of the asset. The CWC may modify the estimation of insurance cost in the light of our observation.	(b). The insurance cost includes the cost of insurance of its property as well as the stocks of the users. There may be depreciation on the CWC property but, the cost of the insurance on stocks is based on the value of cargo. Since there is an increase in projected traffic, insurance expenditure would obviously increase. Therefore, the estimate of insurance cost need not be modified.
(iv).	Please confirm the depreciation on assets is as per the straight line method with life norms adopted as per the Companies Act or based on life norms prescribed in the LA, whichever is higher.	The depreciation has been provided on straight line method. Depreciation on container yard and warehouses/godowns is provided on remaining agreed lease period, computers at 16.2% electrical / office equipment at 6% and furniture / fixtures at 6.5%.
(v).	The revised tariff guidelines clearly prescribes that the estimation of expenditure must be based on the current movement of Wholesale Price Index (WPI) as announced by the Government of India which is 4.5% for the year 2005-06. In view of this position, the annual escalation of 20% considered in the estimation of management and administration overheads for each of the years 2006-07 to 2008-09 may be justified with detailed computation.	While the payment on account of salaries could be linked to movement of the Wholesale Price Index, the outgo of payment to contractors outsourced, is linked to the escalation in fuel price. Further, repair and maintenance is linked to the initial cost of bringing up the assets and its usual wear and tear.

7.	<b>Capital Employed</b>																					
(i).	(a). Clarify whether the proposed additional investment of Rs. 914 lakhs during the year 2008-09 for civil works is as per the terms of the investment plan envisaged in the LA.	(a). It has confirmed that proposed additional investment of Rs. 914 lakhs is as per the terms of the Investment plan envisaged in LA. These proposed investment is for the second phase development, which is likely to be incurred during 2008-09 and the results may be seen during 2009-10.																				
	(b). Appendix 6 of the LA gives details of the investment to be made in the second phase on various equipment/civil works which are, however, not found to have been considered in the estimations. The reasons for variation in the proposed investment vis-à-vis the investment plan envisaged in LA may be explained.	(b). It has not furnished any reply to this point.																				
(ii).	Please indicate increase in the capacity, reduction in the per unit operating cost, or additional traffic likely to be generated on account of the proposed addition.	The holding capacity would remain the same while the turnover is expected to increase because of additional facilities like development of yard and storage area which can be quantified at appropriate time.																				
8.	Reduction in the fixed cost per TEU estimated in Form 6 for the years 2007-08 and 2009-10 may be on account of increase in the throughput estimated in these years over the respective previous years. Please furnish a detailed analysis to establish that the reduction in the fixed cost per TEU is on account of efficiency/productivity improvement.	The reduction in the fixed cost is due to written down value of fixed assets on account of depreciation cost. It has not furnished any analysis to establish that reduction in the fixed cost per TEU is on account of efficiency/productivity improvement.																				
9.	<b>Form 7</b>																					
(i).	<p>(a). The estimates for the years 2004-05 and 2005-06 are not found to be as per the estimates considered in our last tariff Order. Modify the estimates as per our last tariff Order. While doing so, the income estimation may be updated to the extent of reduction ordered in our last tariff Order for a like to like comparison with the actual income.</p> <p>(b). Since the reply furnished by CWC was not found to be satisfactory, it was again advised to modify Form 7 in line with the observation already made earlier.</p>	<p>(a). The initial proposal for tariff fixation was based on the guidelines followed by CWC. The estimates as per its accounting policy and the contents of last tariff Order are incorporated. As per the submissions made by CWC, the net surplus/deficit after return vis-à-vis the estimates considered in the last tariff Order are tabulated below:</p> <table border="1" data-bbox="804 1335 1449 1585"> <thead> <tr> <th colspan="4" style="text-align: right;">Rs. in lakhs</th> </tr> <tr> <th>Year</th> <th>Actual net surplus/deficit</th> <th>Estimates as per our order (after adjustment of tariff reduction effected in the Order)</th> <th>Difference</th> </tr> </thead> <tbody> <tr> <td>2004-05</td> <td>-556.51</td> <td>-27.80</td> <td>-528.71</td> </tr> <tr> <td>2005-06</td> <td>-363.29</td> <td>34.31</td> <td>-397.60</td> </tr> <tr> <td><b>Total</b></td> <td><b>-919.80</b></td> <td><b>6.51</b></td> <td><b>-926.31</b></td> </tr> </tbody> </table>	Rs. in lakhs				Year	Actual net surplus/deficit	Estimates as per our order (after adjustment of tariff reduction effected in the Order)	Difference	2004-05	-556.51	-27.80	-528.71	2005-06	-363.29	34.31	-397.60	<b>Total</b>	<b>-919.80</b>	<b>6.51</b>	<b>-926.31</b>
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(ii).	In line with the then prevailing policy, royalty was not admitted as an item of cost while approving the initial tariff. The CWC has, however, included royalty as item of cost for the past period. As this exercise is for assessment of the past period with reference to actuals, the approach followed in the last tariff Order should be maintained. In the light of this	The Royalty as per Article-5 and Appendix-7 of the LA has been paid to the KPT since inception i.e. w.e.f.10/02/2004 past period. Therefore, the actual royalty payment is to be considered for analysis.																				

	position, exclude the actual royalty payment for analysis of the past period maintaining the position considered during the last tariff Order.	
(iii).	In the tariff Order approved in August 2004, Return on Equity linked to capacity utilisation and Cost of Debt were considered while fixing the tariff. As against this, the CWC has computed Return on Capital Employed (ROCE) for the past period 2004-05 and 2005-06 in Form 7. In the light of the observation made in (ii) above, computation of return may be modified maintaining the position considered in the last tariff Order.	The CWC has proposed to finance all infrastructure facilities at CFS from its own resources. No loan has been taken from any financial institution and hence this observation is not applicable.
<b>10.</b>	<b>Scale of Rates:</b>	
(i).	The consolidated cost statement reflects an average deficit of 9.05% for the years 2007-08 and 2008-09 at the existing tariff level. The reasons for proposing 23% hike in the existing tariff need to be explained in view of this deficit position reflected in the cost statement. Also, explain the reasons for proposing 33% hike in the charges for reefer plug facilities and justify the same with reference to increase in the cost of procurement of power and other related services provided to the category of containers.	There are many components to be considered while computing expenditure viz., operational increase in establishment cost due to increase in salary of staff, increase in electricity and water charges, maintenance and repair of building and other assets and escalation in the rates of the outsourcing contractors.
(ii).	<b>General Terms and Conditions:</b>	
	(a). The general terms and conditions prescribed in the existing SOR need to be included in the proposed SOR. While doing so, the provision relating to the penal rate of interest for delayed payment by users/delayed refund by CWC may be updated at 2% above the prevailing Prime Lending Rate (PLR) of the State Bank of India as per clause 2.18.2. of the revised tariff guidelines.	(a). It has not furnished any comments on the observation made by us to incorporate the general terms and conditions of Scale of Rates.
	(b). The following general conditionality may be incorporated in the proposed SOR as per clause 2.15. of the revised tariff guidelines. <i>"Users will not be required to pay charges for delays beyond a reasonable level attributable to the CWC"</i>	(b). No specific comments furnished.
	(c). Incorporate the following conditionality flowing from the principle prescribed in the revised tariff guidelines that the users should not be made to pay for the delays attributable to the Port; <i>"Storage charges/ground rent on cargo/container shall not accrue for the period when the CWC is not in a position to deliver/shift the cargo/container when requested by the users".</i>	

(iii).	<b>Ground rent and storage charge</b>	
	The first sentence incorporated, in Note No. 4 under storage charge and at Note No. no. 9 under ground rent charge of the proposed SOR, stating that the imported stocks are normally insured from warehouse to warehouse including 60 days transit storage seems to be a general statement and is not found to be relevant in tariff setting process and hence may be deleted.	It has noted the point. It shall ensure that compliance of provisions of Customs Act, 1962 in this regard.

5.2. In the revised cost statement, the traffic projection of 96,000 TEUs 1,20,000 TEUs and 1,44,000 TEUs for the years 2006-07 to 2008-09 respectively made in the earlier proposal has been scaled down to 60,020 TEUs 72,030 TEUs and 86,440 TEUs for the corresponding years. The CWC was requested to explain the reasons for scaling down the traffic projections with reference to its earlier proposal. The CWC has clarified that the throughput of 60020 TEUs for the year 2006-07 is arrived on the basis of actual container traffic handled upto February 2007 and estimates for March 2007. The traffic projections for the subsequent years are scaled down in the revised cost statement based on actual achievement of 2006-07 and taking into consideration the stiff competition with private CFS operators in and around Kandla.

5.3. A copy of the revised the proposal was forwarded to the KPT with a request to comment on the reasonableness of the revised traffic projections made by the CWC.

5.4. The revised cost statement filed by the CWC reflects the following net surplus / deficit at the existing tariff level after return on capital employed:

(Rs. in Lakhs)

Sr. No.	Particulars	2006-07	2007-08	2008-09	2009-10
(i).	Number of TEUS	60,020	72,030	86,440	1,03,750
(ii).	Income (at existing tariff)	1116.66	1306.50	1512.16	1794.85
(iii).	(a). Operating Expenditure	850.16	1011.75	1206.24	1441.06
	(b). Depreciation	103.42	103.42	141.50	141.50
	(c). Overheads	347.99	398.61	458.61	499.33
	Sub-total (a) to (c)	1301.57	1513.78	1806.35	2081.35
(iv).	Operating surplus/deficit	-184.91	-207.28	-294.20	-287.04
(v).	Capital Employed	2052.01	2106.91	2011.40	2113.62
(vi).	ROCE (considered at 100% capacity utilization)	305.29	312.43	300.01	475.20
(vii).	Net Surplus/ Deficit	-490.20	-519.71	-594.21	-762.24
(viii).	Net Surplus/Deficit as % of Income	-43.9%	-39.78%	-39.30%	-42.47%

5.5. The CWC has subsequently clarified that the modification proposed in the provision relating to insurance charge by including the word 'Customs Interest' in the value of stock means Rs. 1000 value of stock for insurance cover is inclusive of assessable value of the Cargo plus Customs Duty, Penalty, etc.

6. The KPT was also requested to furnish some additional information / clarifications. The KPT has not furnished any reply despite reminders. The summary of the queries raised are summarised below:

- (i). Furnish specific comments on the reasonableness of the traffic projections made by the CWC for the years 2006-07 to 2008-09.
- (ii). Clause 3.8.1 of the License Agreement (L.A.) stipulates that the CWC shall guarantee a throughput of 36% of the impex container trade handled by the container terminal operator. For this purpose, impex container trade has to be declared by the KPT. The actual impex container trade handled for the years 2004-05 to 2006-07 (up to 31 December 2006) and estimates for 1 January 2007

to 31 March 2007 may be furnished. Also, furnish the impex container trade declared by the KPT for the years 2007-08 to 2009-10.

- (iii). The capacity of the CWC-CFS in the last Order was considered at the level of 79,200 TEUs and 96,000 TEUs per annum for the years 2004-05 and 2005-06 respectively based on the information furnished by the KPT. As against this, the capacity considered by the CWC in the present proposal is at the level of 51600 MT per annum for the years 2004-05 to 2007-08 and 89100 MT per annum for the year 2008-09. Please furnish specific comments on the reasonableness of the capacity of the CFS assessed by the CWC for the years 2004-05 to 2008-09.
- (iv). (a.) Please clarify whether the proposed additional investment of Rs. 914 lakhs during the year 2008-09 for civil works is as per the terms of the investment plan envisaged in the LA. Also, comment on the reasonableness of the proposed additional investment.  
  
(b). Increase in the capacity of the CWC -CFS or additional traffic likely to be generated in view of the proposed addition to the gross block may be indicated.
- (v). Confirm whether the estimated lease rentals of Rs.47.85 lakhs, Rs. 50.24 lakhs and Rs. 52.75 lakhs payable by the CWC for the years 2006-07 to 2008-09 are in line with the terms of L.A.
- (vi). As per clause 2.8.1. of the revised tariff guidelines, in case the bid is finalised before 29 July 2003, royalty has to be taken into account in the tariff computation in such a manner as to avoid likely loss to the operator on account of royalty not being taken into account, subject to the maximum of the amount quoted by the next lowest bidder. In this regard please furnish detailed analysis of the Net Present Value (NPV) of the bids quoted by the CWC and the next highest bidder while selecting the successful bidder
- (vii). The Annual Accounts of the CWC for the years 2004-05 and 2005-06 reports income from Dess Charges and Fumigation Charges. The SOR approved by the Authority does not prescribe any separate tariff for these items. Confirm whether the CWC is authorised to render this service and collect these charges as per the terms of L.A.

7. A joint hearing in this case was held on 13 March 2007 at the KPT premises. At the joint hearing, the CWC, KPT and the user organisations made their submissions.

8.1. At the joint hearing, many of the users association had raised issue relating to the quality of services provided at the CWC -CFS. The KPT also endorsed this position. The KPT had also pointed out issues relating to Custom examination, availability of round-the-clock service, etc, which are directly related to enforcing the provisions of the License Agreement. As decided in the joint hearing, KPT was advised to take appropriate action on these issues and furnish its report by 3 April 2007.

8.2. The KPT has made the following submissions:

- (i). A number of joint meetings have been held between CWC, KPT and port users to resolve the difficulties faced by the port users. Even a Joint Committee constituted, as per the Licence Agreement, has met in past to resolve impediments followed by visit of KPT senior officials to CWC office to amicably resolve the issues causing impediments for improving the growth of container traffic at Kandla. Though the CWC committed to revert back on the issue, there is no response so far from CWC in this regard. The KPT has also expressed displeasure on substandard and inefficient way of working of CWC-CFS.

- (ii). As far as the monopoly of CWC-CFS is concerned, the KPT endorses that CWC has the advantages of being virtually attached to Kandla Port enjoying the locational benefit. The matter has also been taken up with the Ministry of Commerce in December 2006 to resolve the issue regarding monopoly in accordance with the Licence Agreement. It does not agree with CWC's contention that they are not in monopolistic position. Further, other CFS's mentioned by CWC are far away from port ranging from 8 to 15 KMs resulting in significant increase in cost and thereby making the CWC-CFS in the monopolistic position to that extent.

9.1. The revised guidelines stipulated that in those BOT cases where bidding process was finalised before 29 July 2003, the tariff computation will take into account royalty payment as cost for tariff fixation in such a manner as to avoid likely loss to the operator on account of the royalty payment not being taken into account, subject to the maximum of the amount quoted by the next lowest bidder. To our query about treatment of entire royalty payment, the CWC has stated that in the competition bidding, the CWC was the only technically qualified tenderer and has, therefore, sought the entire royalty payment as pass through in the tariff revision process.

9.2. Since clause 2.8.1 of the revised tariff guidelines does not cover the situation where there is only a single technically qualified bidder and no other bid is available for comparison, this Authority requested the Ministry to advise in the matter of treating of the royalty payable by CWC to KPT as a cost for tariff fixation. The response from the Ministry is still awaited. We have subsequently informed Ministry that since this case is matured for final consideration and in the absence of any specific direction about treatment of royalty in this case, it is found appropriate not to admit royalty as pass through while fixing tariff in CWC case when there is no second bid available for comparison. The Ministry was requested to convey its views if it holds a difference view. We have not received any response/views of the Ministry in this regard.

10. 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 will also be made available at our website <http://tariffauthority.gov.in>

11.1. With reference to the totality of information collected during the processing of this case, the following position emerges:

- (i). The initial Scale of Rates of Central Warehousing Corporation (CWC) for the CFS operations carried out at the Kandla Port Trust was fixed in August 2004. Following the (then) prevailing practice, the validity period of the Scale of Rates was prescribed for two years and accordingly the tariff at CWC fell due for review in August 2006. The CWC filed a proposal in July 2006 for a general increase of 23% in its Scale of Rates.

The cost statement filed by the CWC in its initial proposal reflected an average revenue deficit position of 10.04% for the years 2006-07 to 2008-09 at the existing tariff level. It has subsequently on 16 April 2007 filed revised cost statements modifying the traffic and incomes estimates for the years 2006-07 to 2009-10 which reflected an average deficit of 40.5% for the relevant three years. The revised cost statement filed by the CWC and the actuals reported for nine months from April to December 2006 and estimates for January to March 2007 duly certified by its Chartered Accountant is considered in the analysis for review of the existing tariff of the operator.

- (ii). The CWC has not updated the income and the expenditure for the year 2006-07 with reference to actuals/estimates duly certified by the Chartered Accountant for this year. Whilst the income estimation in the revised cost statement is found to be marginally lower than the figures certified by its Chartered Accountant for the year 2006-07, the estimates of expenditure are found to be significantly on the higher side.

The actual/estimates certified by its Chartered Account for the year 2006-07 in respect of repairs and maintenance cost, MF payments, management and administration overheads pertaining to the salary and wage cost, general overheads, etc., are found to be lower than actuals for the year 2005-06 reported in its Annual Accounts. The CWC has not explained the reasons why these expenditure are lower than 2005-06 actuals despite a specific request. The financial position duly certified by the Chartered Accountant of CWC for the year 2006-07 is relied upon for the purpose of this analysis. The lease rentals payable to the KPT is, however, escalated by 5% over the actuals reported in 2005-06 in view of a specific provision in the terms of the LA. The depreciation for the year 2006-07 is found to be marginally higher than 2005-06 actuals though no addition is proposed to the gross block in this year. The depreciation for the year 2006-07 is considered at the level reported in 2005-06 Annual Accounts.

- (iii). The License Agreement entered between the CWC and the KPT stipulates that Minimum Guaranteed Throughput (MGT) shall be equivalent to the 36% of the IMPEX container traffic handled by the container terminal operator which is to be declared by the Licensor, the KPT. Based on the container traffic reported by the KPT to CWC for the years 2004-05 (180917 TEUs), 2005-06 (148624 TEUs ) and 2006-07 (163127 TEUs upto 6 March 2007), the MGT works out to 65130 TEUs, 53505 TEUs, and 58725 TEUs for the years 2004-05 to 2006-07.

The actual traffic handled by CWC at its CFS for the years 2004-05 is reported at 22741 TEUs(for seven months of operation) which is lower than the MGT level after pro-rata adjustment. The actual traffic handled by CWC for the years 2005-06 and 2006-07 at 68987 TEUs and 60020 TEUs are higher than the MGT.

It is relevant to mention here that the traffic was estimated at 96000 TEUs, 120000 TEUs and 144000 TEUs for the years 2006-07 to 2008-09 respectively in its initial proposal of July 2006. Subsequently, in the revised cost statement, the traffic projections for the year 2006-07 have been modified and reduced to 60,020 TEUs based on the actual traffic handled upto February 2007 and estimates for March 2007. The decline in the traffic over the actuals of 2005-06 is explained by the CWC as the result of permission granted by the KPT for operation of other private CFS facilities and also the traffic increase at Mundra International Container Terminal.

It has recasted the traffic for the subsequent years 2007-08 to 2009-10 at 72030 TEUs, 86440 TEUs and 103750 TEUs projecting 20% growth per annum over the actuals/ estimates of the corresponding previous years in its revised proposal.

The LA specifies that the licensor shall not permit construction and operation of other CFS till the traffic of the CWC CFS reaches 1.40 lakhs TEUs per annum. The KPT has clarified that it has abided by the terms of the LA and not granted permission to other CFS to operate in their premises. The permission is granted by the Ministry of Commerce for creation of CFS facilities in the neighbourhood. The KPT is of the view that the CWC-CFS is virtually attached to Kandla Port and enjoys the locational benefit since the other CFSs are far away from Port in the range of from 8 to 15 kms. and to that extent the CWC CFS enjoys an advantage over the other CFSs.

Though the KPT has not furnished any specific comments on the reasonableness of the traffic projections made by the CWC, it has indicated the container throughput likely to be handled by the private operator ABG Kandla Container Terminal Limited for the years 2007-08 to 2009-10 at 292333 TEUs, 338167 TEUs and 391167 TEUs. Accordingly, the MGT at 36% of the throughput declared by the KPT works out to 105240 TEUs, 121740 TEUs and 140820 TEUs for the years 2007-08 to 2009-10 respectively. The revised traffic estimated by the CWC is found to be significantly lower than the MGT based on the container traffic declared by the KPT.

Both the KPT and the users have made serious observation on the service standard offered by the CWC. It is relevant to mention that both the licensor and the licensee have agreed that the minimum throughput to be handled by the CWC shall be 36% of the container traffic declared by the KPT. It may be, therefore, reasonable to expect that the CWC should gear up to handle traffic atleast at the level of MGT.

The traffic projections made by the CWC and the Minimum Guaranteed Throughput, as per LA, based on the container traffic declared by the KPT is tabulated below:

Particulars	Traffic in TEUs		
	2007-08	2008-09	2009-10
Traffic considered based on the CWC projections	72030	86440	103750
Minimum Guaranteed Throughput at 36% on the container traffic declared by the KPT.	105240	121740	140820

For the purpose of this analysis, the traffic projections estimated by the CWC for the years 2007-08 to 2009-10 based on the actual position reported for the year 2006-07 is considered in the analysis. At the time of the next general review of tariff to be undertaken after the validity period is over, if any undue advantage is found to have accrued to the operator due to wrong estimation, such advantage will be fully adjusted in the tariff to be fixed then.

Actual traffic handled by the CWC for the years 2004-05 and 2005-06 vis-a-vis the estimates considered in the last tariff Order is reviewed in the subsequent analysis.

- (iv). (a). The income estimated by the CWC for the year 2006-07 is found to be marginally lower than the actual/ estimates certified by the Chartered Accountant. The income for the year 2006-07 is updated with the actuals/ estimates certified by its Chartered Accountant. The income estimation for the subsequent years is also adjusted to the extent of volume growth considered by the CWC taking the actuals / estimates for the year 2006-07 as the base figure.
- (b). The cargo handling income in the cost statement pertains to income from some of the main services like delivery, loading/ unloading, stuffing, etc., which are outsourced to the various contractors.

The CWC has not furnished detailed computation of this income at the existing tariff level. The income estimation at the existing level, however, corresponds with the growth projected in the container traffic for the years 2007-08 to 2009-10. The per TEU income for the years 2007-08 to 2009-10 is in the range of Rs. 1400 per TEU which more or less matches with the per TEU income of the previous two years 2005-06 and 2006-07. The cargo handling income estimated by the CWC is relied upon and considered in this analysis subject to updating it with reference to 2006-07 actuals / estimates certified by the Chartered Accountant.

- (c). Apart from main services considered by the CWC in the computation of cargo handling income, the SOR approved by this Authority prescribes tariff for various other services. The income from these other services is estimated to increase by 14% in the year 2007-08 over the actuals/ estimates of the previous year and by 5% per annum for the subsequent two years.

The CWC has not furnished any detailed break-up of income likely to accrue from the miscellaneous services on the grounds that the other services prescribed in the SOR are not mandatory in nature and are offered only at the request of the users. Income from miscellaneous services is not significantly high, as it appears from the actual position reported for the previous two years. The income from miscellaneous services estimated by the CWC is, therefore considered subject to updating it with reference to 2006-07 actuals / estimates.

- (d). The CWC has estimated the storage income for the year 2007-08 to increase by 8% over the estimates of the previous year. The estimate for the year 2007-08 is updated with reference to the actual/ estimated storage income for the year 2006-07.

The income for the year 2008-09 from this source is estimated to remain at the same level of 2007-08 on the grounds that availability of improved infrastructure, change in the Custom laws and business scenario and factory stuffing and de-stuffing of containers encouraged by the Customs is likely to reduce the stuffing and de-stuffing activity at its CFS.

It is relevant to mention that storage income for the years 2007-08 and 2008-09 are estimated to increase by 8% and 15% respectively over the estimates of the previous year. The actuals for the year 2006-07 also show around 10% increase in storage income despite 13% reduction in the traffic over the previous year.

Based on the actual position for the past two years and estimates for the years 2007-08 and 2009-10, it is difficult to accept the argument of the CWC that the storage income will remain static in one particular year i.e 2008-09 despite the CFS having adequate capacity and the volume is projected to increase by 20%.

That being so, the storage income for the year 2008-09 is modified considering an increase of 8%, as assumed by CWC, over the relevant estimate of the previous year. Consequently, the storage income for the year 2009-10 is also modified considering 8% increase over the estimates of the relevant previous year.

It is relevant to mention that estimation of storage income by adopting the percentage increase over the base figure indicates a drop in the average realisation per TEU. The actual average realisation for the years 2005-06 and 2006-07 which is reported at Rs. 360 per TEU and estimated average realisation of Rs. 367 per TEU in the year 2007-08 scales down to Rs. 330 per TEU in the year 2008-09 and Rs 297 per TEU in year 2009-10 as per the modified estimates. This gives rise to a doubt about the accuracy of the estimation of storage income .

In the absence of any analysis furnished by the CWC for estimating the income from this tariff item, the storage income estimated based on the percentage increase over the previous year is considered in the cost statement.

- (e). Subject to the above modification, the estimated operating income furnished by the CWC is considered for the purpose of this analysis. At the time of next review, if it is found that the actual income varies widely from the estimates furnished, the additional accrual will be fully set off against the future tariff revision.
- (v). The actuals / estimates for the year 2006-07 under the head Market Facilitation (MF) payments made to contractors for the services outsourced is Rs. 644.51

lakhs. The estimate of this item of cost for the year 2007-08 has been made with an escalation of 12% over the actuals for the previous year with necessary adjustment for the 20% growth in volume. For the subsequent two years 2008-09 and 2009-10, the estimates capture volume growth alone without any effect of price inflation.

The CWC has clarified that as per the provisions of tender/contract entered with the contractors on February 2004, escalation in rates has to be allowed by the CWC based on the increase in the base rate of High Speed Diesel (HSD) two years after the commencement of the contract and second escalation is to be allowed 18 months thereafter. Accordingly, the first escalation in the MF rates is reported to be overdue from February 2006 and second escalation will become due from August 2008. The CWC has argued that whilst the escalation in the salary and wage cost can be linked to the WPI, the outgo of payment to contractors needs to be treated separately since it depends on the increase in the price of fuel.

The CWC has not substantiated the escalation considered in this item with any documentary support of increase granted to its contractors. It has only forwarded a copy of the contract last granted to the contractor in February 2004. In any case, this Authority cannot be required to be bound by the provisions of contracts entered by an operator.

This Authority is guided by the revised tariff guidelines for fixation of tariff which stipulates that the expenditure is to be estimated based on the current WPI (for all commodities) and adjusted for traffic growth. With reference to the argument of the CWC that escalation in the fuel price should be treated separately, it has to be recognised that WPI for all commodities is a weighted average index which captures the price movement in different identified groups which also includes fuel. It is not that all groups in the basket of WPI had suffered the same quantum of escalation. It is, therefore, not found necessary to allow escalation in the MF payment beyond the current permissible annual escalation rate of 5.4% per annum for each of the years under consideration besides suitable adjustment for the estimated increase in volumes.

- (vi). The repairs and maintenance cost for the year 2006-07 is reported at Rs.2.56 lakhs based on the actuals for the first nine months upto December 2006 and estimates for the three months duly certified by its Chartered Accountant. The estimation of repairs and maintenance cost for the year 2007-08 at Rs.19.73 lakhs seems to be high in comparison to the actuals reported for the years 2005-06 and 2006-07. The CWC has not justified the reasons for steep hike in the estimation of the repairs and maintenance cost for the years 2007-08 with reference to the actuals for the year 2006-07. It is relevant here to note here that most of the basic services are outsourced by CWC. The Annual Accounts for the years 2004-05 and 2005-06 do not report any investment on container handling equipment except civil works. Obviously, the maintenance of the equipment will be the responsibility of the concerned owners who are contracted to provide services to CWC.

In view of this position and also in the absence of any justification from the CWC for the steep hike in the estimated repairs and maintenance cost for the year 2007-08, the actuals/ estimate of 2006-07 is taken as the base and escalated by 5.4% per annum.

No addition is proposed to the gross block of assets except Rs. 914.00 lakhs proposed to be added to the civil works in the year 2008-09 which is likely to reap benefit from 2009-10 onwards. The repairs and maintenance cost is estimated to increase by 4.5% to 5% for the 2008-09 and 2009-10 by the CWC based on the WPI prevailing at the time of filing its proposal.

The annual escalation in the repairs and maintenance cost for the years 2008-09 and 2009-10 on the existing assets is updated with the prevailing WPI of 5.4%. The repairs and maintenance cost on the additions proposed to the civil works available for use in 2009-10 is estimated at 0.10% of the relevant capital cost based on the actual repairs and maintenance cost on the civil works obtained for the past two years.

- (vii). As already mentioned earlier, lease rental payable by the CWC to the KPT certified by its Chartered Accountant for the year 2006-07 is found to be marginally higher than 5% annual escalation prescribed in the terms of the LA. The lease rentals for the year 2006-07 is modified applying 5% annual escalation in view of specific provision in the LA.

The estimates for the subsequent years 2007-08 to 2009-10 are escalated by 5% per annum over the estimates of the previous year as per the terms of the LA and hence is accepted.

- (viii). The insurance cost is estimated to escalate by 4.5% per annum for the years 2007-08 and 2008-09 and by 5% for the year 2009-10 over the estimates of the corresponding previous years.

As already stated earlier, the CWC has not proposed any addition to its gross block of assets except Rs. 914 lakhs in the year 2008-09. To our query to justify the annual escalation in the insurance cost, the CWC has clarified that the estimation includes insurance cost on its assets as well as insurance on stocks based on the value of cargo. Documents furnished by the CWC confirm that insurance cover is taken on stocks but it pertains to stocks stored in warehouses situated at various locations. Hence, the position exclusively for Kandla CFS is not available to assess the reasonableness of the cost. In any case, it is clear that the CWC takes insurance on stock based on the value of cargo at the request of the user.

Since traffic is projected to increase, insurance expenditure would also obviously increase, though the insurance cost on the written down value of the assets will show a decline. Based on the clarification furnished by the CWC, annual escalation of 4.5% estimated by the CWC for the year 2007-08 is accepted and applied on the on actuals/ estimates reported for the year 2006-07.

On the same analogy, the escalation @ 4.5% for the year 2008-09 and a slightly higher rate of 5% for the year 2009-10 recognising the additional investment proposed to the civil works is considered as estimated by the CWC.

- (ix). One-time upfront fees of Rs.2.80 crores and lease premium of Rs.39.22 lakhs paid to the KPT as per terms of the LA has been apportioned over the lease period in line with the treatment given in the initial tariff fixation process and the general policy followed at the other private terminals. The Annual Accounts for the year 2005-06 also confirms this position. The preliminary expense to the extent not written off is added to the capital employed at the end of each of the years for computation of return.
- (x). The management and administration overhead and the general overhead for the year 2006-07 is estimated at Rs. 215.96 lakhs and Rs. 66.67 lakhs respectively in its cost statement. The actuals certified by the Chartered Accountant for the year 2006-07 are at the level of Rs. 142.01 lakhs and Rs.39.44 lakhs respectively which is found to be significantly lower than its estimates.

On further analysis it is found that the actual management and administration overhead general overheads for the year 2006-07 is lower than the actuals reported in the previous year 2005-06. The CWC has not explained any reasons

for decline in the expenditure under these two heads in the year 2006-07 over the 2005-06 actuals.

In the absence of any specific explanation from the CWC in this regard, the actuals certified by the Chartered Accountant for the year 2006-07 is taken as the base as done for other items for estimating the expenditure for the subsequent years.

The CWC has estimated the management and general overhead and the contribution to the provident fund to escalate by 20% per annum for the years 2007-08 to 2009-10 to meet the cost towards annual increments, payment of dearness allowance and consequential increase in other allowances.

The Annual Accounts for the past two years indicate that the management overheads pertain to the salaries and the wage component of the employees deployed by the CWC. It is noteworthy that no increase in the staff strength is reported for the years 2007-08 to 2009-10 over the previous year. Further, general overhead and management overhead expenditure are generally fixed in nature and may not vary with the general traffic growth. The annual escalation in the management and general overhead and the contribution to the provident fund is restricted to current annual escalation of 5.4% for the years 2007-08 to 2009-10 taking the actual 2006-07 figures as the base.

The actuals of 'other expenses' for the year 2006-07 is reported to be marginally higher than the estimates considered by the CWC. The actuals for the years 2006-07 is taken as the base and the escalation factor of 5.4% per annum is applied to arrive at the estimates for the years 2007-08 to 2009-10.

- (xi).
- (a). Revenue share payable by CWC to KPT was not allowed earlier as a pass through in line with the principle followed by this Authority prior to the issue of the tariff guidelines by the Government.
  - (b). As per the revised guidelines for tariff fixation, in case of bids finalised before 29 July 2003, the tariff computation must take into account royalty / revenue share payable by the private operators to the landlord port as cost for tariff fixation so as to avoid the likely loss on account of this item not being taken into account, subject to maximum of the amount quoted by the next lowest bidder.
  - (c). The L.A. was signed by the CWC in February 2002. The KPT has not intimated about the rate, if any, quoted by the second highest bidder. The CWC has clarified that in the competition bidding, it was the only technically qualified tenderer. Since there is no second bid available for comparison, it has sought pass through of the entire royalty payable to the KPT on the Minimum Guaranteed Throughput envisaged in its proposal.
  - (d). The revised tariff guidelines do not cover the situation where there is single technically qualified bidder and no other bid is available for comparison. Therefore, the Government has been requested to advise in the matter of treating revenue share/royalty in such cases as cost for tariff fixation. The decision of the Government in this regard is yet to be conveyed to this Authority.
  - (e). In the absence of any specific direction from the Government about the treatment of royalty in instant case where no other bid is available for comparison, the royalty payable by CWC is not allowed as pass through. If any decision contrary to this position is received from the Government, this Authority is inclined to review the tariff of the CWC to correctly reflect the decision of the Government.

(xii). The KPT has stated that the depreciation on assets has been incorrectly computed on straight line basis commensurate with the balance period of agreement. It has argued that depreciation must be considered on the actual life of assets. The submission made by the KPT is not found to be in line with revised tariff guidelines. Clause 2.7.1. of the revised tariff guidelines requires computation of depreciation on straight line method with life norms adopted as per the Companies Act or based on life norms prescribed in the Concession Agreement, whichever is higher. The CWC has confirmed that the depreciation is computed in line with the revised tariff guidelines. The estimation of depreciation by the CWC is considered in this analysis with a modification in respect of the additions proposed to the civil works as explained in the subsequent analysis.

(xiii). (a). The gross block of assets and net fixed assets for the financial year 2005-06 are reported at Rs. 26.75 crores and Rs. 24.70 crores respectively excluding the un-amortised preliminary expense and upfront fee.

As per the terms of the LA, the CWC has to invest Rs. 16.73 crores on civil works towards construction of godown, container yard, ground treatment, etc., and Rs. 2.36 crores on some handling equipment in second phase when it reaches 5000 TEUs per month and the investment must be completed by the time the CFS reaches 8000 TEUs per month.

The CWC has crossed the throughput of 5000 TEUs per month in the year 2005-06. It has not reported any significant investment in the year 2005-06 on equipment / civil work nor has it proposed any addition to the gross block of assets in the years 2006-07 and 2007-08 except Rs. 9.14 crores is proposed to be spent on civil works in the year 2008-09. The KPT has not furnished any comments on the investment proposed by the CWC. The CWC has made a general statement that the investment proposed in 2008-09 is for the development in the second phase as per the terms of the LA.

The CWC does not anticipate any significant increase in the traffic except the general trend of 20% growth nor does it expect any reduction in the per unit cost on account of the proposed investment. The CWC has claimed that the proposed investment is mainly to increase the capacity of its CFS from 51600 tonnes per annum to 89100 tonnes per annum.

Since the proposed capital expenditure is reportedly to increase the capacity as required by the Licence Agreement and also recognising that there has been no pointed objection from the licensor, the proposed investment of Rs. 9.14 crores estimated by the CWC is considered in this tariff review.

The CWC has confirmed that the investment made in the civil works in the year 2008-09 will be available for the benefit of users only from 2009-10. In view of this explanation, additional investment is considered in the year 2009-10 for the purpose of this analysis. Accordingly, the estimates of depreciation, repairs and maintenance and insurance cost are modified to that extent.

(b). The cumulative depreciation considered in the computation of net block does not match with the depreciation reported in the Annual Accounts for the years 2004-05 and 2005-06. The depreciation and the net block as reported in the Annual Accounts are considered as the base for estimating the net block and depreciation for the subsequent years. The un-amortised portion of upfront fee and preliminary expense at the end of each financial year is considered in the estimation of capital employed.

- (c). The working capital estimated by the CWC is negative. For the purpose of this analysis, it is considered nil for the years under consideration as done in the case of other major ports/ private terminals under similar circumstances.
- (xiv). (a). During the initial tariff fixation the CWC had estimated the designed capacity of CFS at 60,000 TEUs per annum in phase I (2004-05), 96,000 TEUs per annum in 2005-06 and 1,20,000 TEUs per annum in second phase (2006-07). Neither the CWC, nor the KPT, had furnished the designed capacity of the CFS based on the facilities created, equipment deployed / hired and the productivity levels achievable despite specific request.

In the absence of the requisite information of capacity assessment, the capacity of the CFS was considered at the level of 79200 TEUs and 90000 TEUs per annum for the years 2004-05 and 2005-06 respectively based on the Minimum Guaranteed Throughput (MGT) indicated by the licensor even though it is obvious that the designed capacity should ordinarily be more than the MGT.

- (b). The capacity of the CFS in the present proposal is reported to be 51600 metric tonnes per annum for the years 2004-05 to 2007-08. The basis and reasons for restating the capacity from TEUs to metric tonnes is not furnished. The capacity of the CFS is estimated to increase to 89100 metric tonnes in 2008-09 in view of the proposed investment in the civil works.

The CWC has clarified the permission granted by the KPT to other CFSs in Port area and more over up-coming of Mundra International Container Terminal has resulted in decline in the container traffic at KPT. In view of this, the capacity is considered lower than the level considered in the last tariff Order.

Be that as it may, it has to be recognised that the designed capacity depends on the physical facilities available and productivity levels achievable/desired. The CWC appears to have mixed up designed capacity with actual utilisation. As mentioned earlier, designed capacity of the CFS is neither made available by CWC nor KPT.

In the absence of correct assessment of the capacity furnished, the capacity of the CFS for the year 2006-07 is taken at 1,20,000 TEUs per annum based on the indications given by the CWC in its initial tariff proposal. Incidentally, a similar CFS facility developed by a private operator in the Jawaharlal Nehru Port Trust has assessed the capacity of its CFS at 1,20,000 TEUs per annum.

The additional civil works proposed to be available to users in 2009-10 is likely to increase the capacity of the CFS. But in the absence of availability of the additional capacity assessment in TEUs, the capacity taken at the MGT level of 1,40,820 TEUs per annum based on the container traffic of 3,91,167 TEUs declared by the KPT for this year.

- (c). The capacity utilisation for the throughput projected works out to be 60%, 72% and 74% for the years 2007-08 to 2009-10. As per the revised tariff guidelines, full return on capital employed is allowed, while conceding that this approach may be in favour of the operator since the designed capacity recognised for this purpose has no scientific basis.

Since the capacity utilisation is to the extent of 50% only in the year 2006-07, ROCE linked to capacity utilisation of 50% is allowed as per the revised tariff guidelines.

- (d). The return on capital employed is allowed @ 15% for the years 2006-07 based on the rate of return then adopted as per the revised tariff guidelines. From the year 2007-08 onwards, the rate of return is allowed @16% per annum based on the updated values of the key parameters prescribed in the revised tariff guidelines.
- (xv). During the initial tariff fixation of CWC in August 2004, the estimated cost position for the years 2004-05 and 2005-06 were relied upon. The income estimation at the tariff and the throughput projected by the CWC were considered. Based on the revenue surplus position of 4.8% reflected by the cost statement, this Authority had ordered 5% reduction in the proposed tariff. The CWC has reported to have commenced the operations from September 2004.

Clause 2.13 of the revised tariff guidelines requires a review the actual physical and financial performance of the major port / private operators at the end of the prescribed tariff validity period with reference to the projections relied upon at the time of fixing the prevailing tariff. The analysis of the actuals for the past period 2004-05 and 2005-06 with reference to the estimates considered in our tariff Order furnished by the CWC is found to contain some gap which is modified in respect of the following:

- (a). During the last tariff Order, the traffic and the income estimated by the CWC was relied upon and considered in the analysis. The income estimated in the last tariff Order is reduced by 5% to the extent of reduction effected in our Order for the years 2004-05 and 2005-06 for a like to like comparison. It is also adjusted for the differential tariff for 20' and 40' containers prescribed in the SOR of CWC.

For the purpose of a like to like comparison with the actuals, the net surplus/ deficit position for the year 2004-05 estimated in our initial tariff Order is considered for seven months being the period of its operation.

- (b). Royalty payable to KPT was not admitted as cost during the last tariff fixation in line with the principles then followed by this Authority prior to the issue of the revised tariff guidelines. As this exercise is for assessment of the past period with reference to actuals, the approach followed in the last tariff Order is maintained for assessment of actual performance.
- (c). In the last tariff Order, 20% return on equity linked to capacity utilisation was allowed on 50% of the investment projected by the CWC. The balance 50% of the investment was allowed return @ 11% as applied for borrowed funds, in line with the normative debt : equity ratio of 1:1 followed then.

As against this, the CWC has considered 15% return on its capital employed on the grounds that all infrastructure facilities at CFS are funded from its own resources and that no loan is taken from any financial institution as reported in its Annual accounts.

It is, however, relevant to mention here that this exercise is for assessment of the past period performance with reference to actuals, hence the approach followed in the last tariff Order should be maintained. Even during the last tariff revision, the CWC had claimed the 20% return on the entire investment on the grounds that project is entirely funded by its own funds. It was held by this Authority that maximum permissible

return on equity is subject to capacity utilisation and observance of debt equity ratio of 1:1. 20% return linked to capacity utilisation on 50% of the investment and on the balance investment return @11% was allowed in the last tariff Order.

The same approach is followed for assessment of actuals for the years 2004-05 and 2005-06. In any case, this works out to be more beneficial to the CWC as against considering ROCE of 15% for these two years.

Since the working capital comes out to be negative, it is considered as nil. The net fixed assets and the un-amortised portion of the preliminary expense and the upfront fee reported in the respective Annual Accounts are considered in the computation of capital employed for the purpose of allowing return.

(xvi). The performance of CWC during the years 2004-05 to 2006-07 is discussed below:

- (a). The net deficit position for the year 2004-05 based on the actuals is Rs. 469.60 lakhs as against the estimated deficit of Rs. 33.97 lakhs as per the last tariff Order after pro-rata adjustment of the estimates for seven months. The variation in deficit position reflected in this year are mainly attributable to the reduction in actual traffic which is reported at 22741 TEUs as against 35000 TEUs estimated in the initial tariff Order. The actual traffic handled by CWC is 35% lower than the estimates considered in the last tariff Order and the income is Rs. 400 lakhs i.e 50% lower than the income estimation considered in the last Order. The actual total expenses is in fact 7% less than the level estimated in the initial tariff Order. There is no significant variation in the capital employed position.
- (b). In the year 2005-06, the actual traffic handled is 68987 TEUs as against the estimated volume of 96000 TEUs in the last tariff Order. The actual income is Rs. 965 lakhs lower than the estimates considered in the last tariff Order which is mainly due to lower traffic. The traffic and income are found to be 28% and 44% lower than the estimates considered in the last tariff Order. On the other hand, the actual total expense are almost 22% lower than the level estimated in the last tariff Order.

The return on investment (both on equity and cost of debt) is found to be Rs. 254.68 lakhs lower than the return allowed in the last tariff Order. This is on account of two reasons - lower capacity utilisation and the actual investment level lower than the level estimated in the initial tariff Order. To summarise, the net deficit is Rs.369.48 lakhs as against deficit of Rs. 14.38 lakhs (after adjustment) estimated in the last tariff Order.

It is significant to note that even the container traffic of the KPT had declined in this year by 17%. The actual traffic handled by the CWC is higher than the MGT based on the actual throughput declared by the KPT.

- (c). The CWC continued to operate the terminal for the year 2006-07 at the rate approved in August 2004. Since the year 2006-07 is already over, the financial position for the year 2006-07 is also considered with the past analysis. The MGT based on the throughput declared by the KPT is 58725 TEUs against which the CWC has handled 60020 TEUs.

Since no estimates for the years 2006-07 are available for the purpose of comparison, the actuals upto December 2006 and estimates for January to March 2007 duly certified by its Chartered Accountant subject to modification explained in the analysis above is considered. The actual

position shall be subject to review during the next tariff revision exercise. If the variation is found to be more than the level prescribed in the revised tariff guidelines, it shall be adjusted in the next tariff validity cycle.

- (d). Accordingly, a summary of net surplus / deficit after allowable return subject to the above discussions is as follows:

<b>(Rs. in lakhs)</b>	
2004-05	(-)469.60
2005-06	(-)369.48
2006-07	(-) 143.30
<b>Total</b>	<b>(-)982.38</b>

- (e). A comparison of the physical and financial performance for the years 2004-05 and 2005-06 between the updated estimates and the actuals show that the variation is more than 20%.

As already mentioned earlier, the deficit position reflected in the two years 2004-05 and 2005-06 is mainly attributable to the actual traffic which is reported lower than the estimates.

In fact in the year 2004-05, the actual traffic handled by the CWC is even lower than the MGT. The actual container traffic handled by the KPT for the year 2004-05 is reported to be 180917. The MGT at 36% of the actual traffic works as per the terms of the LA works out to be 65130 TEUs. The MGT after prorata adjustment for seven months of operations will work out to be 37992 TEUs. It is found that the actual traffic handled by the CWC is 40% lower than the MGT. Since the CWC has not attained even the MGT level for this year, it may not appropriate to pass on the burden of the deficit pertaining to this year on users in the future tariff.

Excluding the position for 2004-05, the aggregate of net deficit is Rs. 512.77 lakhs for the years 2005-06 and 2006-07. It is noteworthy that the CWC has achieved the MGT in the years 2005-06 and 2006-07.

Since the physical and financial variation with reference to the estimates considered in the last tariff Order is more than 20% in the year 2005-06, 50% of the deficit reported in this year as well as 2006-07 is spread over the current tariff validity period of three years in line with clause 2.13. of the revised tariff guidelines.

- (xvii). (a). The cost statement for the years 2007-08 to 2009-10 have been modified in line with the above analysis. The modified cost statement is attached as **Annex-I**. The summarised position of the results disclosed by the cost statement is tabulated below:

Operating Income (Rs. in lakhs)				Net Surplus / (-) Deficit (Rs. in lakhs)				Net Surplus / (-) Deficit as a % or operating income			Average net deficit as % of operating income
2007-08	2008-09	2009-10	Total	2007-08	2008-09	2009-10	Total	2007-08	2008-09	2009-10	
1318.80	1544.04	1811.44	4674.28	(-) 433.06	(-) 416.72	(-)599.64	(-)1449.4	(-)32.8%	(-)27.0%	(-)33.1%	(-)31.0%

- (b). The modified cost statement reflects an average deficit of 31% for the years 2007-08, 2008-09 and 2009-10 over the operating income estimated at the prevailing rates. The CWC has proposed across the board increase of 23% on the prevailing tariff.

As already mentioned earlier, there is a vast difference in the traffic projections made by the CWC ( considered in this analysis) and the Minimum Guaranteed Throughput at the container traffic declared by the

KPT. The CWC is expected to achieve atleast the MGT as per the terms of the LA signed by both the KPT and the CWC. A further analysis done at the MGT level indicates that the cost deficit position would have been 10.8% if the MGT was achieved by CWC as against the deficit position of 31% reflected in the table above.

In view of this position, there does not seem to be a case for increasing the tariff at the level proposed by the CWC.

- (c). It is also relevant to recognise here the concerns expressed by the users about the quality of the service level, availability of round-the-clock service, etc. at the CWC-CFS. The land lord port trust has expressed displeasure on substandard and inefficient way of working of CWC-CFS. It is also reported that the attempts made by the port to amicably resolve the issues relating to quality of service at CFS did not materialise in the absence of any favourable response from the CWC. Even the LA requires the CWC to provide adequate service standards.
  - (d). As already mentioned earlier, storage income seems to be under estimated and the income estimation from miscellaneous services prescribed in the SOR is not clear in the absence of detailed computation in this regard. Further, the designed capacity of CFS based on which ROCE is allowed is not properly assessed.
  - (e). Considering all the above facts, an increase of 10% is allowed in the existing tariff of the CWC. This will generate additional revenue of around Rs. 4.70 crores in the 3 years period under consideration. The uncovered balance should be met by attracting additional volumes, atleast to the extent of MGT, and improving service standards and efficiency. The licensor KPT is advised to ensure that CWC provides services of reasonable standards as required by the Licence Agreement.
- (xviii). The CWC has not incorporated the general conditions relating to levy of penal interest on delayed payments and time limit beyond which storage charge shall not be levied in case of FCL abandoned containers etc., which are already prescribed in the existing Scale of Rates. These provisions are uniformly prescribed in the Scale of Rates of all other major ports / private terminals in line with the revised tariff guidelines and hence are incorporated in the SOR of the CWC.

The prevailing PLR of the State Bank of India is 12.75%. The existing provision relating to penal rate of interest on delayed payments by users and refunds by CWC is updated with interest rate of 14.75% being 2% above the prevailing PLR of the State Bank of India in line with the revised tariff guidelines.

- (xix). Users should not be required to pay charges for delays beyond reasonable level attributable to the major ports / private terminals as stipulated in clause 2.15. of the revised tariff guidelines. Flowing from this principle, the CWC was requested to prescribe a condition stating that storage charge/ ground rent on cargo / containers shall not accrue for the period during which the CWC is not in a position to deliver / shift the cargo/ container when requested by the users. These provisions are in line with the revised tariff guidelines and are prescribed in the SOR of other major ports/ private terminals and hence are incorporated in the revised SOR of the CWC.
- (xx). The existing structure of free days for cargo / containers is proposed to continue. The storage charge and ground rent are proposed to be increased by 23%. Increase in tariff is approved to the extent of 10% in line with the general decision.

Separate ground rent for 40' container is prescribed at double the tariff for a 20' container in line with the revised tariff guidelines instead of a general condition proposed by the CWC.

- (xxi). (a). Some of the users have raised an issue about the responsibility of the CWC for insurance claims/ risks to the extent of the insurance cover.

The CWC has clarified that as per the trade practice, stocks are normally insured from warehouse to warehouse including the transit storage time of 60 days. It is presumed that stocks received at the CFS are adequately covered. Hence, a condition is prescribed in the existing SOR that the CWC will not be responsible for any insurable claims/risks in any eventuality.

It is relevant to mention that similar provision is prescribed in the Scale of Rates for the CFS operated by the Jawaharlal Nehru Port Trust. The CWC has adopted this provision from the JNPT CFS. Since taking insurance cover on stock from warehouse-to-warehouse including the transit insurance appears to be a general trade practice being followed, it is not found necessary to modify the existing provision.

The CWC undertakes to arrange for additional insurance cover on stock against risk of fire, flood, cyclone, etc., at the request of the users at the rate prescribed in the SOR.

- (b). The existing insurance charge of 12.50 paise per Rs. 1000 value of stock per week or part thereof is proposed to be partially modified to state that the value of stock will be inclusive of Customs interest i.e Customs duty, penalty etc., Taking insurance on the value of the stock is the general trade practice and the same approach is to be followed. It is ,therefore, not found necessary to modify the existing provision in this regard.
- (xxii). 25% premium is proposed on the storage / ground rent charge of hazardous containers/ cargo and over dimensional containers. The premium proposed on storage charge of hazardous cargo / containers is in line with the revised tariff guidelines and hence is accepted. The proposed premium of 25% in the storage charge of over dimensional containers is also be accepted since it is in line with the similar prescription at the other private terminals like the Visakha container Terminals Limited, India Gateway Terminal Limited , etc.,
- (xxiii). The unit of levy of reefer plugging facility is proposed to be reduced from 8 hours to 4 hours in line with the revised tariff guidelines and hence accepted.
- The rate for this service is, however, proposed to be increased by 33% as against 23% proposed for other tariff items. The CWC has not justified the higher level of increase proposed in this item. The increase in this tariff item is restricted to the level allowed for other tariff items.
- (xxiv). Another issue agitated by the users is the charges towards fumigation and dess charges collected by the CWC. The income earned from offering this service is reflected in the Annual Accounts for the years 2004-05 and 2005-06 and also incorporated in its income estimation for the current tariff validity period.
- The existing SOR approved by this Authority as well as the SOR proposed by the CWC do not prescribe any separate tariff for these services.

The KPT was requested to confirm whether CWC is authorised to offer this service as per the terms of the LA since the LA does not mention anything specific about offering this service. The KPT has not furnished any clarification in this regard.

The CWC has submitted that it has been vested with duty to offer the disinfection services under the Warehousing Corporation Act, 1962 and has also been recognised as a fumigation agency by the Export Inspection Council of India (Govt. of India). The fumigation of export/imported goods is a legal requirement of foreign countries and as such is not a service. The fumigation services are offered by various other agencies in its premises and the users are free to get fumigation services from any authorised agency. It has, therefore, argued that tariff regulation of this item does not come under the purview of this Authority.

There is no doubt about authorisation granted by the relevant Authority in the Government of India to CWC to offer the fumigation service. But, as far as tariff is concerned it needs the sanction of this Authority as the CWC is operating the CFS based on a licence granted under the Major Port Trusts Act, 1963. The CWC has not furnished any documentary support of the approval obtained from the Government on the tariff to be levied for offering this service. Despite a specific advise rendered, the CWC has neither filed a proposal seeking approval of tariff for this item nor disclosed the rates collected by it for this service. It is not clear under what legal authority the CWC has made such collection.

Incidentally, this Authority has recently approved tariff for this specific item in case of other private terminal i.e. Chennai Container Terminal Limited.

As already mentioned earlier, fixing tariff for fumigation service provided within the major port trusts falls under the jurisdiction of this Authority. The charges collected by the CWC for this service is without any authorisation. The CWC is allowed time upto 31 August 2007 to file a proposal for levy of tariff for fumigation service based on the cost of offering the service. If no such proposal with detailed cost analysis and justification is received within the stipulated date, tariff levied by the CWC towards fumigation and dess services will be treated as unauthorised. In such event, the KPT as landlord is advised to take appropriate action as per the LA.

- (xxv). Some of proposed provisions not in line with the common prescription at other major ports/ private terminals have been modified to maintain uniformity and consistency at all the major ports/ private terminals. Further, CWC has included conditionality in the proposed SOR to the effect that service tax will be levied extra as applicable. Service Tax is not a tariff item to be fixed by this Authority and therefore its levy need not be prescribed as conditionality in the Scale of Rates. This levy is to be made as per the relevant law.
- (xxvi). The revised tariff guidelines prescribe tariff validity cycle of three years. Since the financial position considered for the purpose of this analysis is only till 31 March 2010, the validity of the revised Scale of Rates will also expire on 31 March 2010. This Authority, however, entertains general revision proposal from the CWC ahead of schedule for good and valid reasons.

12.1. In the result, and for the reasons given above, and based on the collective application of mind, this Authority approves the revised Scale of Rates of the CWC-CFS at Kandla, which is attached as **Annex-II**.

12.2. The revised Scale of Rates and conditionalities of the CWC will 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 till 31 March 2010. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.

12.3. The CWC is also advised to file its proposal for fixation of tariff for fumigation and dess services latest by 31 August 2007. If no such proposal is received within the stipulated date, the levy of tariff by CWC for this service will be treated as unauthorised.

12.4. The tariff has been fixed relying on the information furnished by the CWC and based on assumptions made as explained in the analysis. If this Authority, at any time, during the prescribed tariff validity period, finds that the actual position varies substantially from the estimations considered or there is deviation from the assumptions accepted herein, this Authority may require the CWC to file a proposal ahead of the schedule to review its tariff and to setoff fully the advantage accrued on account of such variations in the revised tariff.

In this regard, the CWC is directed to furnish to this Authority the actual financial/performance details in the format prescribed for filing tariff proposal, alongwith its annual accounts and performance report within 60 days of closing of the respective accounting year. If CWC fails to provide such information within the stipulated time limit, this Authority may proceed *suo motu* to review the tariff of CWC. This apart, analysis of variations will also be made at the time of the next general review at the end of the usual tariff validity period and full adjustment of additional surplus will be made in the tariff to be fixed for the next cycle.

**(A.L. Bongirwar)**  
Chairman

## COST STATEMENT OF CENTRAL WAREHOUSING CORPORATION FOR CFS OPERATIONS AT KANDLA PORT TRUST

(Rs. Lakhs)

Sr.No.	Particulars	Acutals upto Dec and estimates from Jan to March	Estimates by CWC			Modified estimates		
			2007-08	2008-09	2009-10	2007-08	2008-09	2009-10
	Traffic (In TEUs)	60020	72030	86440	103750	72030	86440	103750
	Capacity	120000	51600	89100	89100	120000	120000	140820
I	<b>Total Operating Income</b>							
	(i) Storage income	245.28	241.77	241.77	278.00	264.90	286.09	308.98
	(ii) Cargo handling income	840.81	1015.88	1219.10	1463.00	1008.97	1210.77	1452.92
	(iii) Others	42.79	48.85	51.29	53.85	44.93	47.18	49.53
	<b>Total (i to iii)</b>	<b>1128.88</b>	<b>1306.50</b>	<b>1512.16</b>	<b>1794.85</b>	<b>1318.80</b>	<b>1544.04</b>	<b>1811.44</b>
II	<b>Operating Costs (excluding depreciation)</b>							
	(i) Repairs and maintenance	2.56	19.73	20.62	21.65	2.70	2.84	3.91
	(ii) Royalty / revenue share	0.00	59.64	76.93	99.34	0.00	0.00	0.00
	(iii) Market Facilitation Payment (for services outsourced)	644.51	864.85	1037.87	1245.70	815.18	1031.03	1302.05
	(iv) Lease Rentals	47.85	50.25	52.75	55.40	50.25	52.75	55.40
	(v) Insurance	14.67	17.29	18.07	18.97	15.33	16.02	16.82
	<b>Total (i to v)</b>	<b>709.59</b>	<b>1011.75</b>	<b>1206.24</b>	<b>1441.06</b>	<b>883.45</b>	<b>1102.65</b>	<b>1378.18</b>
III	Depreciation	103.42	103.42	141.50	141.50	103.42	103.42	141.50
IV	Overheads							
	(i) Management & Administration overheads	142.01	259.15	310.98	342.08	149.68	157.76	166.28
	(ii) General Overheads	39.44	69.67	72.81	76.45	41.57	43.81	46.18
	(iii) Preliminary expenses & Upfront Payment write-off	11.40	11.40	11.40	11.40	11.40	11.40	11.40
	(iv) Contribution of Provident fund	10.80	15.52	18.63	22.36	11.38	12.00	12.65
	(v) Others	56.60	42.87	44.80	47.04	59.66	62.88	66.27
	<b>Total (i to v)</b>	<b>260.25</b>	<b>398.61</b>	<b>458.62</b>	<b>499.33</b>	<b>273.69</b>	<b>287.85</b>	<b>302.78</b>
V	Operating Surplus / (Deficit) (I) – (II) – (III) – (IV)	55.62	-207.28	-294.20	-287.04	58.25	50.11	-11.03
VI	FMI Less FME	0.00	0.00	0.00	0.00	0.00	0.00	0.00
VII	<b>Surplus Before Interest and Tax (V) + (VI)</b>	<b>55.62</b>	<b>-207.28</b>	<b>-294.20</b>	<b>-287.04</b>	<b>58.25</b>	<b>50.11</b>	<b>-11.03</b>
VIII	Capital Employed	2651.32	2106.90	2011.40	2113.62	2536.50	2383.60	3144.70
IX	RoCE - Maximum permissible considered at 16% from 2007-08 as against 15% considered by CWC	397.70	312.43	300.01	475.20	405.84	381.38	503.15
X	Capacity Utilization	50%	100%	100%	100%	60%	72%	74%
XI	RoCE adjusted for capacity utilization	198.92	312.43	300.01	475.20	405.84	381.38	503.15
XII	<b>Net Surplus / (Deficit) (VII) - (XI)</b>	<b>-143.30</b>	<b>-519.71</b>	<b>-594.21</b>	<b>-762.24</b>	<b>-347.59</b>	<b>-331.26</b>	<b>-514.18</b>
XIII	<b>Net Surplus / (Deficit) as a % of operating income (XII/I in %)</b>	<b>-12.69%</b>	<b>-39.78%</b>	<b>-39.30%</b>	<b>-42.47%</b>	<b>-26.36%</b>	<b>-21.45%</b>	<b>-28.39%</b>
XIV	<b>Average Net Surplus / (Deficit) as a % of operating income</b>							
					<b>-40.51%</b>		<b>-25.40%</b>	
XV	Deficit accrued for the past period from 2005-06 to 2006-07	-512.77						
XVI	50% of the deficit accrued in the past set off over three years 2007-08 to 2009-10	0.00	-	-	-	-85.46	-85.46	-85.46
XVII	Net Surplus / (Deficit) after adjustment of past surplus	-143.30	-	-	-	-433.06	-416.72	-599.64
XVIII	Net Surplus / (Deficit) as a% of operating income (XVII / I in % )	-12.7%	-39.8%	-39.3%	-42.5%	-32.8%	-27.0%	-33.1%
XIX	<b>Average net surplus / deficit for the three years 2007-08 to 2009-10</b>							
					<b>-40.5%</b>		<b>-31.0%</b>	

**Annex-II**

**CENTRAL WAREHOUSING CORPORATION**  
**Scale of Rates**

This Scale of Rates sets out the charges payable to the Central Warehousing Corporation for the services and facilities provided at its Container Freight Station at Kandla Port Trust.

**General Terms and Conditions:**

- (1).
  - (i). The user shall pay penal interest @ 14.75% on delayed payments of any charge under this Scale of Rates. Likewise, the CWC shall pay penal interest on delayed refunds.
  - (ii). The delay in refunds will be counted only 20 days from the date of completion of services or on production of all the documents required from the users, whichever is later.
  - (iii). The delay in payments by the users will be counted only 10 days after the date of raising the bills by the CWC. This provision shall, however, not apply to the cases where payment is to be made before availing the services as stipulated in the Major Port Trusts Act and/or where payment of charges in advance is prescribed in this Scale of Rates.
- (2). The storage charges on abandoned FCL containers/shipper owned containers shall be levied upto the date of receipt of intimation of abandonment in writing or 75 days from the date of landing of container, whichever is earlier subject to the following conditions :
  - (i). The consignee can issue a letter of abandonment at any time.
  - (ii). If the consignee chooses not to issue such letter of abandonment, the container Agent/MLO can also issue abandonment letter subject to the condition that,
    - (a). the Line shall resume custody of container along with cargo and either take back it or remove it from the port premises; and
    - (b). the Line shall pay all port charges accrued on the cargo and container before resuming custody of the container.
  - (iii). The container Agent/MLO shall observe the necessary formalities and bear the cost of transportation and destuffing. In case of their failure to take such action within the stipulated period, the storage charge on container shall be continued to be levied till such time all necessary actions are taken by the shipping lines for destuffing the cargo.
  - (iv). Where the container is seized/confiscated by the Custom Authorities and the same cannot be destuffed within the prescribed time limit of 75 days, the storage charges will cease to apply from the date the Customs order release of the cargo subject to lines observing the necessary formalities and bearing the cost of transportation and destuffing. Otherwise, seized/confiscated containers should be removed by the Lines/consignee from the port premises to the Customs bonded area and in that case the storage charge shall cease to apply from the date of such removal.
3. Users shall not be required to pay charges for delays beyond a reasonable level attributable to the CWC

**CHAPTER -I  
GROUND RENT AND STORAGE CHARGES**

**1.1. Storage Charge**

<b>Sl. No</b>	<b>Description of Service</b>	<b>Rate ( in Rs.)</b>
1.	<b>Import Operations</b>	
	(a). Storage charge (covered area)	
	Upto 30 days	3.15 per MT per day
	31 <sup>st</sup> day onwards	5.25 per MT per day
2.	<b>Export Operations</b>	
	(a). On General Basis	3.15 per MT per day
	(b). On Reservation Basis	130.65 per sq mtr. per month

**Notes:**

- (1). First 3 days will be free for the import LCL cargo in CWC godowns, in respect of containers received from Kandla Port at CWC,CFS.
- (2). 3 days free period will be allowed for stuffing of export cargo.
- (3). While counting free days Customs notified holidays and CFS non- operating days falling in between or succeeding the free period will not be counted.
- (4). **INSURANCE :**  
  
It will be presumed that the stock being received at the CFS, Kandla port are adequately insured by the user against all possible risks during storage including interests of the Customs. Thus, in any eventuality, CWC shall not be responsible for any insurable claims/risks including consequential losses. Same assumption will also apply for export cargo warehouses.  
  
However, in case the insurance cover is required by any party against the risk of fire, flood, cyclone, theft, etc., the same will be arranged by the CWC-CFS, Kandla on a written request, for which advalorem charge at the rate of 12.50 paise per Rs. 1000/- value of the stocks will be levied, per week or part thereof.
- (5). For cargo stored in open area at the request of users, storage charges would be 25% less than the rate prescribed for covered area.
- (6). Container / Cargo remained un-cleared beyond 30 days shall be liable for shifting to the disposal unit at CFS Gandhidham at the risk and cost of the importer / CHA / Shipping Lines.
- (7). 25% extra charges will be levied for hazardous cargo.
- (8). Storage charge on cargo shall not accrue for the period when CWC is not in a position to deliver/shift the import/export cargo when requested by the user.

**1.2. Ground Rent**

SI.No.	Description of Service	Rate per container per day (in Rs.)	
		20' container	40' container
1.	<b>Import operations</b>		
(A).	Loaded Container		
(i).	1 to 7 days	Free – including date of arrival	Free – including date of arrival
(ii).	8 to 15 days	104.50	209.00
(iii).	16 to 30 days	156.75	313.50
(iv).	31 <sup>st</sup> day onwards	313.50	627.00
2.	<b>Export operations</b>		
(B).	Loaded Container		
(i).	1 to 3 days	Free	Free
(ii).	4 days to 15 day	104.50	209.00
(iii).	16 <sup>th</sup> day onwards	156.75	313.50
3.	<b>Empty Container</b>	26.15	52.25

**Notes:**

- (1). All empty import containers that are stuffed at CWC-CFS will have 7 days free storage.
- (2). Three days free period is allowed on export containers after stuffing and/ or sealing of the container.
- (3). Seven days free period including date of arrival of the container in the CFS will be allowed for import containers brought from KPT.
- (4). Container / Cargo remained un-cleared beyond 30 days shall be liable for shifting to the disposal unit at CFS Gandhidham at the risk and cost of the importer / CHA / Shipping Lines.
- (5). While counting free days, Customs notified holidays and CFS non-operating days falling in between or succeeding the free period will not be counted.
- (6). For reefer plugging facility charges @ Rs.165/-per TEU and Rs.247.50 per FEU per 4 hours or part thereof will be levied in addition to ground rent.
- (7). 7 days free period will be allowed for parking of empty containers at CFS Kandla Port.
- (8). Free period in case of empty containers will commence from the date of parking of empty container at the designated yard of CFS Kandla Port, irrespective of time of arrival of such containers.
- (9). **INSURANCE :**  
It will be presumed that the stock being received at the CFS, Kandla port are adequately insured by the user, against all possible risks during storage including interests of the Customs Thus, in any eventuality, CWC shall not be responsible for any insurable claims/risks including consequential losses. Same assumption will apply for export cargo warehouses.  
  
However, in case the insurance cover is required by any party against the risk of fire, flood, cyclone, theft, etc., the same will be arranged by the CWC,CFS, Kandla on a written request, for which advalorem charges at the rate of 12.50 paise per Rs. 1000/- value of the stocks will be levied, per week or part thereof.
- (10). 25% extra charges will be levied for hazardous cargo containers oversized /over dimensional containers.
- (11). Ground rent on container shall not accrue for the period when the CWC is not in a position to deliver/shift import/export containers for reasons attributable to the CWC.

**CHAPTER-II  
CONTAINER/CARGO HANDLING & TRANSPORTATION CHARGE**

SL NO.	Description of Operations	Rate (in Rs.)				
<b>A.</b>	<b>Import Operations</b>					
(1).	Providing road vehicles at Container Yard, Kandla Port and taking over loaded containers placed by Kandla Port Trust operators on the vehicles provided by the contractor, after due inspection of the condition of the container, the locks & seals and on completion of the required formalities, transporting the same to the Container Freight Station, CWC, Kandla Port [within 24 hours of issue of job order irrespective of any detention due to offloading / loading delays or traffic congestion (under Customs escort wherever / whenever required) including lift on in the port.	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: center;">PER TEU</td></tr> <tr><td style="text-align: center;">Rs.888.25</td></tr> </table> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: center;">PER FEU</td></tr> <tr><td style="text-align: center;">Rs.1332.40</td></tr> </table>	PER TEU	Rs.888.25	PER FEU	Rs.1332.40
PER TEU						
Rs.888.25						
PER FEU						
Rs.1332.40						
(2).(a).	Destuffing the container under the supervision of CWC / Customs / Shipping agents' representatives as per the procedure laid down; inventorisation of the cargo and stacking the same in the Import Warehouse / Open yard (preferably by means of mechanical equipment) and carrying empty containers to the ECY or any other designated area within the CFS complex and stacking them three high [irrespective of time lag between different operations].	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: center;">PER TEU</td></tr> <tr><td style="text-align: center;">Rs.731.50</td></tr> </table> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: center;">PER FEU</td></tr> <tr><td style="text-align: center;">Rs.1097.25</td></tr> </table>	PER TEU	Rs.731.50	PER FEU	Rs.1097.25
PER TEU						
Rs.731.50						
PER FEU						
Rs.1097.25						
(2).(b).	Destuffing of the loaded container stacked in the yard by grounding them, wherever necessary (which may include transportation within the complex) for facilitating Customs examination and stuffing the cargo back into the same container or any other containers after Customs examination or loading the cargo / container on to road vehicles by means of mechanical handling equipment / manually and stacking the loaded / empty container as the case may be in the LCY / ECY or any other designated area after inventorisation in the presence of Customs authorities, Shipping Line / Shipping agent / CHA / Exporter / any other agency and under the supervision of CWC officials.	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: center;">PER TEU</td></tr> <tr><td style="text-align: center;">Rs.1045.00</td></tr> </table> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: center;">PER FEU</td></tr> <tr><td style="text-align: center;">Rs.1567.50</td></tr> </table>	PER TEU	Rs.1045.00	PER FEU	Rs.1567.50
PER TEU						
Rs.1045.00						
PER FEU						
Rs.1567.50						
3.(a).	Taking required number of packages from the stacks / open yard and bringing them to the designated place for Customs examination (which would include unpacking and re-packing of packages, providing suitable straps, etc., or weightment, sealing wherever required on free of charge), and placing them in the stacks / open yard, if necessary, and loading the entire consignment into trucks / vehicles provided by the importer / CHA at the Import Warehouse / Open Yard.	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: center;">PER QTL</td></tr> <tr><td style="text-align: center;">Rs.4.20</td></tr> </table>	PER QTL	Rs.4.20		
PER QTL						
Rs.4.20						
3. (b).	Manual handling of foodgrains.	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: center;">PER QTL</td></tr> <tr><td style="text-align: center;">Rs.3.15</td></tr> </table>	PER QTL	Rs.3.15		
PER QTL						
Rs.3.15						
<b>B.</b>	<b>Export Operations</b>					
(4). (a).	Unloading the cargo from the trucks / vehicles provided by CHA / Exporter/ User at CFS complex and stacking the same in the Export Unit / Warehouse / Open Yard by means of suitable mechanical equipment or by any other appropriate means, after due inventorisation.	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: center;">PER QTL</td></tr> <tr><td style="text-align: center;">Rs.4.20</td></tr> </table>	PER QTL	Rs.4.20		
PER QTL						
Rs.4.20						
(4).(b).	Manual handling of foodgrains.	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: center;">PER QTL</td></tr> <tr><td style="text-align: center;">Rs.2.10</td></tr> </table>	PER QTL	Rs.2.10		
PER QTL						
Rs.2.10						
5.	Providing labour or appropriate equipment for taking out required number of packages from the racks / stacks / open yard and bringing them for Customs examination (which would include unpacking and re-packing of packages providing suitable straps / scales or weightment wherever / whenever required on free of cost) and placing them in the rack / stack /	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: center;">PER TEU</td></tr> <tr><td style="text-align: center;">Rs.940.50</td></tr> </table>	PER TEU	Rs.940.50		
PER TEU						
Rs.940.50						

SL NO.	Description of Operations	Rate (in Rs.)										
	open yard, if necessary, and consolidating the nominated stocks / cargo, shifting of nominated empty container after retrieving the same from CFS container yard, placing the container at Export Unit / Open Yard, stuffing those by use of suitable mechanical equipment or by other means under supervision of CWC / Customs / Shipping Line / Agent officials, locking & sealing and loading of the container on road vehicles after completion of required formalities after following the prescribed procedure.	<table border="1"> <tr><td>PER FEU</td></tr> <tr><td>Rs.1410.75</td></tr> </table>	PER FEU	Rs.1410.75								
PER FEU												
Rs.1410.75												
(6).	Transporting the loaded container (under Customs escort wherever / whenever required) from CFS, Kandla Port Trust, Kandla to Container Yard, Kandla Port Trust and handing over the same to the port authorities and obtaining clear "EQUIPMENT INTERCHANGE REPORT" (EIR), within 12 hours of receipt of job order of port cut-off time including extended cut-off time, which ever is earlier.	<table border="1"> <tr><td>PER TEU</td></tr> <tr><td>Rs.836.00</td></tr> <tr><td>PER FEU</td></tr> <tr><td>Rs.1254.00</td></tr> </table>	PER TEU	Rs.836.00	PER FEU	Rs.1254.00						
PER TEU												
Rs.836.00												
PER FEU												
Rs.1254.00												
(7).	Unloading the cargo from the trucks / vehicles provided by CHA / Exporter / User at CFS complex and directly stuffing the cargo into the nominated container after completion of customs and other formalities in the presence of CWC, Customs / Shipping Line / Agent officials, locking and sealing of the containers on completion of required formalities and after following the prescribed procedures and loading of the loaded container on to the road vehicles.	<table border="1"> <tr><td>PER TEU</td></tr> <tr><td>Rs.1149.50</td></tr> <tr><td>PER FEU</td></tr> <tr><td>Rs.1724.25</td></tr> </table>	PER TEU	Rs.1149.50	PER FEU	Rs.1724.25						
PER TEU												
Rs.1149.50												
PER FEU												
Rs.1724.25												
<b>C.</b>	<b>General Operations</b>	(i).UPTO 15 KMs										
(8).	<p>Providing suitable vehicles at Container Yard, Kandla Port Trust / any other CFS / Container yard within a road distance of 15 kms. from the CFS Kandla Port Trust, Kandla and taking over of empty containers after due inspection, transporting the same to Container Freight Station, CWC, Kandla Port Trust, Kandla (within 12 hours of receipt of job order irrespective of any detention due to offloading / loading delays or traffic congestion en-route).</p> <p>(i). UP TO 15 KMS (ii).FOR KPT TO CFS</p>	<table border="1"> <tr><td>PER TEU</td></tr> <tr><td>Rs.836.00</td></tr> <tr><td>PER FEU</td></tr> <tr><td>Rs.1254.00</td></tr> <tr><td>(ii).FOR KPT TO CFS</td></tr> <tr><td>PER TEU</td></tr> <tr><td>Rs.522.50</td></tr> <tr><td>PER TEU</td></tr> <tr><td>Rs.783.75</td></tr> </table>	PER TEU	Rs.836.00	PER FEU	Rs.1254.00	(ii).FOR KPT TO CFS	PER TEU	Rs.522.50	PER TEU	Rs.783.75	
PER TEU												
Rs.836.00												
PER FEU												
Rs.1254.00												
(ii).FOR KPT TO CFS												
PER TEU												
Rs.522.50												
PER TEU												
Rs.783.75												
(9).	<p>Shifting of empty / loaded containers from one location to another location within the Container Freight Station Complex at the designated place including stacking the same upto three high by use of appropriate handling equipment.</p> <p style="text-align: right;">(i) Empty Containers</p> <p style="text-align: right;">(ii). Loaded Containers</p> <p><b>NOTE: NOT APPLICABLE IF SHIFTING OF CONTAINER IS REQUIRED FOR RETRIEVAL OF THE CONTAINER FOR ONWARD MOVEMENT /ANY DELIVERY THEREOF OR FOR NORMAL HOUSEKEEPING.</b></p>	<table border="1"> <tr><td>PER TEU</td></tr> <tr><td>Rs.261.25</td></tr> <tr><td>(i) Empty Containers</td></tr> <tr><td>PER FEU</td></tr> <tr><td>Rs.391.90</td></tr> <tr><td>(ii). Loaded Containers</td></tr> <tr><td>PER TEU</td></tr> <tr><td>Rs.470.25</td></tr> <tr><td>PER FEU</td></tr> <tr><td>Rs.705.40</td></tr> </table>	PER TEU	Rs.261.25	(i) Empty Containers	PER FEU	Rs.391.90	(ii). Loaded Containers	PER TEU	Rs.470.25	PER FEU	Rs.705.40
PER TEU												
Rs.261.25												
(i) Empty Containers												
PER FEU												
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PER TEU												
Rs.470.25												
PER FEU												
Rs.705.40												



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

**F.No.TAMP/35/2006- CWC(KPT) - Proposal from the Central Warehousing Corporation (CWC) for revision of tariff for services rendered by CWC at CFS at Kandla Port.**

1. The comments received from the Kandla Port Trust and port users / representative bodies of port users and the response furnished by the CWC are tabulated below:

<b>Sl. No.</b>	<b>Comments of users / user organisations</b>	<b>Comments of CWC</b>
1.	<b>Kandla Port Trust (KPT)</b>	
(i).	(a). The equipment hire charges estimated for the years 2005-06 to 2008-09 appears to be on the higher side. Similarly 20% projection in the management and administrative charges over the actuals of 2005-06 also appear to be on the higher side.	(a). The equipment hire charges have been projected on the basis of the actuals for the year 2005-06 and in the same trend and form as prescribed by TAMP. It has also justified the projections in the highlights of the proposal.  (b). The projected establishment charges cannot be said to be on the higher side as this cost goes up by 20% annually.
(ii).	Depreciation on assets has been incorrectly provided on straight line basis commensurate with the balance period of agreement with the KPT. The actual life of the asset should be considered for the purpose of depreciation.	It has complied with the Note 5 of Form 3(a), which states that for the purpose of depreciation of assets straight line method following the life norms adopted as per the Companies Act or based on the life norms prescribed in the Concession Agreement, whichever is higher is allowed.
(iii).	The CWC has attributed the shortfall in its traffic during 2004-05 and 2005-06 is on account of KPT granting permission for operation of private CFS within its premises. The permission is granted by the Ministry of Commerce and not by us. Further, it is the shippers choice to choose the CFS for stuffing and destuffing; they cannot impose it on shippers.	The shortfall in its throughput is, in fact, attributable to operation of private CFS. As per Article 7.2.4 of the LA, no stuffing and destuffing of containers will be allowed in the port and dock area.
(iv).	(a). The CWC has proposed hike in tariff on account of loss incurred by them due to shortfall in handling the containers. However, the containers handled by CWC are more than the minimum guaranteed level in the LA.	Article 3.8.1. (ii) (a) and (b) of the LA stipulates that licensee shall handle 8000 TEUs per month besides a guarantee to handle throughput equivalent to 36% of the impex container traffic handled by the terminal operator.

	In the year 2005-06 the containers handled by the KPT was 1,36,544 TEUs and minimum throughput guaranteed by CWC at 36% of impex trade is 68272 TEUs whereas the CWC has handled (only loaded) 77391 TEUs.	The present facilities built are pegged to handle more than 1.40 lakhs TEUs per annum though it has never handled those volumes. The KPT has also admitted that the CWC has only handled 73391 TEUs. The cost and income are, however, based on its capacity of handling the traffic.
	(b). The cost structure considered for the proposal shows huge expenses towards the MF expenses	The MF expenses are projected in line with details furnished to the TAMP and cannot be said to be huge as they have been duly justified.
(v).	In view of the above, the KPT does not agree to the proposed revision of 23% in the tariff.	In view of the aforesaid, its proposal for revision may be agreed.
2.	<b>Kandla Custom House Agents Association (KCHAA)</b>	
(i).	The CWC has compared its services with M/s Seabird CFS to picture it to be cheaper and competitive.	Its CFS is adjacent to CFS operated by M/s. Seabird and hence obviously comparison has to be made with the operator who is the closest.
(ii).	The CWC is unilaterally recovering charges for. lifting containers sent from the CWC to container yard Kandla without the approval of TAMP. This was withdrawn when it was brought on record by some user associations in one another hearing held on 14 July 2005. The KPT has submitted that the CWC still continues to levy this charge without approval of TAMP.	(a). It had withdrawn its proposal for increase in tariff keeping in view the interest of the users and for smooth functioning of the operations. It has, in fact, sacrificed its share so that the operations could be carried in congenial atmosphere. It could have gone in appeal but has avoided in the interest of all.  (b). As per the tariff approved by TAMP, transportation of loaded container from CWC CFS to CY KPT for export has been fixed at Rs.760 per TEU and Rs.1140 per FEU. The lift on charges in respect of loaded container at CFS as per the tariff approved by TAMP are also levied at Rs. 213.75 per TEU and Rs.320.65 per FEU. However, at the KPT container yard, which is within the jurisdiction of the KPT, lift off charges is paid directly by the CHA/customer to the operator.

(iii)	<p>The CWC recovers insurance charges despite clarification vide TAMP Order No. TAMP/9/2004 dated 21.10.2004. The stand of the CWC that they will not be responsible for insurable claims / risks etc., is not a lawful stand. If the CWC recovers insurance charge from the users then they have to accept the responsibility.</p>	<p>(a). As per the trade practice stocks are normally insured from warehouse to warehouse including the transit storage time of 60 days. It is presumed that stocks received by it are adequately covered. Hence, in any eventuality the CWC will not be responsible for any insurable claims/risks. This assumption is applicable for export cargo as well.</p> <p>(b) However, at the request of any party, it arranges for insurance against risk of fire, flood, cyclone, etc., for which the <i>ad valorem</i> charges of 12.50 paise per Rs.1000 value of stock is levied as prescribed in its Scale of Rates.</p> <p>(c). It is under obligation to insure the stocks in terms of the agreement with KPT. It is totally baseless to say that they are not taking any responsibility for insurance claim/risk. In fact insurance claims have been settled for theft /damage taking place within its premises.</p>																		
(iv).	<p>The CWC also recovers fumigation charges though this tariff is not approved by TAMP.</p>	<p>The Government of India has recognised the CWC as a fumigating agency and hence it is competent to undertake fumigation work under the NSPM specification. It offers competitive rates and the trade cannot have any grievance in this regard.</p>																		
(v).	<p>The CWC cannot justify their services with other CFS's. The comparison of charges at CWC and MCFS is as below:</p> <table border="1" data-bbox="341 1626 833 1946"> <thead> <tr> <th></th> <th>CWC</th> <th>Mundra (CFS)</th> </tr> </thead> <tbody> <tr> <td><b>For IMPORT</b> Delivery of Cargo on Truck</td> <td>3609.75</td> <td>3100/-</td> </tr> <tr> <td><b>For EXPORT</b> Upto delivery of loaded container to Container Yard.</td> <td>3183/-</td> <td>3085/-</td> </tr> </tbody> </table>		CWC	Mundra (CFS)	<b>For IMPORT</b> Delivery of Cargo on Truck	3609.75	3100/-	<b>For EXPORT</b> Upto delivery of loaded container to Container Yard.	3183/-	3085/-	<p>The comparison of cost for transporting a 20' container by it and MCFS is not depicted appropriately. The factual position is given below:</p> <table border="1" data-bbox="896 1626 1458 1973"> <thead> <tr> <th></th> <th>CWC</th> <th>Mundra (CFS)</th> </tr> </thead> <tbody> <tr> <td><b>For IMPORT</b> Transportation of laden containers from KPT to CFS, lift off, customs examination and delivery</td> <td>1970/-</td> <td>3100/-</td> </tr> <tr> <td><b>For EXPORT</b> Carting of cargo, stuffing, lift on and transportation to KPT.</td> <td>2120/-</td> <td>3085/-</td> </tr> </tbody> </table>		CWC	Mundra (CFS)	<b>For IMPORT</b> Transportation of laden containers from KPT to CFS, lift off, customs examination and delivery	1970/-	3100/-	<b>For EXPORT</b> Carting of cargo, stuffing, lift on and transportation to KPT.	2120/-	3085/-
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(vi).	Till date, the CWC has not been able to fulfill their contractual obligations for providing equipment, security of cargo, etc., as per MOU signed with KPT.	It is fulfilling its contractual obligation by providing adequate equipment for which two outsourcing agencies have been appointed on competitive rates for handling and transportation of cargo and containers. Further, it has engaged round the clock watch and ward security at the CFS.
3.	<b>The Kandla Port Stevedores Association (KPSA)</b>	
	It has reiterated the comments made by the KCHAA.	It has also reiterated the reply furnished for the KCHAA.
4.	<b>Northern India Shippers Association (NISA)</b>	
(i).	No further revision in tariff should be made. Rather CWC should reduce the tariff.	It is seeking revision based on the tariff proposal submitted to the TAMP.
(ii).	The container services from Kandla were not started long back. If charges are increased, traffic will be diverted to nearby ports like Mundra etc. Therefore, there is no scope to increase the tariff; rather it should be reduced.	It is giving excellent service at Kandla and hence it sees no reason for traffic getting diverted to Mundra port.
(iii).	The CWC has projected increase in traffic in the years 2006-07 to 2008-09 over the previous years. That being so, the cost of handling should go down with increase in volume.	Even if volume increases it has to incur charges for movement of the require volumes. It, therefore, stands for the proposed increase in the tariff.
5.	<b>Gujarat Chamber of Commerce &amp; Industry (GCCI)</b>	
(i).	It fails to understand any reasons furnished by the CWC for proposing revision in tariff. Shifting of all the containers from within the port to outside the port by CWC alongwith KPT has created monopoly detrimental to the trade. This has resulted in manifold increase in costs and corresponding time frame for activities. Proposing increase in tariff is like adding salt to injury, which the industry cannot afford.	It has not created monopoly at Kandla as other operators are also functioning in Kandla. It has furnished all the information in a scientific manner and as required by TAMP.
(ii).	The CWC has made no visible or concrete efforts for the development of the area as was understood	It has been endeavoring to develop the area but the cooperation of all the concerned is lacking.

	earlier. Instead of providing more facilities or improvement, the CWC is only looking at filling in their coffers.	
(iii).	The CWC has attributed its loss to KPT for violating the agreement entered with them by granting license to private CFS operators. If this was the violation then the CWC should have addressed their grievances against KPT and not penalised the trade for its inability to sort out the issue with the KPT.	The infrastructure built by it is as per LA which can handle more throughput than what it presently handles. Under these circumstances allowing other CFS operators to enter the fray is injuring its operations. It has been following the tariff as prescribed by TAMP and due to overall increase in cost has proposed revision in tariff. It has no intention to penalize the trade rather it wants to co-operate and co-exist.
(iv).	Insurance: (a). The CWC has stated that in the initial fixation of tariff it had wrongly estimated the amount of insurance premium. This cannot be a reason for seeking increase. (b). It is understood from various forwarding agents that CWC has been recovering insurance charges contrary to Order of TAMP.  (c). It is not understood why the CWC proposed to recover insurance charges for import and export cargo when it is not accepting responsibility for any insurable claims/risks.	According to trade practice, import and export cargo is normally insured from warehouse to warehouse including 60 days transit storage. The stocks received by it are presumed to be adequately insured against all the possible risks during storage including interest of the customs. Hence, in case, of any eventuality it will not be responsible for any insurable claims/risks including consequential losses. However, on written request it will arrange insurance against fire, flood, cyclone, etc for which <i>ad valorem</i> charges are proposed. It is also under obligation to insure stocks in terms of the agreement with the KPT. It will settle the insurance as per the terms indicated in the proposed tariff.
(v).	The statement by CWC regarding reduction in its revenue stream due to awarding of star status to exporters by the Customs is complete disregard of every facilitating action of the Government of India to increase exports and correspondingly improve our foreign exchange.	The point regarding star status to exporters by Customs was mentioned in the context of throughput to be achieved by them. This no way disregards facilitation of export granted by Government.
(vi).	The proposal of the CWC to penalise the trade for its wrong estimation of repairs and maintenance at the time of initial fixation of tariff may not be accepted.	There is no mistake in estimation of repairs and maintenance cost. However, these expenses are included in cost so as to provide good and better facilities.
(vii).	The CWC proposes to make additional investment as per terms of	The tariff has been worked out on the basis of investment to be made as per the

	LA, which is preposterous. How can this be a cause for seeking increase at this stage when the LA was in place when the operations started.	agreement with KPT. In due course of time and as and when the activities pick up, it would make all efforts to fulfill its contractual obligations which also includes development activities.
(viii)	The CWC is following a monopoly practice of insisting for executing fumigation through them at rates higher than locally available.	It being a fumigation agency recognised by the Government of India undertakes the work on NSP specifications at a very competitive rate and therefore the contention of the trade in this regard is unfounded.

2. A joint hearing in this case was held on 13 March 2007 at the KPT premises. At the joint hearing, the following submissions were made:

**Central Warehousing Corporation**

- (i). We have given full justification for our proposal to increase the rate. Basically, we seek 23% increase based on cost justification.
- (ii). For import we allow 7 days free period and there is no delay at all.
- (iii). We welcome any penal provision to be included in our SOR.
- (iv). We work on 24 hour basis. Customs presence is, however, needed.

**Gandhidham Chamber of Commerce Industry & Kandla Stevedores Association Ltd.**

- (i). Our main concern is the quality of service at CFS. The result is many containers incur detention charges.
- (ii). Service level is all the more important with full fledged terminal commenced its operation recently. For example, till now there is no shut out charges. But, after private terminal, shut out charges would be levied.
- (iii). We request penal provision should be included in SOR to ensure quality of service.

**Container Shipping Lines Association (India)**

- (i). We don't agree with the proposal as there is no assurance on quality of service.

**Kandla Custom House Agents Association**

- (i). We endorse the views of GCCI.

**Kandla Port Trust**

- (i). We suggest the custom examination charges should be levied only on such containers grounded by customs for examination. CWC demands the charges on all boxes.
- (ii). Similarly, on-van examination should be allowed for export containers.
- (iii). CWC does not operate 24 hours. This creates problems even to our operation.