

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)
Tariff Authority for Major Ports

G No. 348

New Delhi,

30 December 2010

NOTIFICATION

In exercise of the powers conferred by Sections 48, 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the South West Port Limited for general revision of Scale of Rates for its multipurpose cargo berth no.5A and 6A at the Mormugao Port Trust as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports
Case No. TAMP/12/2010-SWPL

South West Port Limited

Applicant

ORDER

(Passed on this 3rd day of November 2010)

This case relates to the proposal dated 16 February 2010 filed by the South West Port Limited (SWPL) for revision of the Scale of Rates for its operations at the multipurpose cargo terminal at berth 5A and 6A in the Mormugao Port Trust (MOPT).

2. The existing Scale of Rates (SOR) of the SWPL was approved by this Authority vide Order dated 15 January 2007 and the validity of the SOR was prescribed till 31 March 2010, which was subsequently extended till 30 September 2010 vide Order dated 31 March 2010.

3. The highlights of the initial proposal are as follows:

- (i). Actual traffic reported by SWPL for the years 2007-08 and 2008-09 is at 4.40 MMT and 4.63 Million Metric Tonne (MMT) respectively and the estimate furnished for 2009-10 is 4.10 MMT. The port has cited the following reasons for reduced traffic achieved:
 - (a). Since its facilities are meant for rail loading only and the systems are tuned to evacuate at a speed of 6 rakes per day, the Terminal can easily handle 5 Million MT without any hassle.
 - (b). Due to sudden external factors and drop in iron ore exports, the numbers of incoming rakes were reduced to 2 to 3. The Railway authorities shared their inability to provide further rakes and advised SWPL to reduce its operating time by improving their efficiency. This will be further hampered once the proposed development in Berth No.7 for handling coal comes up. The cargo volume is, therefore, expected to remain same for the next financial year also.
 - (c). Due to non availability of rakes, the limited storage area was fully occupied and hence SWPL was not in a position to handle more vessels. In fact, during the Financial Year 2009-10, Eleven panamax vessels carrying about 8.45 lakh tonnes of coal were diverted to other ports because of this reason.
 - (d). SWPL will install an in-motion wagon loading system and a single rail line which can cater for loading an entire rake within two hours time. MOPT has agreed this plan in-principle and advised SWPL to provide further details for final approval.
- (ii). The traffic estimated in the current tariff revision exercise for the years 2010-11 to 2012-13 is 4.15 MMT , 4.45 MMT and 5.15 Million tonnes respectively.
- (iii). The operating income for the years 2010-11 to 2012-13 has been estimated based on the estimated traffic with reference to existing tariff as well as proposed tariff as given below:

(Rs. in lakhs)

Year	Income with existing tariff	Income with proposed tariff
2010-11	8037.00	9224.00
2011-12	8581.00	9854.00
2012-13	9906.00	11336.00

- (iv). (a). The direct labour for stevedoring, operating mechanised handling system, storing, loading cargo into wagons, etc., is awarded to various cargo handling contractors. Similarly, maintenance labour for upkeep, replacement of spares, lubes and oils of all machinery in the system are also outsourced. These expenses have been projected on the basis of the existing rates of the contactors and the prevailing market rates.

- (b). Repair and maintenance expenses are estimated at 1.5% for civil assets and 3% for mechanical assets, as was approved in its initial tariff fixation.
- (c). The maintenance dredging is to be carried by MOPT. The MOPT, however, disputes this and agrees to dredge only upto 13 mtrs. in the particular approach and 13.5 mtrs. in berth pockets. Pending settlement of dispute, SWPL has made a provision for maintenance dredging at Rs.76 lakhs, Rs.80 lakhs and Rs.85 lakhs for the three years under projection for additional depth beyond the level stated by the MOPT. The estimates are for volume of 90000 cu. mtr. of dredging in front of berth nos.5A and 6A @ 5.8% over the existing rates paid by MOPT for dredging with annual escalation of 5.8% in the unit rate for the subsequent years.
- (d). Annual escalation of 5.8% is considered towards inflation for estimating the expenses.
- (e). Revenue share as an expense as per clause 2.8.1 of the revised guidelines, i.e. to the extent of rate quoted by the second highest bidder at 13.10% of the cargo handling income.
- (v). The SWPL has estimated capital addition of Rs.10.77 crores during the year 2010-11, Rs.67.85 crores in 2011-12 and Rs.12.05 crores during the year 2012-13 in Plant and Machinery, construction of rail line, sheds, etc., the break up is as furnished below:
- | | | | |
|---------|--|---|--------------|
| (i). | Construction of Rail line (1 km) | - | 2.20 |
| (ii). | In-motion wagon loading system & Cylors | - | 20.50 |
| (iii). | One Stacker cum reclaimer | - | 15.00 |
| (iv). | Two Mobile Unloaders | - | 65.21 |
| | (to unload at 4000 tph by replacing two mobile harbour cranes) | | |
| (v). | Conveyor system to link cylors, Rail line & MHS | - | 2.90 |
| (vi). | Two Mobile harbor cranes (book value) | - | (16.15) |
| (vii). | Suitable electrical and dust suppression system | - | 0.85 |
| (viii). | Office equipments & Computers | - | 0.15 |
| | Total | - | 90.66 |

- (vi). The revenue deficit position estimated by the SWPL for the years 2010-11 to 2011-12 for the estimated traffic at the existing tariff are as follows:

Year	Net Deficit after allowable Return on Investment & adjustment of past surplus	
	Rs. in lakhs	As % of operating income
2010-11 (Projections)	(1473)	(21%)
2011-12 (Projections)	(2252)	(26%)
2012-13 (Projections)	(2128)	(18%)

4. In response to our letter dated 10 March 2010, the SWPL has, vide letter dated 19 March 2010, filed the draft proposed SOR and has also furnished its Annual Report for the years 2007-08 and 2008-09. The main modification proposed in the draft proposed Scale of Rates with reference to the existing Scale of Rates are highlighted below:

- (i). Berth Hire charges:
A summary of the existing and the proposed berth charges is tabulated below:

(Rate per GRT per hour or part thereof)					
Berth No.	Class of vessel	Existing charges		Proposed charges	
		Foreign-going vessel (in US \$)	Coastal vessel (in Rs.)	Foreign-going vessel (in US \$)	Coastal vessel (in Rs.)
Berth No. 5A	All Vessel	0.0125	0.34	0.0125	0.35
Berth No. 6A	1. Upto 30000 GRT	0.0275	0.75	0.0325	0.90
	2. 30001 GRT and above	0.0325	0.87		

- Status quo is proposed in the berth hire charge at berth no.5A.
 - At berth no. 6A, berth hire is proposed in single slab as against the existing two slabs rates. While doing so, the existing berth hire charge for vessels above 30,000 GRT is uniformly prescribed for all sizes of vessel. The impact thereof is 18% increase for foreign-going vessels upto 30,000 GRT.
- (ii). Wharfage charges:
No change is proposed in the wharfage charges except in the case of coal. Single wharfage charge for coal is proposed as against the existing bifurcation of coal into thermal coal and other types of coal and concessional rate proposed for coal.
- (iii). Cargo Handling charges:
Around 25% to 32% increase is proposed in the handling charges at berth no. 5A and 6A.
- (iv). Ground rent / storage charges, dust suppression charges and other services are proposed to continue at the existing level.
- (v). A separate charge is proposed for coke at Rs.2.75 per tonne towards dust suppression. For all other types of cargo the existing charge of Rs.2.15 per tonne is proposed to continue.

5. In accordance with the consultation process prescribed, the proposal dated 16 February 2010 along with the proposed Scale of Rates were circulated to the MOPT and concerned users / organisation bodies seeking their comments. The MOPT and Mormugao Port Users Association have furnished their comments. The comments received from MOPT and Mormugao Port Users Association were forwarded to SWPL as feedback information. The SWPL has furnished its comments on the comments of MOPT and Mormugao Port Users Association.

6.1. Based on a preliminary scrutiny of the proposal, the SWPL and MOPT were requested vide our letter dated 2 July 2010 to furnish additional information / clarifications on the SWPL proposal. The SWPL and MOPT have furnished their reply on the queries raised by us subsequent to the joint hearing which are brought out in the subsequent paragraph.

6.2. In the meanwhile, the SWPL vide letter dated 23 June 2010 has updated the cost statements with actuals for the year 2009-10 and has also revised the estimates for the subsequent three years 2010-11 to 2012-13. The main submissions made by the SWPL are given below:

- (i). The traffic projections are modified at 4.35 MMT, 4.65 MMT and 5.25 MMT for the years 2010-11 to 2012-13 based on the actual traffic of 4.32 MMT reported in 2009-10 actuals with corresponding modification in the income estimation.
- (ii). The estimate of operating expenses has also been modified. The main submissions made by SWPL are:
- (a). Power: The unit rate for 2009-10 has been based on the current tariff of the Goa State Electricity Board. The projections for next three years have been computed applying inflation factor of 5.80% for FY 2010-11 and thereafter 3.76%. 5.80% increase in FY 2010-11 is considered in line with previous two revisions of Goa State Electricity Board.
 - (b). Fuel: The price increase in POL products is expected to be announced any time. In line with this and past experience, 10.00% increase in FY 2010-11 in fuel prices has been assumed. For next two years i.e. FY 2011 and FY 2012 inflation factor of 3.76% has been assumed.
 - (c). Water: The MOPT has reduced supply of water to the Terminal and as a result, half of the requirement is met through outside source, current rate for which is Rs.135/ KI (as against is Rs 9/KI for recycled water supplied by MOPT). The cost for 2010-11 has been projected on this basis and for next two years by applying inflation factor of 3.76%.

- (d). Maintenance Dredging: As per the License Agreement, the maintenance dredging is to be carried by MOPT. The MOPT, however, disputes this and agrees to dredge only upto 13 mtrs. in approach channel, turning circle and 13.5 mtrs. in berth pockets. In order to handle a fully loaded panamax vessel carrying about 70,000MT, the Terminal has to maintain a draft of 14.5 Mtrs in Channel and 15 Mtrs at Berth Pockets. Pending settlement of dispute, SWPL has made a provision for maintenance dredging at Rs.146.75 lakhs, Rs.152.69 lakhs and Rs.158.43 lakhs for next three years under projection for maintaining the required depth beyond the level stated by the MOPT. The estimates are for volume of 1.20 Lakh cu. mtr. of dredging in front of berth nos.5A and 6A @ Rs.122.63 per cu. mt. as per the demand note raised by MOPT; projections for next two years will be with annual escalation of 3.76% in the unit rate.
- (e). Revenue share at 13.1% (being the second highest bid for the Tender) of the income from cargo handling is considered as admissible expenses for tariff computation.
- (f). Lease Rentals has been projected on the basis of the provisions of the L.A. Insurance cost is estimated based on 0.5% of the gross value of assets added with assets capitalised during the year.
- (g). Overheads is projected for 2010-11 to 2012-13 applying inflation rate of 10.00% for staff cost and 3.76% for other expenses to the actual expense figures for 2009-10. This is minimum increase in port sector.
- (h). Preliminary Expenditure is considered at one tenth of preliminary expenditure every year as done in its last proposal.
- (iii). Addition to gross block in the year 2010-11 is modified from Rs.1077 lakhs estimated in the original proposal to Rs.1427 lakhs in the revised cost statements. Consequently, the total addition to the gross block estimated at Rs.94.17 crores as against Rs.90.66 crores estimated in the original proposal.
- (iv). In order to improve performance, it is planned to increase the discharge and loading rates of various commodities as indicated below:

(in tonnes/day)			
Sl.	Cargo	Existing	Proposed
1.	Coal	26,100	27,500
2.	Coke	15,000	15,000
3.	Limestone	19,100	17,500
4.	Steel products	6,200	8,000

The faster discharge / loading of ships benefits the user but, reduces the income from berth hire accruing to SWPL.

- (v). The SWPL has assessed the optimal capacity of the terminal at 5 Million Tonnes Per Annum. A summary of the calculation is given below:

Sr. No.	Particulars	Name of the Berth	
(i).	Optimal Quay Capacity	5A	6A
(a).	Share of Vessel Size		
	Percentage share of capacity of Panamax vessels	80.0%	80.0%
	Percentage share of Handy max vessel	20.0%	20.0%
(b).	Ship day Output (in tonnes per day)		
	- Panamax vessels	25000	30000
	- Handy max vessels	15000	15000
(c).	Optimal Quay Capacity cargo-wise = in MMT	3.83	6.9
	Total optimal Capacity (MMT)	10.73	

(ii).	Optimal Yard Capacity	
(a).	Area of yard made available by the Port (in square metres) (A)	33000
(b).	Area available for stacking (%) (U)	80%
(c).	Stacking Quantity per square metre (tons) (Q)	15 T/sqm
(d).	Annual Turnover Ratio of the plot (T)	18
	Total Optimal Yard Capacity (in million tonnes)	4.99
(iii).	Optimal capacity of the Terminal - lower value of the optimal quay capacity and optimal stack yard capacity (in Million tonnes)	4.99

- (vi). A summary of the actual vis-à-vis the estimates furnished by the SWPL for the past period i.e. 2007-08 to 2009-10 is tabulated below:

Years	Estimated Net Surplus/ deficit as per Order of 29 December 2006	Actual Net Surplus/ deficit
2007-08	(-)890	738
2008-09	(-)769	431
2009-10	343	320
Subtotal	(-)1316	1488

The SWPL has cited the following main reasons for variations in the estimates vis-à-vis the actuals for the years 2007-08 to 2009-10:

Particulars	2007-08	2008-09	2009-10
(i). Vessel related income	Projections made considering higher parcel size of cargo but, cargo came in vessels with lesser parcel size; resulting in more number of vessels and hence the increase in the vessel related income.	Vessels idled for longer time due to lesser availability of rail rakes hence more berth hire income earned. Reduction in traffic in 2009-10 with reference to estimates was due to storage constraint coupled with lesser availability of Rail rakes. This has resulted in reduction in income	
(ii). Repairs and maintenance cost	Estimated was as per the Norms. In actual terms lesser repairs as the assets were	Estimated was as per the Norms. In actual terms lesser repairs as the assets were	Two Mobile harbor cranes and stackers have already completed five years of life and require regular maintenance plus frequent spare changes.
(iii). Maintenance dredging	Lesser Siltation and hence the proportionate share payable to Mormugao Port's reduced		
(iv). Equipment running cost	No reasons cited	During the year 2008-09, 4 pay loaders and wheel loaders procured hence the contract charges plus diesel consumption reduced considerably	Lesser traffic, lesser contract expenditure coupled with better planning and utilisation of labours, lead to considerable reduction in cost.
(v). Royalty/ Revenue Share:	Expenditure in direct relation with cargo handling income, when income reduces, royalty reduces		
(vi). Management and general overheads	The cost was estimated with higher number of personnel but due to economic slowdown, managed with lesser numbers of personnel & better mechanisation and planning		

- (vii). The SWPL has proposed to adjust 50% of the past surplus assessed for the years 2007-08 to 2009-10 i.e. Rs.1488 lakhs *50% = Rs.744 lakhs over three years period from 2010-11 to 2012-13 over equal instalment of Rs.248 lakhs per annum.
- (viii). A summary of cost position reflected in the initial proposal and in the revised proposal is tabulated below for easy reference:

(Rs. in lakhs)

Sl. No.	Particulars	Original proposal				Revised proposal			
		2009-10 (Actuals)	2010-11	2011-12	2012-13	2009-10 (Actuals)	2010-11	2011-12	2012-13
(i).	Traffic (in Million)	4.10	4.15	4.45	5.15	4.32	4.35	4.65	5.25
(ii).	Income (Rs. in lakhs)	8,142	8,037	8,581	9,906	9,313	7,971	8,483	9,606
(iii).	Total Expenses	6,107	6,405	6,925	8,215	5,886	6,537	7,345	8,299
(iv).	Capital Employed	18,285	17,805	22,822	22,269	18,971	19,043	24,267	23,717
(v).	16% ROCE	2,743	2,849	3,652	3,563	3,035	3,047	3,883	3,795
(vi).	Net surplus/ (Deficit)	(-708)	(-1217)	(-1996)	(-1872)	392	(-1613)	(-2745)	(-2487)
(vii).	Last installment of 50% of past surplus for the last cycle 2004-05 to 2006-07 adjusted in 2009-10	(-72)	-	-	-	(-72)	-	-	-
(viii).	Past period surplus assessed for the period 2007-08 to 2009-10	1536	-	-	-	1488			
(ix).	50% of the past surplus for the period 2007-08 to 2009-10 adjusted in 2010-11 to 2012-13	-	256	256	256	-	248	248	248
(x).	Net surplus/ (Deficit) after adjustment of past surplus (**)	(-636)	(-1473)	(-2252)	(-2128)	320	(-1365)	(-2497)	(-2239)
(xi).	Net Surplus as % of Gross revenue		(-18%)	(-26%)	(-21%)		(-17%)	(-29%)	(-23%)
(xii).	Three years Average	5%		(-22%)		5%		(-23%)	

(**) The estimates of the SWPL in their original proposal contained arithmetical error.

- (ix). With reference to the rates proposed in the original proposed, the following modifications are made by the SWPL in the revised proposal:
- No increase was proposed in the wharfage charges in the original proposal. The SWPL has proposed 32% increase in this tariff item in the revised proposal.
 - No increase was sought in the dust suppression charges. In the revised proposal the SWPL has sought 32% hike in this item.
 - The hike proposed in the Cargo handling charges is at 32% as proposed to the original proposal.
 - In respect of berth hire charges, the position in its original proposal is maintained.

6.3. The revised proposal of SWPL was forwarded to the MOPT and the users / user associations consulted earlier for their comments, if any. We have not received any separate comments from MOPT and users / user association on the revised proposal of the SWPL except Indian National Shipowners' Association (INSA). The comments received from INSA were forwarded to SWPL as feedback information. The SWPL has not furnished any remarks on the comments of INSA.

7.1. A joint hearing in this case was held on 22 July 2010 at the MOPT premises. At the joint hearing, SWPL and MOPT have made their submissions.

7.2. As decided in the joint hearing, the SWPL and MOPT were advised to furnish the following by 2 August 2010:

- (i). Response to our queries addressed to the MOPT and the SWPL vide our letter of even number dated 2 July 2010.
- (ii). The main issue is non-achievement of Minimum Guaranteed Throughput (MGT) of 5 million tonnes per annum. While SWPL has attributed this to lack of storage area and constraints in the railway network, the MOPT is of the view that lack of facilities at the terminal to handle road bound cargo as the major impediment. The MOPT and the SWPL are therefore, advised to discuss among themselves and submit a joint note on the ways to be adopted to improve the capacity of the terminal and make the terminal available for more users.

7.3 The MOPT has vide its letter No.FA/COST/112/2010 dated 7 October 2010 forwarded the minutes of the joint meeting held between the Port and SWPL on 3 September 2010. The points made by the MOPT and SWPL in the minutes of the said joint meeting are mostly reiteration of the points made by them earlier. The main points made by them are, however, summarized below:

- (i). With consistent maintenance of deeper depths, the terminal operator is able to bring larger parcel sizes. This had resulted in increase in terminal capacity. It is however, noted that the throughput of 4.32 million tonnes achieved by the SWPL in the year 2009-10 is after MOPT provided deeper drafts. Therefore, the projection of 4.65 million tonnes appears to be reasonable. MOPT accepts the throughput projected by SWPL for purposes of fixation of tariff.
- (ii). **Payment of CHLD levy**
Both MOPT and SWPL have reiterated their earlier stand on payment of CHLD levy. MOPT has requested TAMP to permit continuation of the payment of CHLD levy by SWPL to MOPT, as it is on a mutually agreed basis. Since both parties have reached a mutual understanding, they have requested to consider the same as an input cost for tariff fixation and have reiterated that if TAMP allows the actual CHLD levy payment as an input cost for fixation of tariffs, SWPL will withdraw their arbitration reference and continue to pay CHLD levy to MOPT.
- (iii). **Maintenance dredging costs recovered by MOPT from SWPL**
It is confirmed that the SWPL is actually making payments to MOPT, though under protest. As long as SWPL continues to pay the maintenance dredging cost, the port has no objection if it is considered as an input cost for fixation of tariff. However, depending upon the outcome of the arbitration reference, appropriate adjustments in the recoveries of tariffs will have to be made and provided for.
- (iv). **Common User Facility/ Creating/ Constructing Coal Handling Facility for Evacuation by Road**
 - (a). MOPT stands by its views that the Goa State Pollution Control Board (GSPCB) cannot lay down the parameters for the operations of the terminal at Berths 5/6, nor can they place any restrictions or prohibitions on handling road borne cargo. In MOPT's understanding, the terminal operator was required to construct a common user facility, including a facility for evacuation by road.
 - (b). SWPL has reiterated that the License Agreement envisages transporting cargo by 'Rail mode' only and 'Road mode' has not been specified.
 - (c). Consequent upon directives of the High Court of Bombay at Goa, the then Hon'ble Secretary (Shipping) has observed that SWPL may require more land of approximately 10,000 sq.mtrs. area, for providing pollution free

and an efficient facility for evacuation of cargo by road. SWPL has pointed that unless the said area of 10,000 sq.mtrs. is made available, it will be difficult to create a facility for handling cargo by road.

- (d). SWPL has also pointed out that the present road network and connectivity to/ fro MOPT is not suitable for evacuation of any significant quantity of cargo by road. After discussions, the MOPT and SWPL are of the view that the matter needs to be further examined with a view to ascertain whether the road handling facility can be created/ constructed. It was also noted that the road connectivity to MOPT is likely to improve significantly in future, with the completion of the balance 5.2 kms. 4-lane port connectivity road NH-17B upto Sada Junction. However, the time frame was uncertain as the State Government of Goa is vehemently opposing the completion of the road.

7.4. Earlier, the MOPT vide its letter dated 20 July 2010 and SWPL vide its letter dated 29 July 2010 maintained the following position in respect of payment of CHLD levy by SWPL to MOPT:

Sl. No.	Comments of MOPT	Reply furnished by SWPL
(a).	<p>The SWPL is not allowed to handle geared vessels as per the license agreement. In view of this the MOPT had objected to such handling by SWPL. However, the SWPL was later permitted to handle geared vessels for export of steel coils subject to payment of CHLD levy towards loss of employment to the CHLD workers on account of such handling. As this activity resulted in loss of revenue to the port, the MOPT believes that the SWPL should compensate the CHLD levy to it. On this issue the SWPL went into arbitration and is paying the levy under protest. However, the SWPL has stated that if TAMP allows this levy as an input cost, it will withdraw their arbitration. As the levy is actually being paid by the SWPL, the MOPT does not have any objection if the CHLD levy is considered as an input cost while revising its tariff for this commodity.</p>	<p>(i). Clause no. 6.1.6 of the Licence Agreement pertaining to 'Right to Allow the Use of Ship's Gears states thus:-</p> <p>(Quote) The Licensee shall have the right to allow the use of ship's gears as and when felt necessary (Unquote).</p> <p>This stipulation in the Licence Agreement clearly gives the absolute, unfettered and unhindered right to SWPL to allow the use of Ship's Gears, as an when it feels necessary.</p> <p>(ii). Clause no. 6.1.1(g) of the Licence agreement pertaining to 'Obligations of the Licensee-Principal Obligations of the Licensee' states thus:-</p> <p>(Quote) Subject to the provisions of this Agreement, generally perform and undertake, within the Licensed Premises, all services which the Licensor is required to perform and undertake under the provisions of Section 42 of the Major Port Trust Act, 1963 (Unquote).</p> <p>(iii). Clause no. 6.1.1(g) read, with sub-sections 3 and 3A of section 42 of Major Port Trusts Act, 1963, makes it absolutely clear that the Board has authorized SWPL to perform any of the services mentioned in sub section 1. It is to be noted the Licence Agreement has been approved by the Central Government and thus SWPL is empowered to carry out the services of the Board.</p> <p>(iv). Clause no. 9.3 of the Licence agreement pertaining to 'Non-Interference states thus:-</p> <p>(Quote) Subject to the provisions of this Agreement, the Licensor shall not interfere or cause any hindrance in the design, construction, operation, maintenance and repair of the Terminal save as may be necessary to protect public health and safety or for the discharge of its statutory duties. At the request of the Licensee, the</p>

		<p>Licensor shall use its best efforts to alleviate any interference by third parties in the Terminal (Unquote).</p> <p>(v). Clause no. 9.6 of the Licence Agreement pertaining to 'No Hindrance' states thus:-</p> <p>(Quote) The Licensor shall ensure that construction/development and operation of the Port will not adversely affect or cause hindrance to the construction/development and operation of the Terminal (Unquote). These two clauses, viz. 9.3 and 9.6 do not permit MOPT to interfere or cause hindrance in the operation of the Terminal. MOPT, on the unfounded grounds that SWPL cannot use the Ship's Gears and if it is done SWPL should pay to MOPT the CHLD levy or employ CHLD Labour, has forced SWPL to pay to MOPT the CHLD Levy, under protest, whenever Ship's Gears have been used for handling the steel cargo. This action of MOPT was not in consonance with the provisions of clauses 9.3 and 9.6 of the Licence Agreement.</p> <p>(vi). SWPL also informed MOPT that SWPL is the Terminal Operator and hence is not required to engage the Stevedore or CHLD labour to handle the cargo.</p> <p>(vii). As all the pleadings of SWPL were rejected by MOPT, SWPL had no other alternative, but to raise a dispute and refer the matter for Arbitration under the relevant clause no. 14 of the Licence Agreement.</p> <p>(viii). During the process of Arbitration (which is in progress), MOPT also attempted to make the Unions a party in the Arbitration proceedings. This proposition of MOPT was rejected by the Learned Arbitrator.</p> <p>(ix). SWPL has paid so far an amount of over Rs.59.00 lakhs to MOPT towards CHLD Levy under protest.</p> <p>(x). SWPL hence requests TAMP to include CHLD levy as input cost while revising the tariff when Ship's Gears are used.</p> <p>(xi). SWPL has also to state that MOPT had earlier taken the stand that in view of the provisions of the Licence Agreement, SWPL is required neither to engage CHLD labour nor pay CHLD levy. This stand was subsequently reversed, for reasons unknown.</p>
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8.1. Both the SWPL and the MOPT have furnished their response to the queries raised by us vide letters dated 2 July 2010. The SWPL has furnished its response vide letter dated 20 August 2010 and subsequent letter dated 31 August 2010.

8.2. A summary of the queries raised by us to SWPL and the corresponding replies furnished by the SWPL is tabulated below:

SI. No.	Queries raised by us	Reply furnished by SWPL
A.	FINANCIAL / COST STATEMENTS	
(1).	<p>Since the year 2009-10 has already drawn to a close, the estimates for the year 2009-10 may be updated with actuals duly tallying with the figures reported in the Annual Accounts as certified by its Chartered Accountant. A copy of the Audited Annual Accounts for the year 2009-10 may also be forwarded. Also, furnish actuals for the first three months of the financial year 2010-11 i.e. from April 2010 to June 2010 duly certified by the Chartered Accountant and estimates for the balance nine months July 2010 to March 2011 and update the cost statement accordingly. The estimates for the subsequent years may also be reviewed and modified, if necessary, with reference to the actuals (to be furnished).</p>	<p>The figures in the Revised Proposal have been updated with the actual figures as reported in the audited Annual Accounts of 2009-10.</p> <p>Copy of the Audited Annual Accounts for the year 2009-10 is furnished.</p>
(2).	<p>The total income, sum of operating costs, depreciation, overheads considered in the cost statement do not match with the figures reported in the Annual Accounts for the years 2007-08 and 2008-09. Please furnish a statement reconciling the profit before taxation reported in the financial statement of the SWPL for the years 2007-08, 2008-09 and also for the year 2009-10 with the net surplus before interest and tax considered in the updated cost statement filed by SWPL.</p>	<p>Reconciliation statement is furnished.</p>
(3).	<p><u>Traffic:</u></p> <p>(i). The actual traffic for the years 2007-08 and 2008-09 is reported at 4.40 million tonnes and 4.63 million tonnes which show around 5% growth in the traffic is achieved in the year 2008-09 even during the period of global recession. In this context, justify the reasons for scaling down the traffic to 4.15 million tonnes in 2010-11 (i.e. 10% reduction) and 4.45 million tonnes in 2011-12 (i.e. 3.9% reduction) with reference to the traffic reported in the year 2008-09. The traffic is generally expected to grow in line with the growth expected in the respective industry. The land lord port, Mormugao Port Trust (MOPT) vide letter No.FA/Cost/112/2010/92 dated 29 March 2010 (forwarded to SWPL vide our letter dated 5 April 2010) has commented that the traffic projected by the SWPL for the years 2010-11 to 2012-13 is on the lower side. The MOPT has stated that the requirement of Jindal Steel Limited who is the only major user of Berth No. 5 and 6 operated by the SWPL, is expected to double soon.</p> <p>In the light of the above points, the SWPL is advised to review and modify the traffic projections for the years 2010-11 to 2012-13.</p> <p>(ii). Indicate the additional traffic expected to be handled for each of the years with the proposed improvement in the rail infrastructure by investing on the in-motion wagon loading system and a single rail. Also, show whether the same has been recognised in the traffic projections.</p>	<p>The actual traffic in 2009-10 was 4.32 MMT as against 4.63 MMT in 2008-09 which is a 7% reduction. This reduction in traffic was on account of non-availability of sufficient number of rakes and hence slower and lesser evacuation of cargo. The traffic projections for 2010-11 to 2012-13 have been changed in the Revised Proposal submitted on 7th July 10 and is estimated at 4.35 MMT in 2010-11, 4.65 MMT in 2011-12 & 5.25 MMT in 2012-13. Though JSW Steel Ltd. is going to increase its capacity in the coming years, this in no ways is going to result in an increased cargo at SWPL terminal due to insufficient rakes being made available by Railways. JSW Steel Ltd has already entered into an agreement with Krishnapatam Port Company Ltd for 5 million tonnes p.a as rake availability is uncertain at Goa. In 2008-09, 1392 rakes and in 2009-10, 1276 rakes were available. In spite of less rakes, storage turnaround has been more than 26 times at the terminal.</p> <p>Traffic Projections have been modified in the Revised proposal submitted on 7th July 10.</p> <p>The in-motion wagon Loading system and a single line is expected to be commissioned in the later half of 2011-12. Additional traffic of 0.33 MMT in 2011-12 & 0.92 MMT in 2012-13 over the traffic handled in 2009-10 is expected with proposed improvement in the infrastructure. The same has been considered in the traffic projections.</p>

<p>(iii). On examining the traffic details furnished in Form 2A, it is observed that the traffic projections mainly with reference to coal and coke cargo is estimated to reduce from 4.00 Million tonnes and 4.24 Million tonnes handled in years 2007-08 and 2008-09 to 3.55 Million tonnes and 3.95 million tonnes in the year 2010-11 and 2011-12. The reasons for projecting the coal and coke traffic lower than the traffic handled in the past years need to be justified particularly in the light of the observation made by the port that Jindal Steel Limited the major user is expected to double its volume.</p>	<p>The reason for projecting lower coal and coke cargo in the period 2010-11 to 2012-13 is on account of inadequate availability of sufficient rakes as mentioned in 3(i) above. SWPL will not be able to take advantage of the increased cargo requirements of JSW Steel Ltd on account of the cargo evacuation constraints and JSW Steel Ltd has also entered into a long term agreement with KPCL.</p>																																																																																						
<p>(iv). The reasons for projecting the traffic of HR coil / slabs to reduce from 4 lakhs tonnes in 2010-11 to 3 lakhs tonnes in the subsequent two years may be explained.</p>	<p>Steel exports from India will considerably reduce in the coming years and most of the sale will be domestic. Hence, HR coil/slabs projections based upon the figures provided by the user of the terminal is provided. Changes in traffic projections have been made in the revised proposal.</p>																																																																																						
<p>(v). The SWPL may in the light of the above observation, review the traffic projections for the years 2010-11 to 2012-13 alongwith corresponding modification in the income estimation.</p>	<p>Traffic projections have been changed with corresponding changes in the income statements, in the revised proposal already submitted earlier.</p>																																																																																						
<p>(vi). Justify the reasons for scaling down the number of foreign-going vessels from 86 in 2008-09 to 64 vessels in 2010-11 which in terms of percentage works out to 25% reduction.</p>	<p>As per JSW Steel Ltd., domestic sales will be more than 80% of its output. So movement of Steel cargo will be mostly coastal. Hence, the number of foreign-going vessels is reduced.</p>																																																																																						
<p>(vii). Furnish the average GRT of vessels actually handled by SWPL and the number of vessels handled in the last three years i.e. 2007-08 to 2009-10 at berth no.5A and at berth no.6A in the two slabs i.e. below 30,000 GRT and above 30,000 GRT. The average GRT of the vessels, number of vessels expected to be handled in the next three years i.e. 2010-11 to 2012-13 at berth no. 5A and 6A may also be furnished.</p>	<p>The average GRT of vessels actually handled by SWPL during the last 3 years is as below:</p> <table border="1" data-bbox="894 1045 1468 1209"> <thead> <tr> <th colspan="5">GRT of vessels at 6A</th> </tr> <tr> <th>Year</th> <th>No. of Vsl.</th> <th>Avg. < 30,000</th> <th>No. of Vsl.</th> <th>Avg. > 30,000</th> </tr> </thead> <tbody> <tr> <td>2009-10</td> <td>Nil</td> <td>Nil</td> <td>63</td> <td>41084.40</td> </tr> <tr> <td>2008-09</td> <td>4</td> <td>24330.75</td> <td>65</td> <td>39146.26</td> </tr> <tr> <td>2007-08</td> <td>Nil</td> <td>Nil</td> <td>66</td> <td>39099.37</td> </tr> </tbody> </table> <table border="1" data-bbox="894 1234 1468 1398"> <thead> <tr> <th colspan="5">GRT of vessels at 5A</th> </tr> <tr> <th>Year</th> <th>No. of Vsl.</th> <th>Avg. < 30,000</th> <th>No. of Vsl.</th> <th>Avg. > 30,000</th> </tr> </thead> <tbody> <tr> <td>2009-10</td> <td>27</td> <td>8,778</td> <td>Nil</td> <td>Nil</td> </tr> <tr> <td>2008-09</td> <td>14</td> <td>21,803.21</td> <td>3</td> <td>31,322.33</td> </tr> <tr> <td>2007-08</td> <td>9</td> <td>17068.78</td> <td>1</td> <td>31,047.00</td> </tr> </tbody> </table> <p>The average GRT of vessels expected to be handled in the years 2010-11 to 2012-13 at berth no.5A and 6A are as below:</p> <table border="1" data-bbox="894 1541 1468 1734"> <thead> <tr> <th rowspan="2">Year</th> <th rowspan="2">Berth No.</th> <th>Avg. < 30,000</th> <th>Avg. > 30,000</th> </tr> <tr> <th>No. of vessels</th> <th>No. of vessels</th> </tr> </thead> <tbody> <tr> <td>2010-11</td> <td>5A</td> <td>14</td> <td>Nil</td> </tr> <tr> <td>2011-12</td> <td>5A</td> <td>16</td> <td>Nil</td> </tr> <tr> <td>2012-13</td> <td>5A</td> <td>18</td> <td>Nil</td> </tr> </tbody> </table> <table border="1" data-bbox="894 1759 1468 1953"> <thead> <tr> <th rowspan="2">Year</th> <th rowspan="2">Berth No.</th> <th>Avg. < 30,000</th> <th>Avg. > 30,000</th> </tr> <tr> <th>No. of vessels</th> <th>No. of vessels</th> </tr> </thead> <tbody> <tr> <td>2010-11</td> <td>6A</td> <td>Nil</td> <td>56</td> </tr> <tr> <td>2011-12</td> <td>6A</td> <td>Nil</td> <td>59</td> </tr> <tr> <td>2012-13</td> <td>6A</td> <td>Nil</td> <td>67</td> </tr> </tbody> </table>	GRT of vessels at 6A					Year	No. of Vsl.	Avg. < 30,000	No. of Vsl.	Avg. > 30,000	2009-10	Nil	Nil	63	41084.40	2008-09	4	24330.75	65	39146.26	2007-08	Nil	Nil	66	39099.37	GRT of vessels at 5A					Year	No. of Vsl.	Avg. < 30,000	No. of Vsl.	Avg. > 30,000	2009-10	27	8,778	Nil	Nil	2008-09	14	21,803.21	3	31,322.33	2007-08	9	17068.78	1	31,047.00	Year	Berth No.	Avg. < 30,000	Avg. > 30,000	No. of vessels	No. of vessels	2010-11	5A	14	Nil	2011-12	5A	16	Nil	2012-13	5A	18	Nil	Year	Berth No.	Avg. < 30,000	Avg. > 30,000	No. of vessels	No. of vessels	2010-11	6A	Nil	56	2011-12	6A	Nil	59	2012-13	6A	Nil	67
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<p>(4).</p>	<p>Capacity:</p> <p>(i). Form 2A states that the capacity of the terminal is 5 million tonnes as per the License Agreement. Licence Agreement states 5 million tonnes is the minimum guaranteed throughput to be achieved by the licensee. In this context, it may be relevant to mention that the minimum guaranteed throughput is not the capacity of the terminal. In fact, capacity will always be more than the minimum guaranteed throughput.</p>	<p>SWPL has assessed the terminal capacity at 5 million tonnes per annum based upon the optimal stack yard capacity and not the Optimal Berth Capacity. SWPL has 30,000 sq mtrs available as storage area. With a storage factor of 5 and present storage turnover ratio of 26, SWPL can achieve a throughput of about 4 million tonnes per annum. The terminal capacity is assessed at 5 MMTPA based upon the assumption of 34 turnarounds based upon improved rakes supply.</p> <p>Further, average storage turnaround for bulk cargo is about 12 times in other ports/terminals.</p>																										
	<p>(ii). Though the upfront tariff guidelines of 2008 are not applicable to the existing terminals, only for the purpose of assessing the capacity, the SWPL has followed the approach prescribed in the 2008 guidelines. With reference to the estimation of capacity furnished by SWPL, the following points need to be clarified:</p> <p>(a). Para 5.3.5. of the proposal states that the optimal quay capacity of the terminal 5A is 5.62 million tonnes and 6A is 2.30 million tonnes. The calculation, however, reflects different figures. Further, the optimal quay capacity for terminal 5A based on the share of panamax and handymax vessel and the ship day output considered by SWPL comes to 5.18 million tonnes per annum as against 3.83 million tonnes per annum shown by the SWPL. The inconsistency in the capacity calculation in this regard may be removed.</p> <p>(b). The upfront tariff guidelines of 2008 prescribes the unloading rate for handling coal through panamax vessel at 35,000 tonnes per day. Whereas, the SWPL has considered the ship day output for panamax vessel at 25,000 tonnes per day and 30,000 tonnes per day for berth no.5A and 6A respectively. The reasons for considering the productivity rate lower than the available benchmark may be justified.</p> <p>(c). The average discharge rate and the average loading rate for handling each of the cargo items by panamax / handymax vessel may be furnished for the last three years. The productivity level expected to be achieved for the next three years may also be furnished taking into consideration the two new mobile unloaders proposed to be deployed by the SWPL. Please show that the estimation of berth hire income takes into consideration the average productivity expected to be achieved in the next three years.</p> <p>The productivity improvements anticipated by the SWPL specifically in view of improvement expected in the evacuation of cargo due to improvement in the rail infrastructure and replacement of handling equipment proposed may also be factored and shown separately.</p>	<p>(a). The same is a typographical error on our side and necessary corrections have been made in the Revised Proposal.</p> <p>(b). SWPL has deployed 3 mobile harbour cranes whereas the upfront tariff guidelines of 2008 are based on Ship Unloaders for unloading coal.</p> <p>(c). The average discharge rate and loading rate for last 3 years is as below:</p> <table border="1" data-bbox="889 1501 1463 1774"> <thead> <tr> <th colspan="3">Average Discharge Rate in MT PWWD</th> </tr> <tr> <th>Year</th> <th>Panamax</th> <th>Handymax</th> </tr> </thead> <tbody> <tr> <td>2009-10</td> <td>28,692</td> <td>14,233</td> </tr> <tr> <td>2008-09</td> <td>28,025</td> <td>22,370</td> </tr> <tr> <td>2007-08</td> <td>28,723</td> <td>22,820</td> </tr> <tr> <th colspan="3">Average Load Rate in MT PWWD</th> </tr> <tr> <td>2009-10</td> <td>Nil</td> <td>5,947</td> </tr> <tr> <td>2008-09</td> <td>Nil</td> <td>8,471</td> </tr> <tr> <td>2007-08</td> <td>Nil</td> <td>7,987</td> </tr> </tbody> </table> <p>The effectiveness of mobile unloaders cannot be realized until and unless the rakes situation does not improve.</p> <p>Berth hire income has been calculated taking into consideration an average discharge of 27,500 MT PWWD for berth 6A and 8000 MT PWWD for berth</p>	Average Discharge Rate in MT PWWD			Year	Panamax	Handymax	2009-10	28,692	14,233	2008-09	28,025	22,370	2007-08	28,723	22,820	Average Load Rate in MT PWWD			2009-10	Nil	5,947	2008-09	Nil	8,471	2007-08	Nil
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	<p>(d). The berth nos.5A and 6A operated by SWPL handle cargo other than coal / coke such as limestone, HR coil / slabs, etc. The handling rate will vary depending on the type of cargo handled. Optimal capacity assessment may factor this point.</p> <p>(e). Article 3.1. of the License Agreement (LA) shows that water area of 60,500 square metres and land area 40,200 square metres were allotted to SWPL for construction of the terminal. The total stacking area of 33,000 sq. metres considered by SWPL does not match with the area stipulated in the License Agreement (LA). The reasons for the variation may be explained.</p> <p>(f). Average daily evacuation of cargo achieved by the SWPL in the last three years 2007-08 to 2009-10 and the evacuation of cargo expected after commissioning of the single rail line with in-motion wagon loading system and its complementary equipment may be indicated.</p> <p>(g). While setting upfront tariff for coal terminal at Mormugao Port Trust, the stacking factor at 4.7 tonnes per sq. metre and annual turnover ratio of 20 was considered based on the position reported by the MOPT of the parameters achieved by SWPL i.e. stacking of 5 tonnes per sq. metre and turnover of 25.6 to 26.3. As against the above, the stacking factor now considered by SWPL in optimal yard capacity calculation is 15 tonnes per square metre and turnover ratio of 18 which significantly varies from the position earlier reported by the MOPT.</p> <p>The actual stacking factor and the turnover achieved by SWPL for each of the major cargo group during the last three years may be furnished to justify the parameters considered by the SWPL in the optimal yard capacity calculation.</p> <p>(h). The SWPL may review and modify the optimal quay and yard capacities in the light of the above observation also taking into consideration the equipment deployed/ additional investment proposed by the SWPL during each of the years.</p>	<p>5A.</p> <p>The turnaround ratio shall increase by almost 8 times and the same has been factored in the projections for the period 2010-11 to 2012-13.</p> <p>(d). The average discharge rates of cargo other than coal are lesser than that of Coal. Hence, if the discharge rate of individual cargoes is considered, the optimum capacity will reduce.</p> <p>(e). Out of the total 100,700 sq. mtrs made available as per the Licence Agreement, 11,700 sq. mtrs. has been utilised for construction of berths. About 57000 sq mtrs. of the area has been utilised for Erection of Material Handling system, Stacker Reclaimer & Wagon Loading Tracks, Roads, Bunds etc. Balance about 32,000 square mtrs. is available area for stacking cargo out of which only 30,000 sq mtrs. can be effectively utilised for mechanized storage wherein SWPL is storing even 14 metres high heap in fair weather.</p> <p>(f). Average daily evacuation achieved during last 3 yrs:</p> <table border="1" data-bbox="974 924 1445 1050"> <thead> <tr> <th>Year</th> <th>Average daily evacuation</th> </tr> </thead> <tbody> <tr> <td>2007-08</td> <td>12,488 MT</td> </tr> <tr> <td>2008-09</td> <td>13,210 MT</td> </tr> <tr> <td>2009-10</td> <td>11,722 MT</td> </tr> </tbody> </table> <p>After commissioning of the single line with in-motion wagon loading system, evacuation of average 16000 MT can be achieved provided 5 rakes on an average are made available by railways.</p> <p>(g). The same is an error at our end. SWPL can stack 5 tonnes per sq. mtr. and turnover ratio of about 26 can be achieved. This can increase further provided sufficient rakes are made available by Railways.</p> <p>Details stated to have been furnished are not attached.</p> <p>(h). Realistic Yard capacity is considered as 4 MMTPA. But, in case rakes are available, the capacity can improve further as can be seen from the previous years figures given below:</p> <table border="1" data-bbox="909 1869 1445 1984"> <thead> <tr> <th>Year</th> <th>No. of rakes</th> <th>Cargo handled</th> </tr> </thead> <tbody> <tr> <td>2008-09</td> <td>1392</td> <td>4.63 MMT</td> </tr> <tr> <td>2009-10</td> <td>1276</td> <td>4.32 MMT</td> </tr> </tbody> </table>	Year	Average daily evacuation	2007-08	12,488 MT	2008-09	13,210 MT	2009-10	11,722 MT	Year	No. of rakes	Cargo handled	2008-09	1392	4.63 MMT	2009-10	1276	4.32 MMT
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(5).	<p>Income estimation:</p> <p>(i). The MOPT has observed that the cargo handling income estimated by the SWPL is on the lower side which is mainly because of scaling down the traffic projections. The income estimation may be reviewed and modified in view of our observation to review the traffic estimation for the years 2010-11 to 2012-13.</p> <p>(ii). The income from berth hire is estimated to reduce from Rs.2,887 lakhs in 2008-09 to Rs.1,953 lakhs in 2010-11 (32%), Rs.2,103 lakhs in 2011-12 (27%) reduction with reference to the actual berth hire income earned in 2008-09. The reduction estimated in the berth hire income does not correspond with the variation in the cargo traffic / vessel traffic. As the berth hire is levied with reference to the GRT of the vessel, even if larger vessels are expected to call the terminal, the income may not fall significantly. The reduction estimated in the berth hire income may therefore be justified.</p> <p>(iii). The SWPL has stated that the vessel related income has been converted into rupee terms adopting the exchange rate of 1US\$ = Rs.46.25. From the revenue calculation furnished, it appears that the exchange rate considered is 1 US \$ = Rs.47.10. The SWPL may verify and if necessary modify the revenue estimation from berth hire with reference to the prevailing exchange rate.</p> <p>(iv). (a). On perusing the workings on revenue estimation, it is observed that the income from dust suppression for coke is estimated at 2.75 per tonne as against Rs.2.15 per tonne prescribed in the existing Scale of Rates of SWPL. Likewise, the cargo handling income for HRC / HR slabs at berth no.5A is estimated at Rs.150 per tonne as against Rs.159 per tonne prescribed in the existing Scale of Rates.</p> <p>(b). In Form 5B(i) - Cost statement for cargo handling activity, the income estimation from wharfage and dust suppression is estimated to reduce at the proposed tariff though no reduction is proposed in these tariff items. Further, the revenue from cargo handling charge is estimated to increase by 27% during each year under consideration as against 32% hike proposed in the cargo handling charge.</p> <p>(c). The income estimation tariff may be corrected for the inconsistencies observed.</p> <p>(v).(a). The rates set by this Authority are ceiling levels only. SWPL may indicate the discount over the ceiling rates, if any, allowed by it during the year 2007-08, 2008-09 and 2009-10. The revenue impact of such discounts allowed may be quantified.</p> <p>(b). It may be confirmed that the actual income reported in the Annual Accounts of 2007-08, 2008-09 and 2009-10 are revenue realised at the ceiling level of tariff prescribed by the Authority.</p>	<p>As stated in 3(i) above, traffic projections are realistic. Further, with berth nos.7 & 11 being developed for coal cargo, rake availability and capacity of Braganza Ghat will play a major role.</p> <p>Berth hire income is expected to reduce to Rs.2109 lakhs in 2010-11 as against Rs.2919 lakhs in 2009-10 on account of increased productivity being considered in the proposal for the period 2010-13. Though berth hire is levied with reference to GRT of vessel, but the average number of days a vessel stays on berth is also considered for calculation of berth hire charges.</p> <p>The same is an error on our part and the Average conversion rate of Re/USD may be read as Rs.46.25.</p> <p>(a). Dust suppression charges for coke are proposed at @ Rs.2.75 per tonne instead of Rs.2.15 per tonne. This is on account of higher expenses incurred on dust suppression for coke, as coke has a lesser density 0.6 compared to 0.8 of coal and occupies more space.</p> <p>(b). There is a decrease in the wharfage and dust suppression income on account of a change in the cargo mix vis-a-vis the previous years. There is an increase in steel cargo and the majority of steel cargo is coastal.</p> <p>(c). Corrections have been made wherever necessary in the revised proposal.</p> <p>(a). No discount over the ceiling levels was given by SWPL during the years 2007-08, 2008-09 & 2009-10 and hence there is no impact on the revenue.</p> <p>(b). It is confirmed that the actual income reported in the Annual Accounts of 2007-08, 2008-09 & 2009-10 are revenue realized at the ceiling level of tariff prescribed by the Authority.</p>
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(6).	<p><u>Operating cost:</u></p>	
	<p>(i). In terms of the clause 2.5.1 of the tariff guidelines for tariff fixation, expenditure projection should be in line with traffic adjusted for price fluctuation with respect to the current movement of Wholesale Price Index (WPI) for all commodities announced by the Government of India. As communicated vide our letter No.TAMP/27/2005-Misc dated 18 May 2010 to all Major Port Trusts/ Private Terminals including SWPL, based on the average movement in the WPI for the year 2009-10, the escalation factor of 3.76% will be considered for expenditure projections in the tariff cases to be decided in the financial year 2010-11 is 3.76%. Hence, the annual escalation in the cost estimation may be modified at the stated level.</p>	<p>The same has been explained in details in clause 3.3 & 3.4 of the Revised Proposal.</p>
	<p>(ii). (a). Justify the increase in the cost of operating and direct labour from Rs.1,492 lakhs reported in the year 2008-09 to Rs.1800 lakhs in the year 2010-11 considering the fact that number of labourers are estimated to reduced from 256 to 125 for the corresponding period.</p> <p>(b). The detail working furnished by the SWPL indicate around 33% to 37% increase in the unit rate of onboard stevedoring cost and other handling expenses at stack yard in the year 2010-11 with reference to the actual per tonne cost reported for the year 2008-09. For subsequent years, another 5% increase in the unit cost of stevedoring and handling expense is estimated. Justify the escalation estimated in the unit cost of these services which is beyond the allowable WPI of 3.76%.</p> <p>(c). The SWPL has stated that the services offered by the direct labour (for stevedoring, operating mechanised handling system, storing, loading cargo into wagons) and maintenance labour (for upkeep of all machinery system) are outsourced to various cargo handling contractors. Please furnish copies of contract entered with the outsourcing agency/agencies to justify the estimation of direct labour and maintenance labour cost. Also, confirm whether the relevant service provider(s) were engaged following a competitive bidding and arms length relationship is maintained.</p>	<p>(a). The number of labourer has been maintained at 286 for the year 2010-11 in the Revised Proposal.</p> <p>(b). These rates are subject to annual revision. In the last 3 years CPI has gone up substantially and contractors are not willing to work at rates wherein they will incur losses.</p> <p>(c). All the relevant service providers have been engaged by following a competitive bidding and arms length relationship.</p> <p>The SWPL has subsequently vide letter dated 31 August 2010 furnished a copy of operation and maintenance contract awarded to JSW Infrastructure Ltd. (JSWIL) for handling coal/ limestone at Rs.40 per tonne and Rs.90/- per tonne for steel with effect from 1 April 2010 to 31 March 2013. The SWPL has also forwarded quotations from other contractors which are higher than the rate quoted by the JSWIL</p>
	<p>(iii). The unit consumption of power and fuel is estimated to increase by 35% and 25% respectively in the year 2010-11 over the actual consumption reported in the year 2008-09. For the subsequent years, power and fuel consumption per tonne are almost maintained at the level of 2008-09. Explain the reasons for such wide variation in the consumption of power and fuel in the year 2010-11 alone.</p>	<p>Power consumption is assumed to go up on account of idling of equipment due to rakes uncertainty and also on account of machinery growing older. Once the new equipment will be commissioned in 2011-12, power and fuel consumption will come down.</p>
	<p>(iv).(a). The reasons for estimating 625% increase in the consumption of water (i.e. from 0.004 litre per tonne of cargo reported during the year 2008-09 to 0.01 litre per tonne of cargo for the years 2010-11 to 2012-13) may be explained.</p>	<p>(a). Consumption of water has been revised to 0.07 K.ltr per tonne of cargo handled in the revised proposal.</p>

<p>(b). The average unit cost of water reported in the year 2008-08 at 44.22 per litre is estimated to increase to 100.80 per litre. The estimation of water cost in the cost statement for the year 2010-11 to 2012-13 is found to be almost double when compared to the actual cost reported for the year 2008-09. The reasons for such wide variation in the unit rate of procurement of water may be justified and substantiated with documentary support.</p>	<p>(b). Average unit cost of water has been considered at Rs.50.40 per K.ltr for the period 2010-11 in the revised proposal.</p> <p>(c). The SWPL has subsequently vide its letter dated 1 September 2010 furnished copies of the water bill raised by private parties which shows the rate is around Rs.100 per tonne.</p>
<p>(v).(a). The actual repairs and maintenance cost reported in the Annual Accounts in the year 2007-08 is Rs.261.55 lakhs as against Rs.302 lakhs considered in the cost statement. Similar variation is observed in the figures considered in the cost statement for the year 2008-09 also. The reasons for this variation may be explained.</p> <p>(b). Justify the reasons for steep hike in the repairs and maintenance cost reported at Rs.413.02 lakhs in the year 2008-09 in the Annual Accounts as against actual repairs of 261.55 lakhs incurred in the immediate preceding year. Please confirm and show that one time major repairs and maintenance cost, if any, incurred during the past period of 2008-09 and 2009-10 are not considered while estimating this cost item for the years 2010-11 to 2012-13.</p> <p>(c). The SWPL has stated that the repairs and maintenance cost is estimated at 1.5% for civil assets and 3% for mechanical assets as approved in initial tariff fixation. In the absence of any actuals available during the initial tariff fixation, the said percentages were adopted. Even during the last tariff revision, the repairs and maintenance cost were considered based on the actuals reported in the immediate previous year. Repairs and maintenance cost estimated for the years 2010-11 and 2012-13 may be justified with reference to the actual repairs and maintenance cost incurred in the past two years i.e. 2008-09, 2009-10 and the actuals for the first three months of 2010-11 (i.e. April to June) excluding any one time cost, if any, captured in the actuals. The repairs and maintenance cost estimated on new additions proposed to the gross block in each of the years may be indicated. Please confirm that while estimating repairs and maintenance on new additions, it is borne in mind that the new additions to the gross block are generally covered by warranty/ guarantee during the initial period.</p> <p>(d). Justify steep hike of 48% estimated in the repairs and maintenance cost in the year 2012-13 i.e. from Rs.487 lakhs in 2011-12 to Rs.722 lakhs in 2012-13. Furnish detailed calculation in support of the estimates.</p>	<p>(a). This variation is on account of grouping of account heads in Annual Accounts. The overall costs remain same.</p> <p>(b). Rs.413.02 is the actual repairs and maintenance costs for the year 2008-09.</p> <p>(c). With the assets becoming older, it is expected that repairs and maintenance cost for both civil and mechanical assets will go up substantially. But SWPL is considering the same at 1.5% for civil assets and 3% for mechanical assets.</p> <p>With passage of time and equipment becoming older, repairs and maintenance expenses are bound to go up to sustain and maintain the productivity levels. New additions to Plant & machinery are expected in the later half of 2011-12. Hence the projections of Repairs & Maintenance cost are justified.</p> <p>(d). The projections are based upon the premise of repairs & maintenance costs at minimum 1.5% of Civil assets gross block & 3% of Mechanical block.</p>
<p>(vi).(a). During the last tariff revision, it was brought out that there is some dispute between the SWPL and the MOPT on the quantum of dredging to be undertaken by the MOPT. Pending settlement of the dispute, maintenance dredging cost was admitted in the tariff fixation based on the</p>	<p>(a). Maintenance dredging cost of Rs.1.46 crores in 2010-11 is considered in the revised proposal based upon the actual bill raised by MOPT in May 10.</p>

	<p>bills raised by the MOPT on SWPL with suitable annual escalation. In this context, justify the maintenance dredging cost which is estimated to almost double from Rs.36.53 lakhs reported in the year 2008-09 to Rs.76 lakhs estimated in the year 2010-11.</p> <p>(b). The basis of adopting the unit rate of Rs.190.44 per cubic metre for the year 2010-11 and annual escalation of 5.8% in the subsequent years need to be justified with documentary proof of the relevant contract entered with the dredging company.</p> <p>(c). In case this expenditure is with reference to the bills raised / to be raised by the MOPT towards maintenance dredging, then a copy of the same may be furnished to substantiate the actuals considered for the years 2008-09 and 2009-10.</p>	<p>(b). Unit rate of maintenance dredging has been revised to Rs.122.63 per cbm for the year 2010-11 as against the rate of Rs.74 per cbm in 2009-10. This is based upon the actual bill of MOPT. Increase of 5% is considered for the years 2011-12 and 2012-13. All dredging expenses are reimbursed to MOPT based upon their bills and SWPL has not entered into any contract with any dredging company directly.</p> <p>(c). Copy of the bill raised by MOPT & the receipt of payment of the dredging bill is furnished</p>
(7).	<p>The Authority during the last tariff revision had stated that revenue share payable due to non-realisation of Minimum Guaranteed Throughput will not be recognised and hence revenue share applicable on the estimated traffic projection furnished by the SWPL was taken as a base admitted to the extent of the second lowest bid for the purpose of tariff fixation as per the 2005 tariff guidelines. The SWPL is advised to modify the estimation of revenue share considered in the cost statement for the years 2010-11 to 2012-13 in line with the decision of the Authority in the last tariff Order.</p>	<p>Royalty has been considered in line with the decision of the Authority.</p>
(8).	<p>Article 7.3.4.2 of the License Agreement entered by the SWPL with the MOPT stipulates 5% increase in the license fee every year. As against this, lease rental for the years 2009-10 and 2010-11 estimated by SWPL show around 46% to 54% increase with reference to the actual lease rental reported for the year 2008-09. The Authority has not approved any increase in the estate rentals of Mormugao Port Trust (MOPT) as the MOPT has not filed any proposal for revision of lease rental following the guidelines on Land and Water Management of Major Ports announced by the Ministry in March 2004. In this context, confirm that the estimation of lease rental for the years 2009-10 to 2012-13 is in line with the License Agreement.</p>	<p>License fee for the year 2009-10 has been paid based upon the bill of MOPT and various correspondences wherein MOPT has confirmed that TAMP has duly approved the rate of Rs.292 per 10 sq. mtrs. The same has been considered for estimation of lease rentals for the year 2010-11 to 2012-13.</p> <p>This has also been confirmed by MOPT vide their letter dated 02.08.10 addressed to TAMP.</p>
(9).	<p>(i). The insurance premium reported in the Annual Accounts for the year 2008-09 is Rs.132 lakhs as against Rs.139 lakhs considered by the SWPL in the cost statement. The reasons for variation from the figures reported in the Annual Accounts may be explained.</p> <p>(ii). Furnish a copy of the relevant insurance covers taken during the years 2009-10 and 2010-11 to justify the figures considered in the cost statement.</p>	<p>The same is corrected in the revised proposal submitted.</p> <p>Copies of Insurance for the period from 1 July 2010 to 30 June 2011 is furnished which show insurance premium of Rs.1.44 crores is paid by SWPL.</p>
(10).	<p>The increase of 21% estimated in other expense for the year 2010-11 may be justified as it is beyond the stated WPI of 3.76%. The annual</p>	<p>Other expenses in 2010-11 are considered almost at par with the expenses incurred during the period 2009-10.</p>

	escalation for estimating the Management and General Overheads may also be considered at 3.76% as against 5.8% adopted by the SWPL.	Annual escalation in Management and General Overheads is based upon the annual employee cost revisions, which is much more than the WPI. Further, the expenses on all other general overheads are much more than the WPI.
(11).	The proposal states that depreciation is computed as per the rates mentioned the Companies Act, 1956 and in line with the terms of License Agreement. As per clause 2.7.1. of the tariff guidelines, the depreciation has to be computed based on the straight line method with life norms adopted as per Companies Act or based on life norms prescribed in the concessional agreement whichever is higher. Please confirm whether the computation of depreciation is as per tariff guidelines.	Computation of Depreciation is as per tariff guidelines.
(12).	The basis of allocation of certain common expenditure like management and general overheads, lease rentals, insurance, preliminary expenses and upfront fee written off, etc. between the cargo handling activity and vessel related activity may be explained.	Allocation of certain common expenditure has been made based upon the respective proportion of cargo handling activity and vessel related activity in the total income.
(13).	As stated earlier, the SWPL is advised to update all the expenditure items with reference to the actuals for 2009-10 and suitably modify the estimates for the subsequent years applying the current Wholesale Price Index and adjusted for the traffic growth as per the tariff guidelines.	Actuals for 2009-10 have been updated in the revised proposal.
(14).	The discounting factor considered by the SWPL for annualizing the credit back of the security deposit refund receivable to the SWPL at the end of the project period may be indicated. The discounting factor may be considered at the prevailing cost of debt.	Though we agree with TAMP's observation, but SWPL has considered a discounting factor of 2%.
(15).	Capital Employed:	
	(i). Since the year 2009-10 is already over, the additions proposed to the gross block, depreciation and other related items may be modified with reference to the actuals. The addition to the gross block in the last three months (i.e. April 2010 to June 2010) may also be furnished.	Actual additions to the Gross Block and depreciation for the year 2009-10 have been modified wherever required in the revised Proposal. It has further furnished revised capital employed working vide letter dated 31 August 2010 stating that it is reconciled with the Annual Accounts figures.
	(ii). Please furnish year-wise detailed break up of the additions proposed to the gross block during the years 2010-11 to 2012-13.	The following details have been furnished: PROPOSED CAPEX 2010-11 Stores & Substation (in crores) Rs. 0.75 Silo Rs. 7.50 Strengthening of Western Bund Rs. 0.35 Rail Line Rs. 0.20 Insurance Spares for MHS Rs. 3.50 Conveyor linking Silo Rs. 1.55 Dust suppression system Rs.0.375 Computers Rs. 0.025 Furniture & fixtures Rs. 0.015 Rs. 14.27 ----- 2011-12 Rail Line Rs. 2.00 Reclaimer Rs. 3.00 Mobile Unloaders Rs. 48.00 Conveyor linking silo Rs. 1.35 Electrical items Rs. 0.47

	<p>Computers Rs. 0.015 Furniture & fixtures Rs. 0.015 Silo Rs. 13.00 ----- Rs.67.85 -----</p> <p>2012-13 Reclaimer Rs. 12.00 Computers Rs. 0.025 Furniture & fixtures Rs. 0.015 ----- Rs. 12.04 -----</p>
(iii). The additions to the gross block estimated at Rs.10.77 crores in 2010-11, Rs.67.85 crores in 2011-12 and Rs.12.01 crores in 2012-13 may be substantiated with copies of work orders issued / budgetary quotations, etc. The present status of the additions proposed to the gross block in the years 2010-11 to 2012-13 may also be furnished for each of the assets indicated in para 2.3. of the proposal.	SWPL is in the process of signing a MOU with MOPT wherein permission for installation of in-motion wagon loading will be given by MOPT. Installation of in-motion wagon loading system alongwith single line and continuous ship unloaders will be completed by later half of 2011-12.
(iv). The effect of sale value receivable from sale of the two HMC asset may be recognised in the cost statement.	The sale value of two HMC is reduced from the Capital expenditures during the periods 2010-11 to 2012-13 as mentioned in clause 4 of the revised proposal.
(v). It may be confirmed that the entire proposed expenditure in each of the years will be capitalised in the books of accounts of the same year and also the assets worth the equal amount will be physically available for operation in the very same year. In this regard, it may be borne in mind that capital work in progress is not counted towards capital employed for the purpose of allowing return thereon.	All assets will be capitalized once they will be available for use. This is as per the Accounting Standards.
(vi). With reference to the proposed investment during the years 2010-11 to 2012-13, please quantify the effect of this investment in terms of addition to the capacity, additional traffic / business, reduction in the unit operating cost or any improvement in the operational efficiency.	The additional investment proposed during the years 2010-11 to 2012-13 will result in an increase in the number of storage space turnarounds, which is expected to improve to about 34 times from the present 26.
(vii). The gross block of assets pertaining to Information Technology, Furniture and Fixtures, building, etc. which appear to be common assets for offering the services at the terminal are entirely allocated to Cargo Handling activity. The SWPL may consider to allocate the common and general assets of the terminal to both cargo handling and berth hire service on appropriate basis.	Same is allocated in the revised proposal.
(viii). During the last tariff revision on being pointed out, preliminary expense was excluded from the gross block of assets and spread over the remaining period of the project; return was allowed on the unammortised portion of the preliminary expense. (Refer para 11(x) of the December 2006 tariff Order.) In the current tariff revision exercise, the SWPL has shown the preliminary expense write off separately in the cost statement. It has, however, not made corresponding adjustment in the depreciation and gross block / net block of assets. The SWPL is again requested to exclude this preliminary expense from the gross block of asset and show a separate entry in this regard. Also, reconcile the gross block, depreciation and	Depreciation may be reduced by Rs.69,000 for the period 2010-11 to 2012-13.

<p>net block as per the books of accounts for the years 2007-08 and 2009-10 with the corresponding figures in the cost statement. Return may be considered on the un-ammortised preliminary expense for each of the years both for the past period (i.e. 2007-08 to 2009-10) and the future period (2010-11 to 2012-13) in line with the treatment followed in the last tariff Order.</p>	
<p>(ix).(a). Clause 2.9.9 of the tariff guidelines stipulates norms for estimating sundry debtors at two months' Estate income & Railway Terminal charges for estimating the working capital. The estimation of Sundry debtors at two month's total revenue is not in accordance with the norms prescribed in the guidelines.</p> <p>The Authority based on the decision taken in the Chennai Container Terminal Limited has passed an Order on 30 September 2008 announcing refinement in the 2005 guidelines which interalia permits outflow on certain items arising out of the contractual obligations of the LA to be taken as part of the Sundry Debtors. As per Article 7.3.4.2 of the LA, the SWPL is required to pay lease rent to the MOPT for the lands allotted to it in advance every year. Since the advance payment will get adjusted against the rent payable for the respective month and at the year end of the entire advance is adjusted, an, the average of the pre-payment at 50% may be considered as part of Working Capital for each of the year 2010-11 to 2012-13 for computation of working capital in line with the approach followed in the CCTL Order dated 30 September 2008.</p> <p>(b). Clause 2.9.9. of the tariff guidelines prescribes norms for estimating inventory in the working capital calculation apart from norms prescribed for other items. Inventory considered at the level of closing balance of inventory reported in the Annual Accounts for the years 2008-09 and 2009-10 is not in accordance with the norms prescribed in the guidelines.</p> <p>(c). Furnish bifurcation of consumption of stores and spares reported at Rs.287.80 lakhs and Rs.460.43 lakhs in the Annual Accounts of 2007-08 and 2008-09 respectively into capital spares, other inventory, fuel and customised spares and modify the inventory allowable in the working capital following the norms prescribed in the guidelines for the past period as well as for the future period.</p> <p>(d). Loans and advance considered in the working capital calculation is not as per the norms prescribed in the guidelines. The current liability considered in Form 4B for the years 2007-08 and 2008-09 do not match with the figures reported in the Annual Accounts for the respective years. The reasons for scaling down the current liability from Rs.644 lakhs in 2008-09 to Rs.332 lakhs in 2009-10, Rs.355 lakhs in 2010-11 may be justified.</p>	<p>(a). Debtors have been considered at 2 months gross income.</p> <p>(b). Has been rectified as per guidelines in revised proposal (Form 4A).</p> <p>(c). Has been shown in Form 4A in revised proposal.</p> <p>(d). Loans and Advance in Form 4B in revised proposal shown based on security deposit with Electricity Board and Port Trust only.</p> <p>Difference in working capital has been rectified in revised proposal.</p>

(16).	The net surplus/ deficit after adjustment of past surplus calculated in Sr. No. (XVII) in Form 3A contains arithmetical error. The deficit has been increased after the adjustment of past surplus instead of the reverse effect. Similar error is observed in the cost statement for cargo handling activity and berth hire activity [(Form 5(B)(i) and 5(C)(i)]. The cost statements may be corrected.	This has been rectified in the revised proposal.
(17).	Comparison of Actual vis-à-vis the Estimates (Form 7):	
	(i). In this form, the estimated operating income for the years 2007-08 to 2009-10 need to be adjusted for tariff increase allowed in the last tariff Order of 29 December 2006 for a like to like comparison with the actuals.	Though SWPL agreed to submit it separately, this information is not furnished.
	(ii). Actual other income considered in the cost statement for the years 2007-08 and 2008-09 in Form 7 does not match with the other income reported in the Annual Accounts. Please furnish a reconciliation statement for the variation in the figures reported in the Annual Accounts vis-à-vis the cost statement for the years 2007-08 to 2009-10 after updating the statement with 2009-10 actuals.	Reconciliation Statement is furnished.
	(iii). Estimates of equipment running cost for the years 2007-08 is not as per the estimates considered in the last tariff Order. Further, preliminary expense write off also does not match with the figures considered in the last tariff Order for all the years 2007-08 to 2009-10. These estimates may be maintained as per the last tariff Order.	
	(iv). The computation of capital employed and the return on capital employed at actuals for the years 2007-08 to 2009-10 may be considered following the approach followed in the last tariff Order. Please furnish a detailed working in this regard.	
(18).	Duly filled Form 6 – Analysis of Efficiency on Productivity Improvement and Form 8 – Details of Revenue Share / Royalty may be furnished as they are not accompanied with the original proposal.	Though SWPL has stated that the requisite details will be provided, the same are not furnished.
(19).	The Mormugao Port Trust (MOPT) vide its letter No.FA/Cost/112/2010/05 dated 20 April 2010 (which was forwarded to SWPL vide our letter of even number dated 23 April 2010) stated that the SWPL has disputed on the Cargo Handling Labour Dock (CHLD) levy collected for handling of cargo using ship's gears and also that the SWPL pays the CHLD levy to the port. Clarify what is the arrangement at the SWPL for handling cargo using ship's gears. Also, clarify what is matter of dispute and how this item is considered in the cost statement for the past period 2007-08 to 2009-10 and for the future period.	This has been explained in details vide our letter dated 29.07.10.
B.	SCALE OF RATES	
(1).	Justify the proposed increase of 32% in the cargo handling charge in the light of the fact that the cost statement for the terminal as a whole reflects a deficit of 16% and the cargo handling activity reflects a deficit of 19% after the correcting the arithmetical error.	The cargo handling activity still leaves a shortfall of 2% on ROCE as can be seen in the revised proposal at the proposed hike of 32%.

(2).	During the last tariff fixation there was some issue relating to the change of the name of the company and the MOPT and the SWPL had agreed resolve this issue. In this regard, please confirm whether the issue of change of name of the licensee company is finalised and forwarded the documentary support in this regard.	This issue with MOPT is considered closed as confirmed by MOPT also vide their letter dated 02.08.10.
(3).	The definition of the term 'wharfage' proposed by the SWPL is in general manner and does not covered all the services offered for the said tariff item. The proposed definition may be modified.	The definition may be deleted in the fresh proposal.
(4).	<p>Section 2: General terms & conditions</p> <p>(i). The penal rate of interest in note 9(b) proposed at 15% may updated at 2% above the prevailing Prime Lending Rate of State Bank of India (which is presently 11.75%) as per clause 2.18.2. of the tariff guidelines.</p> <p>(ii). The proposed note no.13 about levy of service tax, educational cess, etc. may not be necessary as such conditions are generally not prescribed in the Scale of Rates of other private terminals/ major port trusts.</p>	<p>In the light of PLR concept done away by banks on RBI guidelines, linking penal interest to PLR is no more feasible. Hence, 15% may be allowed.</p> <p>May be removed from the proposal.</p>
(5).	<p>(i). Part - I – Vessel Related Charges, Section C – Berth Hire Charges</p> <p>(a). Though the SWPL has stated that no increase in the berth hire charge is proposed, an analysis shows that the single slab rate proposed by SWPL for berth no.6A as against the existing two tier structure will lead to a 18% increase in case of vessels upto 30,000 GRT. Please furnish the additional income likely to accrue at the proposed tariff level for vessels below 30000 GRT. Furnish a statement showing the no. of vessels, average GRT vessels handled and the income likely to be earned for the existing slabs in respect of berth No. 6A at the existing tariff vis-à-vis the proposed single berth hire for the years 2010-11 to 2012-13.</p> <p>(b). Though the SWPL has stated that status quo is maintained in berth hire charge, the proposed Scale of Rates reveals that the rate for coastal vessel is restated adopting the exchange rate of 1US\$ = Rs.46.25 for prescribing concessional rupee denominated berth hire for coastal vessel as against the exchange rate of 1US\$ = Rs.44.62 adopted in the last tariff revision Order. Clause 6.1.2 of the tariff guidelines, does not allow restatement of coastal vessel rates at the time of the tariff revision exercise. This approach is followed uniformly while prescribed the Scale of Rates of Major Port Trusts / Private Terminal</p> <p>(ii). Section D - Charges for water supply</p> <p>(a). Explain the reasons for proposing to delete the charges for water supply prescribed in the existing Scale of Rates and giving reference to the rates prescribed in the Scale of Rates of MOPT for levy of tariff for this service.</p> <p>(b). If the water supply is arranged by the SWPL, please propose a specific rate for offering</p>	<p>(a). Two tier structure for berth hire charges may be considered as in the last order.</p> <p>(b). Necessary changes can be made in the proposed Scale of Rates.</p> <p>SWPL has to buy the water from outside sources. The rates for the same are fluctuating. Hence, the charges for water supply have been deleted.</p>

	<p>this service and justify with reference to the cost of service provided instead of giving cross-reference to the MOPT Scale of Rates. In case the MOPT is providing this service, it may be sufficient to mention that the MOPT will be offering this service and will recover the tariff accordingly.</p>	
(6).	<p>Part- II – Cargo Related Charges</p> <p>(i). As per Order Number TAMP/4/2004-GenI dated 7 January 2005 and subsequent amendment dated 15 January 2005, concessional rate are to be prescribed for coastal cargo for ship to shore and shore to yard movement and wharfage <u>except for thermal coal, POL including crude oil, iron ore and iron ore pellets</u> not exceeding 60% of the rate applicable for normal cargo.</p> <p>The SWPL in the proposed Scale of Rates has proposed a single wharfage entry for coal of all types without maintaining any distinction in rates for thermal coal and other coal. Since thermal coal is not eligible for concessional tariff for coastal cargo, wharfage charge and handling charge for thermal coal and coal of all types except thermal coal may be shown separately as prevailing in the existing Scale of Rates. If no thermal coal is expected to be handled it may be stated explicitly in the Scale of Rates.</p> <p>Coastal Concession in the wharfage rate cargo handling charge also needs to be proposed for iron ore pellets.</p>	<p>It is confirmed that no coastal cargo of thermal coal will be handled.</p> <p>No coastal concession in wharfage rate for iron ore pellets is proposed.</p>
	<p>(ii). The existing note (1) under Cargo handling Charge of the existing Scale of Rates states that the Cargo handling charge at Berth No 5A amongst others covers the movement of cargo within SWPL stack yard and unloading from railway wagons or vice versa. The reasons for deleting these two services may be explained in the light of the fact that the port has not proposed any reduction in the existing tariff in view of excluding these services from the list of services presently covered under the cargo handling charge.</p>	<p>The same can be retained.</p>
(7).	<p>Section C – Ground rent / storage charges:</p> <p>The reasons for deleting the existing general note to Section C may be explained. The SWPL is advised to incorporate the following condition which has been prescribed in the existing Scale of Rates of SWPL:</p> <p><i>“Storage charge / ground rent on cargo shall not accrue for the period when the SWPL is not in a position to deliver /ship the cargo when requested by the user”.</i></p>	<p>The same can be continued in our proposal.</p>
(8).	<p>Section D – Dust Suppression Charge:</p> <p>The existing Scale of Rates of the SWPL prescribes uniform rate of Rs.2.15 per tonne charges towards dust suppression for coal, coke and limestone. As against this, dust suppression charge for coke is proposed at Rs.2.75 per tonne which means 28% increase from the existing tariff. The basis for proposing 28% increase in this tariff</p>	<p>Coke on account of lower density of 0.6 as compared to coal, occupies more space. Hence, more expenses are incurred for dust suppression.</p>

	item and that too only for coke may be explained with reference to increase in the cost of offering dust suppression service to coke in comparison to other dusty cargo.	
(9).	As stipulated under clause 6.8 of the tariff guidelines, benchmark levels of productivity may be indicated and incentives may be proposed for better performance of the terminal and disincentives for performance below the benchmark levels. The rationale for proposing such benchmark levels and the incentive / disincentive may also be indicated.	

9. The SWPL has subsequently vide emails dated 16 September 2010 and 17 September 2010 further clarified the following points:

- (i). The SWPL, on the point made by the MOPT about disposal of HMC has clarified that it intends to improve upon the productivity and capacity of the Terminal by improving upon the existing Cargo Handling equipments. The present discharge that can be achieved with each Mobile Harbour Crane is 600 MT per hour on an average, which will go up to 900MT per hour average by Ship Unloaders. Speedier evacuation of cargo after installation of In-Motion Wagon Loading system would need a faster discharge from the Vessels. Both the systems complement each other. Hence, SWPL intends to replace the existing Mobile Harbour cranes with Ship Unloaders, though the same are only 6 years old.
- (ii). The year-wise expenditure on account of CHLD included in the Annual Accounts for the years from 2007-08 to 2009-10 is as follows:

Year	Amount (Rs.)
2007-08	10,19,277.00
2008-09	15,08,828.00
2009-10	21,34,931.00
Total	46,63,036.00

10. A summary of the queries raised by us vide letter dated 2 July 2010 to MOPT and the reply furnished by the MOPT vide letter dated 2 August 2010 is tabulated below:

SI. No.	Queries raised by us	Reply furnished by MOPT
(i).	<p>Traffic projected by the South West Port Limited (SWPL) for the years 2009-10, 2010-11, 2011-12 and 2012-13 are 4.10 million tonnes, 4.15 million tonnes, 4.45 million tonnes and 5.15 million tonnes as against the 5.00 million tonnes projected by the MOPT in its general revision proposal for each of the corresponding years. The MOPT has while furnishing comments on the SWPL stated that the projection made by the SWPL for the years 2010-11 to 2012-13 is on the lower side when compared to the traffic of 4.63 million tonnes handled by the SWPL in 2008-09.</p> <p>Kindly indicate the assessment of port about the traffic to be handled by SWPL in the next 3 years duly taking into consideration the upgradation proposed in the rail infrastructure and replacement of two mobile harbour cranes with two mobile unloaders with other ancillary equipment.</p>	It is clarified that traffic to be handled by SWPL during the year 2009-10 to 2011-12 was incorporated in our proposal based on the information submitted by the SWPL. The traffic projection made by the SWPL for the year 2012-13 is reasonable considering the upgradation proposed in the rail infrastructure and replacement of two mobile harbour cranes. The port has already stated that the projection for the year 2010-11 to 2011-12 was on the lower side as compared to the actual traffic for the year 2008-09. However, now it is learnt that due to external factors SWPL is constrained to handle lower traffic during the subsequent years.
(ii).	The SWPL has estimated the number of foreign-going vessels to scale down from 86 vessels reported in the year 2008-09 to 64 vessels in 2010-	It is understood that SWPL is expected to handle more coastal vessels during the year 2010-11 to 2012-13 and accordingly number of foreign going

	<p>11 which in terms of percentage works out to 25% reduction. The number of foreign-going vessels in the subsequent two years are estimated at 67 and 78 for the subsequent two years. The income from berth hire reported at Rs.2887 lakhs in the year 2008-09 is estimated to reduce to Rs.2182 lakhs in 2009-10. Please comment on the reasonableness of number of vessels and berth hire income estimated by the SWPL for the years 2010-11 to 2012-13.</p>	<p>vessels have been estimated on the lower side. As per prevailing Scale of Rates, the coastal vessels are charged 60% of the berth hire charges applicable for foreign going vessels.</p>
(iii).	<p>Article 7.3.4.2 of the License Agreement entered by the SWPL with the MOPT stipulates 5% increase in the license fee every year. As against this, lease rental estimated by SWPL for the years 2009-10 and 2010-11 shows around 46% to 54% increase with reference to the actual lease rental reported for the year 2008-09. Confirm the lease rental paid by the SWPL for the year ended on 31 March 2010 is Rs.350 lakhs. Also, confirm that the estimation of lease rentals payable by the SWPL for the years 2010-11 to 2012-13 at Rs.367 lakhs, Rs.386 lakhs and Rs.405 lakhs respectively are in line with the lease rent prescribed in the SOR of the MOPT and also in accordance with the terms of the LA.</p>	<p>The lease rental payable to the MOPT indicated in the proposal of SWPL is factual and in accordance with the terms of the Licence Agreement.</p>
(iv).	<p>The SWPL has estimated an addition of Rs.10.77 crores during the year 2010-11, Rs.67.85 crores in 2011-12 and Rs.12.05 crores during the year 2012-13 in Plant and Machinery, construction of rail line, sheds, etc. Please furnish your comments on the reasonableness of the investments proposed to be made by the SWPL. Also, indicate the additions to the capacity in view of the proposed additions to the gross block of assets.</p>	<p>The additions to the gross blocks of assets proposed by SWPL during the year 2010-11 to 2012-13 for an additional investment of Rs.90 crores was discussed in the joint meeting held on 22 July 2010. The SWPL has justified the proposed additions to the gross block of assets. Therefore, we have no further comments on this issue. However, we fail to understand why SWPL has proposed to discard two mobile harbour cranes at book value of Rs.16.15 crores after only six years of use. The investment be taken into consideration if the reasons are acceptable and in accordance with guidelines.</p>
(v).	<p>(a). Article 3.1. of the License Agreement (LA) shows that water area of 60,500 square metres and land area 40,200 square metres was allotted to SWPL for construction of the terminal. Please indicate the total area made available and developed by SWPL for stacking cargo.</p> <p>(b). Please indicate the existing standard capacity of the two berths handled by the SWPL taking into consideration the investments made by operator and the equipment deployed for the operations. Also, indicate the standard capacity of the terminal for the years 2010-11 to 2012-13 taking into consideration the additional investment of Rs.90 crores proposed during the year this period and particularly with reference to the proposed upgradation in the rail infrastructure and replacement of two harbour mobile cranes with two ship unloaders.</p>	<p>The installed capacity of berth no.6A and 5A is 5 MMT per year. The operations of the terminal commenced from June, 2004. Despite installations of heavy modern machinery and equipments, SWPL could not achieve the traffic of 5 MMT during the last five years.</p> <p>As regards standard capacity of the two berths handled by SWPL, we have no further comments as SWPL has justified their case in the joint hearing held on 22 July 2010. As per the licence agreement, a water area of 60500 sq. mtrs. and a land area of 40200 sq. mtrs. was allotted to SWPL for the construction of their terminal. It is understood from the SWPL that an area admeasuring 30000 sq. mtrs. is available to them for storage of coal/ coke. It is also understood from them that they would augment an additional capacity of 5.15 MMT per year after installation of proposed plant and machinery.</p>
(vi).	<p>The dredging cost debited to the SWPL, if any, in the last three years 2007-08 to 2009-10 may be indicated. Please indicate the reasonableness of the dredging cost estimated by SWPL at Rs.190.44/ cubic metre</p>	<p>The dredging cost debited to SWPL for the year 2007-08 to 2009-10 was Rs.21.30 lakhs, Rs.30.62 lakhs, Rs.146.75 lakhs respectively. As regards reasonableness of dredging cost estimated by the SWPL @ Rs.190.44 cubic meter in the year 2010-</p>

	in the year 2010-11 with annual escalation of 5.8% for the subsequent years. Since MOPT also engages dredging contractors, the dredging cost / cubic mtr. incurred by MOPT may please be furnished.	11. In this regards, it is stated that the cost on dredging is market driven and dredging contractors are not easily available as there is shortage of dredgers. However, it is noticed that the dredging cost estimated by SWPL is on higher side. The actual dredging cost to the port is Rs.110/- per cubic meter for the year 2009.
(vii).	Please confirm that the estimation of royalty payment by SWPL at Rs.12 crores for each of the year 2010-11 to 2011-12 and Rs.13.44 crores for the year 2012-13 is in accordance with the terms of the LA. If not, the detailed computation of royalty estimated to be collected from the SWPL may be furnished.	The estimation of royalty payment by SWPL to the port indicated in their proposal for the year 2010-11 to 2011-12 is based on the minimum guarantee throughput to 5 MMT to be handled every year. SWPL is expected to handle 5.15 MMT of traffic during the year 2012-13 and the estimated royalty of Rs.13.14 crores and their computation of royalty is as per the licence agreement.
(viii).	During the last tariff fixation there was some issue relating to the change of the name of the company and the MOPT and the SWPL had agreed resolve this issue. In this regard, please confirm whether the issue of change of name of the licensee company is finalised and forwarded the documentary support in this regard.	As regards change in the name of the company title, it is stated that we had objected the name of the company and suggested to delete the word "Port" or replace with a suitable word. Lot of correspondence was exchanged without any outcome. This issue may be considered as closed.
(ix).	The MOPT vide its letter No.FA/Cost/112/2010/05 dated 20 April 2010 has mentioned about some dispute with SWPL on Cargo Handling Labour Dock (CHLD) levy on cargo handled by ship's gear and that the matter is referred for arbitration. Clarify what is the arrangement at the SWPL for handling cargo using ship's gears and whether it is as per the provisions in the LA. Also, clarify what is matter of dispute and what impact it has on the tariff revision exercise of SWPL.	As per the Licence Agreement with SWPL, SWPL is not allowed to handle geared vessels. This was objected by the port. Thereafter, SWPL was permitted to handle geared vessels for exporting steel coils, subject to payment of CHLD levy towards loss of employment to the CHLD workers on account of geared vessels being handled at SWPL. This activity at Berths 5A/6A also results in loss of revenue of the port, as otherwise the steel cargo would have to be handled at the General Cargo Berths 10 and 11 of MOPT. MOPT would have earned cargo handling charges at Berth nos. 10 and 11. Hence, the port is of the firm belief that SWPL should compensate the CHLD levy. Subsequently, SWPL went into arbitration on this issue and is paying levy under protest. However, SWPL has been repeatedly stating that if TAMP allows this an input cost, SWPL will withdraw their arbitration. Since CHLD levy is being actually paid by SWPL, port has no objection to the CHLD levy being considered as in input cost while revising tariff for this commodity.

11.1. The SWPL vide our letter dated 24 September 2010 was requested to furnish further additional information on vessel traffic handled in the years 2007-08 to 2009-10, the gross value and the written down value of the two Harbour Mobile Cranes proposed to be discarded, the actual stores consumption for the last two years 2008-09 and 2009-10 and few other points.

11.2. The SWPL vide its email dated 29 September 2010 and dated 1 October 2010 has furnished further clarifications which is summarised below:

(i). The details of the vessel traffic for the years 2007-08 to 2009-10 is given below:

Particulars	No. of vessels			Average parcel size of vessel			Average GRT of vessel			Average Productivity (in tonnes)		
	2007-08	2008-09	2009-10	2007-08	2008-09	2009-10	2007-08	2008-09	2009-10	2007-08	2008-09	2009-10
Berth 6A												
(i). Coal (Panamax)	50	57	53	68200	66692	65283	39822	39177	41661	28726	27966	28843
(ii). Coal (Handymax)	0	2			41854			27011	0		30471	0

(iii). Coke	12	8	9	46410	44419	41703	37289	35869	37995	22674	19538	14233
(iv).Limestone	4	2	1	53206	59657	57811	35504	33883	38315	26168	18786	20707
Berth 5A												
(i). HR coils/ slabs (foreign)	10	17	8	18563	17059	16302	20730	23481	12724	7987	8329	6873
(ii). HR coils/ slabs (coastal)			19			8416			7117			5557

- (ii). Security deposit of Rs.1.54 crores with MOPT is reflected in the schedule of loans and advances as deposits.
- (iii). The mobile harbour cranes were procured during the financial year 2006-07. The value of 2 HMC in the gross block is Rs.16,29,66,332/- and Written Down Value (WDV) is Rs.11,15,83,182/- as on 31 March 2010 and the WDV as on 31-03-12 is estimated at Rs.7,78,81,744/-.
- (iv). Actual stores consumption is Rs.283.12 lakhs and Rs.309.62 lakhs the years 2008-09 and 2009-10 respectively. The stores consumption relate to revenue spare.

12. 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>.

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

- (i). During the initial tariff fixation done in September 2004 as well as in the last tariff revision of the South West Port Limited in December 2006, there was an issue relating to change in the name of the Licensee - Company i.e. South West Port Limited which was to be settled between both the MOPT and the SWPL. In this proceeding, both the SWPL and the MOPT have confirmed that the issue relating to change in the name of the Company is closed.
- (ii). The proposal filed by SWPL in February 2010 was for the three year tariff cycle i.e. for 2010-11 to 2012-13 based on estimates for the year 2009-10. Subsequently based on our advice, the SWPL has furnished revised cost statements updating actuals for the year 2009-10 and revising the estimates for the years 2011-12 and 2012-13. The revised proposal filed by the SWPL dated 23 June 2010 along with submissions made by the SWPL during the processing of the case is considered in this analysis.

The classification of actual income and expenditure furnished by the SWPL in the cost statement are different from those reported in Annual Accounts. The individual cost items reflected in the cost statement could not, therefore, be verified with the figures reported in the Annual Accounts, though the overall position with reference to the Profit / Loss before tax reported in the Annual Accounts is reconciled with the net surplus / deficit estimated in the cost statement for the years 2007-08 to 2009-10. The actuals furnished by the SWPL in the cost statement are relied upon subject to the modifications, wherever necessary, as explained in the succeeding paragraphs.

- (iii). Both the MOPT and the SWPL have brought out a dispute between themselves about Cargo Handling Labour Department (CHLD) levy demanded by the port even on the cargo handled by ship's gear at the SWPL terminal. It is reported that the SWPL has made payments to MOPT on this account under protest and the matter is referred for arbitration which is still pending.

SWPL has strongly argued that the claim of MOPT in this regard is not as per the Licence Agreement. On the other hand, MOPT claims this payment towards compensation for loss of employment to its CHLD pool is a legitimate recovery. The SWPL has casually submitted that it will withdraw from arbitration if this Authority permits this payment as pass through. This position is reflected in the

joint note filed by MOPT and SWPL. Clause 2.4.2. of the tariff guidelines calls for examining the reasonableness of the cost which presupposes the legitimacy of the concerned cost item. It is necessary that the obligation of the Terminal Operator to bear certain expenditure should be established beyond doubt. In such an event only, this Authority will factor the relevant cost item, subject to its reasonableness, in the tariff computation. Interpretation of the Licence Agreement and adjudication of disputes between the Land Lord and the Licensee are not the mandate of this Authority. It is to be settled by the concerned parties in the manner provided in the Agreement between them.

The SWPL has reported that Rs.10.19 lakhs, Rs.15.09 lakhs and Rs.21.35 lakhs has been paid to the MOPT in the years 2007-08 to 2009-10 towards CHLD levy, which is included under the head cargo handling expense in the Annual Accounts which in turn captured under operating and direct labour in the cost statement. For the reasons given above, the payment made to the MOPT towards the CHLD levy is not considered in this analysis. This decision of this Authority cannot be construed as prejudging the dispute in arbitration, as the rival contentions are not analysed on merit as the matter is already under Arbitration.

In this regard, it may be relevant here to mention that the above stated position maintained in this analysis may not cause any undue hardship to SWPL. As can be seen later, the review of actual performance of SWPL in the preceding three years shows availability of additional surplus of which 50% is considered for adjustment in future tariff as per the tariff guidelines. The payments made by SWPL, if the arbitration award to be announced requires so, can easily be accommodated from balance surplus allowed to be retained. For the future period, if such payments are to be made as per the License Agreement, then the past period analysis to be made in the next review will account for them.

- (iv). (a). The existing Scale of Rates of SWPL was approved in December 2006 relying on the estimated position for the years 2007-08 to 2009-10. The cost statement for the relevant period considered in the last tariff Order reflected aggregate deficit of Rs.1014 lakhs for the three years. Tariff increase of 6% only in the then cargo handling charges was allowed to bridge the estimated deficit.
- (b). Clause 2.1.3 of the tariff guidelines mandates review of the actual physical and financial performance of the port at the end of the prescribed tariff validity period with reference to the projections relied upon at time of fixing the prevailing tariff.
- (c). The general approach followed to analyse the estimated position in the last tariff Order is adopted to assess the actual net surplus / deficit for the years 2007-08 to 2009-10. The analysis for the past period furnished by SWPL is modified as explained below:
- The income estimates for the years 2007-08 to 2009-10 considered by the SWPL are adjusted with reference to the tariff increase allowed by the said Order for a like to like comparison with the actual income from the date of implementation of the Order.
 - Interest and finance expense and interest income are not considered maintaining the position followed in the last tariff Order. Bank charges amounting to Rs.3.50 crores in 2008-09 and Rs.1.68 crores in 2009-10 under the head 'Interest and Finance Charge' are reported in the Annual Accounts. In the absence of the SWPL explaining the purpose of this expense, this item is excluded while analysing the actuals with reference to the estimates.

- The repairs and maintenance cost shown by the SWPL in the cost statement for the year 2009-10 is found to be lower than the repairs and maintenance cost reflected in the Annual Accounts. This is mainly because, the SWPL has considered part of the expense under operating and direct labour cost. The operating and direct labour cost and repairs and maintenance cost for the year 2009-10 are considered as reported in the Annual Accounts subject to exclusion of CHLD payments for reasons stated in preceding paragraphs.
 - Revenue share is considered as a cost item to the extent of the revenue share quoted by the second highest bidder i.e. 13.1% on the actual cargo handling revenue reported during the years 2007-08 to 2009-10 in line with the approach adopted in the last tariff Order which is in line with the provisions of the tariff guidelines of 2005.
 - In the last tariff Order, the capitalised part of the preliminary expense was amortised over 26 years. This position is maintained for assessment of actual performance. Consequent adjustment is done in the depreciation.
 - The Net Fixed Assets reported in the Annual Accounts is adjusted for preliminary Expense written off and consequential adjustment is done in the depreciation. The working capital as per the norms prescribed in the guidelines comes to negative in the years 2007-08 to 2009-10 and hence considered nil. 15% ROCE is allowed on the capital employed for each of the years at the level allowed in the last tariff Order.
- (v). The SWPL has assessed the additional past surplus at Rs.1488 lakhs for the years 2007-08 to 2009-10 and has considered adjustment of 50% thereof in the current tariff cycle i.e. 2010-11 to 2012-13. As per clause 2.13. of the tariff guidelines, if review of actual physical and financial performance for the previous tariff cycle shows the variation is more than + or – 20%, then 50% of such accrued benefit / loss has to be adjusted in the next tariff cycle. The analysis with reference to the past period relating to the years 2007-08 to 2009-10 is discussed below:
- (a). The actual aggregate traffic handled by the SWPL is 13.35 Million Metric Tonnes (MMT) as against the estimated traffic of 16.44 MMT during the years 2007-08 to 2009-10. The SWPL has actually handled 18.8% lower than the estimated traffic.
 - (b). The actual operating income earned by the SWPL for the last tariff cycle 2007-08 to 2009-10 is Rs.281.97 crores as against revenue estimation of Rs.307.88 crores for the corresponding period. Though it may appear that the SWPL has earned 8.4% lower than the revenue estimated in absolute terms, a comparison of revenue per tonne shows that per tonne revenue is 13% higher than the estimated revenue per tonne allowed in the last tariff Order.
 - (c). On the expenditure side, the actual aggregate expenditure for the three years is Rs.166.19 crores as against the estimated expenditure of Rs.222.47 crores in the last Order. Excluding the depreciation and license fee which will not be impacted by the lower volume handled by the SWPL, the actual aggregate expenditure is Rs.113.07 crores i.e. 34% lower than the estimated expenditure of Rs.170.63 crores allowed in the last tariff Order.

- (d). A summary of the comparison of the actuals vis-à-vis the estimates allowed per the last tariff Order is tabulated below:

Particulars	Aggregate for the years 2007-08 to 2009-10 in absolute terms (Rs. in lakhs)		Variation in %
	Estimates as per tariff Order	Actuals	
Traffic (in million tonnes)	16.44	13.35	-18.8%
Operating Income	30788	28197	-8.4%
Total Expenses	22247	16619	-25.3%
Total Expenses (excluding License fee and depreciation)	17063	11307	-33.7%
Capital Employed	19954 Average	17186 Average	-16%

- (e). Though the variation in the actual capital employed vis-à-vis the estimates is less than 20%, the actual return earned by the SWPL for the past period 2007-08 to 2009-10 is 22% to 23% in each of the years as given below as against 15% ROCE admitted in these years:

Particulars	(Rs. in lakhs)		
	2007-08	2008-09	2009-10
Total Return Earned by the SWPL	4112	3949	3632
Capital Employed	18639	17197	15723
Actual Return earned on capital employed	22%	23%	23%

- (f). The variation in the financial performance in terms actual return earned by SWPL is found to be more than +/- 20%. Hence, as per clause 2.13 of the tariff guidelines, 50% of the surplus earned during the period 2007-08 to 2009-10 is considered for adjustment in this tariff cycle. Incidentally, SWPL has itself proposed adjustment of 50% of past surplus over the next 3 years. Based on our analysis, the quantum of past surplus proposed for adjustment has, however, undergone a change.

- (vi). (a). In the last tariff review, the surplus for the (then) previous three years i.e. 2004-05 to 2006-07 was assessed at Rs.431 lakhs which was based on the actual position reported for the years 2004-05 and 2005-06 and the estimates for the year 2006-07, subject to the condition that the actuals for the year 2006-07 would be reviewed in the next tariff cycle and if the variation is more than the level prescribed in the tariff guidelines it would be adjusted in the next tariff cycle. In line with the earlier decision, the actuals for 2006-07 is compared with the estimates relied upon in the last tariff Order. The actual position is assessed based on the figures reported in the Annual Accounts, as no separate breakup is furnished. The actual traffic handled in the year 2006-07 is 15% more than the estimates and the variation in the income is 29% more than the estimated income. The expenditure shows a drop of 4% despite 15% higher cargo volume handled by SWPL. Major variation is observed in the estimation of capital employed which is found to be 33% lower than the estimates. During the last tariff revision, SWPL had estimated to add assets worth Rs.81.62 crores to the gross block in the year 2006-07. As against that, the actual additions to the gross block reported in the Annual Account for the year 2006-07 is Rs.17.68 crores. Overall review of 2006-07 based on actuals shows a surplus of Rs.1089 lakhs as against deficit of Rs.2002 lakhs assessed in the last tariff revision. The net gain assessed for the years 2004-06 to 2006-07 relying on the estimates for the year 2006-07 would have been Rs.3523 lakhs as against Rs.432 lakhs assessed in the last tariff Order and considered for adjustment following the tariff guidelines. Effectively, the net differential benefit accrued to SWPL relying on the estimates of 2006-07 vis-à-vis the actuals is Rs.3091 lakhs. As stated in the last tariff and following the tariff guidelines 2005, 50% thereof i.e. Rs.1545.50 lakhs is considered for adjustment.

- (b). To summarise, the net surplus for the years 2006-07 to 2009-10 considered for adjustment in the current tariff cycle is as follows:

(Rs. in lakhs)			
Aggregate of net surplus earned by SWPL for the years 2007-08 to 2009-10 (after allowing admissible return on capital employed of 15%)	2007-08	1317	3960
	2008-09	1370	
	2009-10	1273	
Net gain earned in the year 2006-07 based on the review of actuals flowing from the decision in September 2004 Order			3091
Total Surplus for Adjustment in the future tariff cycle			7051
50% of the net surplus pertaining to the past period 2006-07 to 2009-10 adjusted in three years in the current tariff cycle			3525.40

The initial validity of the Scale of Rates prescribed in the last tariff Order was till 31 March 2010 which has been extended till 30 September 2010. While extending the Scale of Rates of the SWPL vide Order No.TAMP/19/2006-SWPL dated 31 March 2010, it was stated that additional surplus, if any, over and above the admissible cost and permissible return for the period post 1 April 2010 will be adjusted fully in the tariff to be determined. The cost position as assessed by the SWPL for the year 2010-11 subject to the modification done for reasons explained in the subsequent analysis reflects a surplus of Rs.877 lakhs. The net position for the year 2010-11 reflects a surplus due to adjustment of one installment of past gain of Rs.1175.12 lakhs assessed for the years 2006-07 and 2007-08 to 2009-10 based on the actuals. It is relevant to state that without adjustment of the past gain, the cost statement for the year 2010-11 is in deficit to the tune of Rs.299 lakhs. As the decision on the quantum of tariff revision is based on the aggregate of the net position for the 3 years under consideration, the net surplus position after adjustment of past gain for the year 2010-11 upto September 2010 and also for period October 2010 to December 2010 till the revised Scale of Rates will become effective automatically gets adjusted in the tariff determination process for the current cycle.

- (vii). The License Agreement stipulates a Minimum Guaranteed Throughput of 5 Million Metric Tonne to be handled by the SWPL. The SWPL has furnished a calculation of the capacity of the berth No 5A and 6A by borrowing the formula prescribed in the 2008 guidelines. The quay capacity is assessed at 10.73 MMT and the yard capacity at 5 Million Tonnes Per Annum and lower of the two capacities is considered as the optimal capacity of the terminal. The capacity calculation furnished by the SWPL is found to contain lot of gaps. Neither the handling rate nor the share of the vessel categories considered by the SWPL in the quay capacity represents the actual parameters at these berths. The stacking quantity and the turn over factor in the yard capacity calculation are found to be varying at different places. The SWPL has not recognised the differential parameters applicable for HR coil while determining the capacity.

When requested the MOPT to indicate the standard capacity of the SWPL terminal, the MOPT has stated that the installed capacity of berth no.6A and 5A operated by SWPL is 5 MMT per annum which is expected to augment to 5.15 MMT with installation of the in-motion wagon loading system and the related assets. For the time being, this analysis is carried out based on the capacity of the terminal at 5 MMT per annum.

It is needless to mention that the standard capacity of a terminal will be higher than the MGT. The SWPL is, therefore, advised to assess the capacity of the terminal accurately at the time of the next tariff review taking into consideration the gaps observed herein.

- (viii). The actual traffic handled for the financial years 2008-09 and 2009-10 is 4.63 MMT and 4.32 MMT respectively. The traffic for the years 2010-11, 2011-12 and 2012-13 are projected at 4.32 MMT and 4.65 MMT and 5.25 MMT respectively. It can thus be seen that the SWPL anticipates to exceed the MGT level prescribed in the LA only in the year 2012-13. The growth in the volume assumed by the SWPL is 0.7%, 7.6% and 13% for the three years under consideration.

The SWPL has attributed non achievement of MGT levels is due to lack of storage area and constraints in evacuation posed by the railway network.

The MOPT has maintained that the SWPL is required to provide facilities for evacuation of cargo by road also. Both the MOPT and the SWPL were advised to discuss about the ways to improve the capacity of the terminal and make the terminal available for more users and submit a joint note. In the joint note submitted by the MOPT and the SWPL, they have not conclusively reported anything about improving the capacity of the terminal which was the reference made to them.

The issue of developing facilities for road movement of cargo by the SWPL existed even during the initial tariff fixation in 2004. In the initial tariff fixation also, in view of the submissions made by some of the users, both the SWPL and the MOPT agreed to consider the demand of the users particularly of those who import small quantities and decided to devise an alternate operational plan for including road delivery cases.

During the last tariff revision, the MOPT had clarified that despite constant persuasion with SWPL to create facilities at the terminal for handling coal / coke cargo by road mode, it has not yet developed / created the requisite facilities for handling cargo by road mode to cater to the demands of the small volume users. With reference to Writ petition filed by some of the users, the Hon'ble High Court of Bombay in Goa had directed the Ministry of Shipping to decide about handling of coal, subject to compliance of the directions of GSPCB. During the meeting with the Secretary (Shipping), SWPL agreed to consider road mode if the MOPT provides the area of about 10,000 sq. m. behind berth no.7 for storage of cargo. The Secretary (Shipping) after discussions with the port, SWPL and concerned users passed an Order on 15 December 2005. The relevant operative portion of the Order No.PD/13011/1/2005-MoPT dated 15 December 2005 of the Secretary (Shipping) is reproduced here:

"17. After taking into consideration the above mentioned circumstances, the views/observations of all concerned including the Goa State Pollution Control Board, I arrive at the following conclusions:

- (i) Considering the constraints in the premises licensed to SWPL, MoPT would have to continue to handle bulk coal/coke at Berth No.11 till an alternative facility is developed. Port may handle clean break bulk cargo at Berth No.10 where the facility for passenger/cruise vessels is being provided. Port may also consider handling bulk coke at Berth No.10 subject to the condition that the cleanliness of the Berth is maintained by the port users to the satisfaction of the Port.*
- (ii). It is seen that the Port is compelled to continue handling of coal and coke operations at Berth No.10 & 11 due to inability of the Terminal Operator, SWPL to handle road borne cargo. Under such circumstances, it is not considered appropriate to modify the fundamental clauses of the Licence Agreement with regard to the Minimum Guaranteed Throughput etc.*
- (iii). The users should undertake all necessary environmental protection measures while handling coal and coke. These measures would be implemented in consultation with Goa State*

Pollution Control Board. The Board should also suitably monitor the measures to ensure compliance to Environmental Standards under the applicable Act. MoPT should give necessary support. Local Citizens Committee should also be associated, if required.

.....”

Even after more than four and half years since the directions of the Secretary (Shipping), the SWPL has not developed the facilities for evacuation of cargo by the road mode reportedly due to lack of additional land area which is sought from the port but not allotted.

Be that as it may, when the MOPT was requested to comment on the reasonableness of the traffic estimated by SWPL, they initially stated that the traffic projections by the SWPL for the year 2010-11 to 2011-12 are on the lower side as compared to the actual traffic for the year 2008-09. However, subsequently, they maintained that in view of the constraints expressed by the SWPL, the traffic projections for the years 2010-11 and 2011-12 are reasonable. The MOPT has stated that traffic projections for the year 2012-13 also reasonable considering the upgradation proposed in the rail infrastructure and replacement of two mobile harbour cranes by the SWPL.

The actual traffic of the SWPL (informally obtained from the MOPT) for the first five months of 2010-11 i.e. upto August 2010 is 1.82 MTPA. Traffic projection for the year 2010-11 estimated by the SWPL at 4.32 MMT seems to be reasonable when seen in the backdrop of the actuals obtained for the first five months. The traffic estimated by the SWPL in 2012-13 is 5.25 MTPA which reportedly takes into consideration the additional traffic on account of the investment proposed on in-motion wagon loader. The MOPT finds that the traffic estimated by the SWPL are reasonable considering the investment proposed by the SWPL. The traffic projections of the SWPL are considered in this analysis without any modification.

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 SWPL due to wrong estimation, the additional surplus earned will be adjusted in the tariff to be fixed as per the tariff guidelines.

- (ix). The INSA has observed that the cargo handling income per tonne estimated for the years 2010-11 to 2012-13 shows a drop vis-à-vis the cargo handling income per tonne earned in the last three years. It is relevant to state here that cargo mix envisaged by the SWPL for the years 2010-11 to 2012-13 shows fall in the coke traffic at both berth Nos.5A and 6A whereas traffic of limestone and coastal HR coil are estimated to increase. The differential tariff for these cargo items and change in the cargo mix contributes to reduction in the estimated per tonne income.

The income estimated by the SWPL at the existing level of tariff for the throughput projected for the years 2010-11 to 2012-13 is analysed hereunder:

- (a). The income from the berth hire is estimated to reduce from Rs.2919 lakhs earned in the year 2009-10 to Rs.2046 lakhs in the year 2010-11 i.e. around 29%, though the traffic is comparable for both the years. The estimated income for the subsequent years is also found to be lower than the actual berth hire income reported in the past. When sought clarification, the SWPL has explained that the income from berth hire shows a reduction over the previous years income, on account of increased productivity.

The SWPL has subsequently furnished vessel traffic details such as average GRT, parcel size and the productivity achieved by it for the past three years 2007-08 to 2009-10. Relying on the details furnished by the SWPL, the berth hire income is estimated by us based on the weighted average of the vessel parameters and productivity parameters reported by

the SWPL in the last three years. Further, in our analysis, income from berth hire charge from April 2010 upto September 2010 is estimated based on the average exchange rate of 1 US\$ = Rs.46.08 obtained for the said period and for the period thereafter, the exchange rate is updated at Rs.45.05 as prevailing at the time of concluding the analysis in this case.

Subject to the modifications explained above, the estimated berth hire income is Rs.2031 lakhs in 2010-11, Rs.2121 lakhs in 2011-12 and Rs.2411 lakhs in the years 2012-13 as against Rs.2046 lakhs, Rs.2174 lakhs and Rs.2462 lakhs estimated by SWPL for the corresponding years.

It is relevant to state here that the past period assessment of actuals showed variation in the actual berth hire income vis-à-vis the estimates considered in the last tariff Order. Though the berth hire income is estimated based on the actual vessel parameters for the year 2009-10 reported by SWPL some doubt still persists as we could not tally the actual berth hire income for 2009-10 by adopting the parameters furnished.

Since the berth hire income estimated in this analysis is solely relying on the vessel parameters and the productivity furnished by the SWPL, if at the time of the next tariff revision, the actuals of the parameters which are relied upon for estimating the berth hire are found to be significantly varying, the additional revenue accrual will be fully set off in the next tariff revision.

- (b). The unit rate for dust suppression of coke is taken at Rs.2.75 per tonne by the SWPL for estimating the revenue as against Rs.2.15 per tonne prescribed in the existing Scale of Rates of SWPL. Since no coke traffic is projected, it will not have any impact. The cargo handling income for HRC/HR slabs at berth no.5A is estimated at Rs.150 per tonne as against Rs.159 per tonne prescribed in the existing Scale of Rates. The income estimation for this cargo item is modified based on the rates prescribed in the existing Scale of Rates.
- (c). For the years 2008-09 and 2009-10, actual income from supply of fresh water is reported at Rs.1.45 lakhs and Rs.1.51 lakhs respectively. The SWPL has not estimated any income from this item in the future projections. It has stated that the source for procurement of water is different with varying rates. Since SWPL has not categorically mentioned that it will not provide fresh water supply to vessels, in our analysis, the income from supply of fresh water is considered at Rs.1.50 lakhs for all the three years based on the actual income reported in 2009-10.
- (d). Subject to the above changes, the total operating income as estimated by the SWPL is considered for the purpose of this analysis. The modified estimates of total operating income at Rs.7990 lakhs, Rs.8459 lakhs and Rs.9599 lakhs for the three years 2010-11, 2011-12 and 2012-13 respectively are considered.
- (x). Clause 2.5.1. of the revised tariff guidelines requires that the expenditure projections of the major ports / terminal operators should be in line with traffic adjusted for price fluctuations with reference to current movement of Wholesale Price Index (WPI) for all commodities as announced by the Government of India. Annual escalation of 3.76% is adopted for dealing with the tariff revision proposals considered during the year 2010-11. Annual escalation applied by the SWPL for estimating some of cost items like power cost, fuel cost, etc., are found to be higher than the permissible level. In our analysis, the estimate for the years 2010-11 to 2012-13 is modified applying the annual escalation factor of 3.76% over the actuals / estimate of respective previous years wherever the annual escalation applied by the SWPL is higher than the stated level.

- (xi). Actual repairs and maintenance cost reported for the year 2009-10 is Rs.371 lakhs in its Annual Accounts. Considering 1.5% on the gross value of civil works at 3% on the gross value of mechanised equipment and other assets, the SWPL has estimated repairs and maintenance cost at Rs.511 lakhs, Rs.692 lakhs and Rs.728 lakhs for years 2010-11 to 2012-13 respectively. It has stated that the repairs and maintenance cost is likely to increase substantially due to ageing of equipment.

It may be relevant here to note that ageing of the equipment will be gradual and no special circumstance is projected to show that such a happening will be on an accelerated manner in this tariff validity. This general statement is not supported by any documentary evidence or cost analysis.

Repairs and maintenance expenses for the existing assets is estimated applying annual escalation of 3.76% over the actuals reported for previous years 2009-10 in line with the approach followed in case of other private terminals like the Visakha Container Terminal Limited, Vizag Seaport Private Limited, TM International Logistics Limited, etc. The same approach is followed for the subsequent years 2011-12 and 2012-13 as well.

In order to take care of incremental repairs and maintenance cost on the proposed assets to be created in this cycle, the repairs and maintenance cost is estimated at 1% on the civil assets and 2% of mechanical equipment and other assets with reference to the modified additions to gross block of assets considered in this analysis.

Accordingly, the revised estimation of repairs and maintenance cost will be Rs.392 lakhs for the year 2010-11, Rs.408 lakhs in 2011-12 and Rs.548 lakhs in 2012-13.

- (xii). The estimated equipment running cost consists of three cost elements viz. power, fuel and water which are discussed hereunder:

- (a). The average power and fuel consumption reported for the year 2009-10 is 0.49 units and 0.16 units per tonne.

Quantum of power consumption for the year 2010-11 is estimated to increase to 0.68 unit per tonne and for the subsequent two years it is estimated at 0.62 and 0.53 units per tonne by the SWPL. Likewise, the fuel consumption is estimated at 0.25 litres/ tonne, 0.20 litre/ tonne and 0.18 litre/ tonne for the three years under consideration.

SWPL has clarified that power consumption is expected to go up during the year 2010-11 on account of idling of equipment and as assets are getting old and will normalize when the new equipment are commissioned in 2011-12. The reasons cited by the SWPL for assuming increase in the power and fuel consumption particularly in 2010-11 and 2011-12 do not appear to be convincing. In the absence of any reasonable analysis furnished by SWPL, the proposed annual increase in the consumption of power and fuel during the years 2010-11 and 2011-12 cannot be accepted. For the year 2012-13, the unit consumption estimated by the SWPL is considered in view of additions to the gross block in the said year.

The unit cost of power and fuel is estimated to increase by 5.8% and 10% respectively in the year 2010-11. This Authority is guided by the revised tariff guidelines which require the expenditure to be estimated based on the current WPI (for all commodities) reported at 3.76% and adjusted for traffic growth. The unit rate of power reported at Rs.7.27 for the year 2009-10 is taken as the base and annual escalation @ 3.76% is allowed as against 5.8% escalation factor applied by the SWPL. 3.76% annual escalation in the unit rate of power is allowed for the subsequent years as well. It is notable that the same approach has been followed by this Authority while revising the Scale of Rates of the MOPT in the Order passed on 14 May 2010.

Unit cost of fuel is considered at Rs.36.12 per litre as reported for the year 2009-10 for the first three months of the year 2010-11. For the subsequent period, i.e. from July 2010, the unit rate is updated to Rs.40.27 per litre considering the hike announced in fuel in the end of June 2010. The annual escalation of 3.76% is applied in the unit cost of fuel for the subsequent two years.

The estimated power and fuel cost are adjusted for growth in the traffic anticipated during each of the years under projection in line with the revised tariff guidelines.

- (b). The procurement cost of water is estimated for dust suppression service offered for coal/ coke and limestone. The SWPL has submitted that water is procured partly from MOPT and partly from the outside market. The SWPL has furnished the copies of water bills which show that the water is procured at the cost of Rs.100 per tonne from out side suppliers. The average unit cost of procurement of water is Rs.54.91 per litre in 2009-10. For the year 2010-11, the unit cost of water is estimated at Rs.50.40 which is found to be reasonable based on the actuals furnished for the past two years. The annual escalation in the unit rate of water for the subsequent two years is within the stated level.

The average consumption of water considered by the SWPL is based on the actual consumption for the year 2009-10 and hence accepted.

The income estimation includes income from dust suppression service offered to limestone but while estimating the expenditure side, the SWPL has considered only the coal traffic and omitted to factor the traffic of limestone. In our analysis, the traffic of limestone is also considered while estimating the cost of procurement of water.

- (xiii). (a). The SWPL has stated that the operating and direct labour for stevedoring, operating mechanised handling system, storing, loading cargo into wagons, etc, are outsourced from various cargo handling contractors. It has furnished detailed workings of the operating and direct labour cost indicating the existing unit rate and the estimates for the next three years for each cargo group. The existing unit rates indicated in the working cannot be verified as the SWPL has not furnished any documents in this regard. The SWPL has subsequently on our advice furnished a copy of contract dated 10 April 2010 entered by SWPL with the outsourcing agency for the operating and maintenance contract for the period April 2010 to March 2013. The unit rate indicated in the contract copy, however, do not match with the unit rate considered by the SWPL in its working.
- (b). As per the outsourcing contract dated 10 April 2010 furnished by the SWPL, the outsourcing rate for the operation and maintenance is Rs.40/- per tonne for handling coke and coal and Rs.90/- per tonne for steel coil and slab as against existing unit rate of Rs.30.82 and Rs.75 per tonne shown in its working for the year 2009-10. The increase in the unit rate is thus 30% for coal and 20% HR coils which is found to be beyond the admissible annual escalation of 3.76%.

On perusal of the copy of the contract furnished, it is observed that the outsourcing contract awarded is to JSW Infrastructure Limited which is one of the group companies of the SWPL. Though SWPL has furnished a copy of the quotation of other agencies which is higher than the rates quoted by JSW Infrastructure Limited, in the absence of the SWPL furnishing any corroborate evidence to establish the arms length relationship of this transaction, it is not found appropriate to allow steep hike in the unit rate for this item.

The SWPL has separately furnished detailed cargo-wise computation of operating and direct labour cost with reference to outsourcing of on board and handling activity for the year 2009-10. The total expense estimated in this statement do not match with the actual cargo handling expense reported in the Annual Accounts for the year 2009-10 and also for that matter 2008-09 and hence that working is relied upon.

In the Annual Accounts, the cost of outsourcing the operating and direct labour is reflected under the head 'cargo handling expense'. This expense is reported at Rs.1420.79 lakhs and Rs.1403.13 lakhs for the years 2008-09 and 2009-10 respectively. As against the said actuals, the SWPL has in the cost statement estimated the operating and direct labour cost for the year 2009-10 at Rs.1727 lakhs. As stated earlier, the figure shown in cost statement includes the bank charges and stores consumption.

The estimated operating and direct labour cost for the year 2010-11 is revised taking the actuals reported in the year 2009-10 as per the Annual Accounts less the payment made to the MOPT towards CHLD levy as the base and adjusted for the traffic growth and the annual escalation of 3.76% is allowed. The same approach is followed for estimating the operating and direct labour cost for the subsequent two years.

- (xiv). The SWPL has stated that the license fee payable to the MOPT for lands leased to them is estimated as per the terms of the License Agreements. The MOPT has also confirmed this position.
- (xv). During the last tariff revision, it was brought out that there is some dispute between the SWPL and the MOPT on the quantum of dredging to be undertaken by the MOPT. Pending settlement of the dispute, the estimated maintenance dredging cost was admitted based on the bills raised by the MOPT on SWPL with suitable annual escalation. It is reported that the dispute is not yet resolved and the matter has been referred to the arbitrator.

As against maintenance dredging cost at Rs.37 lakhs and Rs.26 lakhs incurred in the year 2008-09 and 2009-10 respectively, the SWPL has considered the maintenance dredging cost for the year 2010-11 at Rs.146.75 lakhs in the year 2010-11.

To a query raised by us to assess the reasonableness of the estimation of the dredging cost, the MOPT observed that the unit cost of dredging estimated by the SWPL is on the higher side in comparison to Rs.110/- per cubic metre incurred by the port during the year 2009.

It is notable that for the dredging work undertaken by the MOPT in the year 2009, the bill raised by the port in May 2010 on the SWPL claiming reimbursement of dredging expense of Rs.146.75 lakhs reckons the unit rate of dredging at Rs.122.63 per cubic metre for 119667 cubic metre of silt dredged. Since the bill raised by the MOPT as well as the payment by the SWPL has occurred in the current financial year 2010-11, the SWPL has estimated the maintenance dredging cost for the year 2010-11 at Rs.146.75 lakhs. Apart from this, the SWPL has not considered any other expense towards maintenance dredging in this year. It is brought out here that the maintenance dredging cost for the year 2010-11 is found to be higher than the actuals reported in the past. However, recognising that estimate is substantiated with the documentary evidence in form of bill raised by the MOPT and that the SWPL has confirmed having made the payment, the maintenance dredging cost estimated by the SWPL for the year 2010-11 is allowed. For the subsequent years, maintenance dredging cost is estimated by the SWPL assuming that the quantum of dredging to be undertaken by the MOPT with reference to the berth of SWPL will be same as in the year 2009 and 3.76% annual escalation is applied in the unit rate. Relying on the assumption made by the SWPL, the maintenance dredging cost estimated by the SWPL for the subsequent years is considered in the analysis.

If at the time of the next tariff review, it is found that the actual maintenance dredging cost reimbursed to the MOPT is less than the estimates considered in this analysis or the decision of the ongoing arbitration process is different from the assumption made in this analysis, then the excess estimates considered now will be set of fully.

- (xvi). (a). As per the tariff guidelines, 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.
- (b). The L.A. was signed by the SWPL in April 1999. While implementing the tariff guidelines for allowing (part of) royalty as pass through, in the case of the Chennai container Terminal Limited, Visakha Container Terminal Limited and the Nhava Sheva International Container Terminal Limited, the loss in this context was taken to be the revenue deficit after considering admissible cost elements and permissible return. If the royalty to the maximum extent quoted by the second bidder is not allowed, as per the revised tariff guidelines it will result in reduction in the return on capital employed and to that extent there will be a 'loss'. Therefore, the SWPL is entitled to claim maximum permissible level of revenue share as stipulated in guidelines. The earlier tariff review of SWPL was made accordingly.
- (c). There is some dispute between the SWPL and the MOPT about the date of handing over the licensed premises. Pending settlement of this dispute, the MOPT and the SWPL have entered into a Supplementary Agreement in June 2003. As per this Supplementary Agreement, from 9 November 2005 onwards Licensee has to pay revenue share that is highest of the 18% on the cargo handling charges computed on various parameters prescribed in the LA subject to a minimum payment of Rs.12 crores. It also requires the licensee to achieve the Minimum Guaranteed throughput of 5 Million Metric Tonne per annum from November 2005 onwards.
- (d). The MOPT had in the last tariff revision exercise mentioned that the revenue share quoted by the next lowest bidder was 13.10% and the minimum amount of revenue share quoted was Rs.11.10 crores.
- (e). The SWPL has accordingly, considered the revenue share as pass through to the extent next highest bid i.e. 13.1% of the cargo handling income estimated for the years 2010-11 to 2012-13 which is in line with the tariff guidelines. In our analysis, the same approach is followed subject to considering the admissible revenue share @ 13.1% on the modified cargo handling income.
- (xvii). The SWPL has stated that depreciation has been computed as per the tariff guidelines. Depreciation for the years 2010-11 to 2011-12 is moderated to the extent the additions proposed to the gross block in these years are deferred for the reasons explained in the subsequent paragraphs.

Preliminary expenses of Rs.8.70 crores incurred during construction period was earlier proposed to be capitalised under civil and equipment cost and depreciated at the applicable rates. During the last tariff revision, this item was treated separately and excluded from the gross block of assets and the expenses were spread over the remaining period of the project. In the current tariff revision exercise, the SWPL has not made this adjustment despite request.

In the modified cost statement considered by us, depreciation on the capitalised part of preliminary expense is excluded with consequent adjustment in the net block of assets. The preliminary expense write off is considered at the level considered in the last tariff Order instead of Rs.10 lakhs considered by the SWPL with suitable modification in the capital employed.

- (xviii). The insurance cost for the year 2009-10 is reported at Rs.122 lakhs by the SWPL and for the year 2010-11 it is estimated at Rs.140 lakhs.

The insurance premium paid by the SWPL for the period 1 July 2010 for one year is Rs.143 lakhs as per the copy of the insurance cover furnished by the SWPL. The estimate of insurance premium is considered at Rs.143 lakhs for the year 2010-11 based the documents submitted.

For the year 2011-12, insurance cost estimated by SWPL is Rs.147 lakhs. As the major additions proposed to the gross block pertaining to in motion wagon loading and the related assets are deferred to the year 2012-13, the insurance cost for the year 2011-12 are maintained at the level of 2010-11.

For the year 2012-13, SWPL has estimated the insurance cost estimated at Rs.181 lakhs. It is observed that the actual insurance cost reported for the years 2009-10 and 2010-11 works out to around 0.6% of the gross block of assets. Considering the actual insurance premium of Rs.143 lakhs incurred in the year 2010-11 for the existing asset block and applying 0.6% insurance cost on the additions to the gross block of assets in the year 2012-13 based on the position obtained from the past, the insurance cost works out to Rs.197 lakhs. The insurance cost estimated by SWPL seems to be reasonable and hence is accepted.

- (xix). The estimate of management and general overhead for the years 2010-11 to 2012-13 is done applying 10% annual escalation. This Authority is guided by the tariff guidelines and hence the estimate of management and general overhead is modified restricting the annual escalation level as considered for the other items.

The annual escalation considered by the SWPL for estimation of survey expense and general overhead expense is within the permissible level and hence considered without any modification.

- (xx). As per the LA, Security Deposit of Rs.1.53 crores paid by the SWPL to the MOPT is refundable at the end of the project. During the last tariff revision, the Security Deposit refund was annualized over the remaining period of the project life by discounting at 11%. The SWPL has considered the effect of this item at the level estimated by it in the last tariff revision. In the last tariff fixation exercise, the terminal value receivable at the end of the project was annualized over the project life by applying discounting rate of 11%. The same approach is followed in the existing tariff revision exercise.

- (xxi). (a). The closing value of gross block of assets reported in the Annual Accounts for the financial year 2009-10 is Rs.15859 lakhs. The SWPL has proposed total additions of Rs.9415 lakhs over the next three years 2010-11 and 2011-12.
- (b). The LA does not mention specifically about the investment plan by the licensee. It allows the licensee to provide for additional facilities at its discretion after informing the licensor. The MOPT has not made any adverse comments on the additional capital assets proposed by the SWPL except questioning the need for discarding the two harbour mobile crane at the book value only after six years of use.
- (c). Most of the additions proposed to the gross block are related to the improvement proposed in the rail infrastructure by way of single rail line with in-motion wagon loading system. The proposed capital expenditure is claimed to improve the annual plot turn over to 34 from the existing 26 and thereby increase the storage capacity which is the major constraint limiting the overall capacity of the terminal. The SWPL has not furnished the current status of these investments despite request, but has indicated that in-motion wagon loader will be installed by the later half of the year 2011-12. It is relevant to state that the SWPL has not estimated any

increase in its capacity or the volume of cargo in the years 2010-11 and 2011-12 on account of the additions proposed in improving the rail evacuation facilities and related assets. The growth in the volume is reportedly projected in the year 2012-13, where the traffic is expected to cross the Minimum Guaranteed Throughput.

Since the benefit of the proposed capital additions can be reaped only when the complete improved facility is in place, estimated capital expenditure relating to in-motion wagon loading system is considered in the year 2012-13.

Presuming that the investment proposed on stores substation, dust suppressions are not linked to the in-motion wagon loading system, the same are allowed but shifted to the year 2011-12 in the absence of any documentary evidence of the work order or contract awarded by SWPL. The additions proposed in IT, office equipment, and insurance spares are considered as proposed by the SWPL.

- (d). The cost of two ship unloaders proposed to be added in the year 2011-12 is estimated at Rs.65.21 crores by the SWPL, however, in the cost statement, it is considered at Rs.48 crores excluding the gross value of two HMC proposed to be discarded.

The cost of two ship unloaders estimated at Rs.65.21 crores is relied upon based on the copy of the quotation furnished by the SWPL. It is also comparable to the cost of two ship loaders estimated in the range of Rs.62 crores to Rs.70 crores in the upfront tariff proposals of NMPT, MOPT etc.

As regard the point made by the MOPT seeking reasons for discarding the two HMC in six years, the SWPL has clarified that the proposed two ship unloader complement the investment proposed in-motion wagon loading system and are required to match the speedier evacuation expected after installation of the in-motion wagon loading system.

Relying on the clarifications furnished by the SWPL, the investment proposed on the ship loader is considered. But, this capital cost is shifted to the year 2012-13 instead 2011-12 as proposed by the SWPL.

In our analysis, the addition to the gross block with reference to two ship unloaders is considered at Rs.65.21 crores and the exclusion of the gross value of the HMC is considered separately. The gross value two HMC at Rs.1629 lakhs and the written down value of Rs.778.81 as of 31 March 2012 furnished by the SWPL is excluded from the gross / net block of assets.

In short the additions considered in the analysis vis-à-vis the additions proposed by the SWPL are as follows:

(Rs. in lakhs)

Particulars	Estimates furnished by SWPL			Estimates considered by TAMP		
	2010-11	2011-12	2012-13	2010-11	2011-12	2012-13
Stores and sub station	75	0	0	0	75	0
Silos	785	1300	0	0	0	2085
Dust suppression system	37.5	0	0	0	37.5	0
Insurance spares for MHS system	350	0	0	350	0	0
Ship unloader replacing 2 cranes	0	4800	0	0	0	6521
Reclaimer	0	300	1200	0	0	1500
Conveyor linking silo	155	135	0	0	0	290

Electrical items for silo	0	47.25	0	0	0	47.25
Railways siding	20	200		0	0	220
IT	2.5	0	2.5	2.5	0	2.5
Office equipment	0	1.5	0	0	1.5	0
Furniture	1.5	1.5	1.5	1.5	1.5	1.5
Total	1426.5	6785.25	1204	354	115.5	10667
Less: Gross value of two HMC	-	-	-	-	-	1629
Net Additions to the gross block of assets	1426.5	6785.25	1204	354	115.5	9038
Total Additions to the gross block of assets in the year 2010-11 to 2012-13	9415.75			9507.75		

The difference in the total additions to the gross block in the above table is because of rounding off considered by the SWPL in the capex of the two ship unloaders.

- (xxii). (a). The sundry debtors are estimated by SWPL at two month's total income which is not found to be as per the tariff guidelines. The revised tariff guidelines limits the sundry debtors to two month's of estate income and terminal handling charges.

This Authority passed an Order on 30 September 2008 announcing refinement in the 2005 tariff guidelines in certain areas. The said Order refining the 2005 tariff guidelines, inter alia, permits the outflow on certain items arising from contractual obligations of LA to be taken as part of sundry debtors.

In the case of the SWPL, as per Article 7.3.4.3. of the License Agreement (LA) entered between SWPL and MOPT, the revenue share is payable on monthly basis on 5th day of the immediately subsequent month. It is thus clear that as per LA also, the SWPL is not required to make any advance payment of royalty.

The SWPL is, however, required to pay the lease rent for the lands allotted to it in advance every year as stipulated in Article 7.3.5.2 of the LA. Since the said advance payments are governed by LA provisions there is a case to consider such pre-payments as part of working capital for the purpose of allowing return. Recognising that the advance payment will get adjusted against the rent payable for the respective month and at the year end of the entire advance is adjusted the average of the pre-payment at 50% of the estimated lease rentals in each of the years is considered as part of working capital. This is in line with the approach followed in the case of CCTL in its review application disposed in the Order dated 19 June 2008.

- (b). The SWPL has claimed Rs.14.70 crores estimated as loans and advances to port and others as part of the current asset while computing the working capital.

As per article 10.12 of the License agreement, the SWPL is obliged to keep security deposit of Rs.1.52 crores free of interest through out the period of license with the port which is refundable at the end of the project. The SWPL has confirmed that loans and advances reflected in the Annual Accounts captures the security deposit. Flowing from the decision in the refinement Order of September 2008 to consider certain items arising from contractual obligations of LA, there is a case to consider the security deposit with the port as part of working capital.

- (c). On our advice the SWPL has furnished the actual inventory consumption at Rs.283.12 lakhs for the year 2008-09 and Rs.309.62 lakhs in the year 2009-10 and has confirmed these are not capital spares. Average consumption of inventory reported for the year 2009-10 is taken as the base and as per the norms prescribed in the tariff guidelines of 2005, six months inventory consumption after allowing the admissible annual escalation is considered for the next three years.
- (d). Cash and bank balance has been considered at one month's cash expense by SWPL in the computation of working capital as per the guidelines. This is suitably modified in the light of changes effected in the operating expenditure estimates.
- (e). The current liabilities is considered as reported by SWPL at the level reported for the year 2009-10 for all the three years under consideration.
- (f). The capital employed subject to the modifications explained in the foregoing paragraphs works out to Rs.14457 lakhs for the year 2010-11 and Rs.12962 lakhs for the year 2011-12, Rs.21411lakhs for the year 2012-13.
- (g). As per clause 2.9.11. of the tariff guidelines, private terminal operator is entitled for full return, if the investment made is in accordance the concession agreement even if full capacity utilisation is not achieved. The License Agreement does not specify any investment plan by the SWPL during the project period. In fact clause 10.1. of the license Agreement gives full discretion to SWPL to create additional facilities as required by them from time to time. Thus, as per the tariff guidelines, the SWPL is entitled for full return on capital employed @ of 16%.
- (xxiii). The SWPL has furnished consolidated cost statement as well as cost statement for the sub-activities i.e. cargo handling activity and berth hire activity. The basis adopted by the SWPL for allocation of common expenses between the two activities by the SWPL is the same as followed in the earlier tariff revision exercise which was relied upon by this Authority. The approach followed by the SWPL in the current tariff revision exercise is, therefore, relied upon.

50% of gain assessed for the past period 2006-2007 to 2009-10 i.e. Rs.3525.40 lakhs is allocated between the two activities in the ratio of the income from each of these activities to the total income and considered for adjustment in three years beginning from the year 2010-11.

- (xxiv). The consolidated cost statement and main activity-wise cost statements for the years 2010-11 to 2012-13 have been modified in line with the above analysis. The modified cost statements are attached as **Annex - I (a) to (c)**. The summarised position of the results disclosed by the financial / cost statements is tabulated below:

Sr. No.	Particulars	Operating Income (Rs. in lakhs)				Net Surplus (+) / Deficit (-) (Rs. in lakhs)				Net Surplus (+) / Deficit (-) as a % of operating Income			Avg. surplus/ deficit %
		2010-11	2011-12	2012-13	Total	2010-11	2011-12	2012-13	Total	2010-11	2011-12	2012-13	
1.	Consolidated cost statement for the terminal as a whole	7990	8459	9599	26048	877	1251	(-)398	1730	11%	14.8%	(-)4.1%	6.6%
2.	Cargo handling Activity	5959	6338	7188	19485	992	1225	(-)736	1481	16.6%	19.3%	(-)10.2%	7.6%
3.	Berth hire activity	2031	2121	2411	6563	(-)115	26	338	249	(-)5.7%	1.2%	14.0%	3.8%

The above table reflects an overall surplus of 6.6% for the period 2010-11 to 2012-13 at the prevailing rates. In absolute terms, the overall surplus is Rs.1730 lakhs for the three years period.

The SWPL in the revised proposal has proposed 32% increase in the wharfage, cargo handling charge and dust suppression charge and has proposed status quo in the berth hire.

Since the overall position as well as individual activities reflects a surplus position, no case emerges for granting any increase in the existing rates as proposed by the SWPL. On the contrary, the existing tariff is to be reduced for the relevant period to the extent warranted by the cost position.

It may be relevant to state here that the surplus position discussed above pertains to the three year period from 2010-11 to 2012-13. Recognising that the revised Scale of Rates will become effective from 1 January 2011, the overall surplus of Rs.1730 lakhs estimated for the three years period 2010-11 to 2012-13 is adjusted over the operating income estimated for the remaining period 1 January 2011 to 31 March 2013. Considering the above and also recognising the impact of the reduction on the partial pass through of revenue share admitted as cost, all the tariff items in the existing Scale of Rates are reduced across-the-board by 9.5% to adjust the estimated surplus. The revised tariff will come into effect from 1 January 2011 and remain valid till 31 March 2013.

When seen on a stand alone basis, the year 2012-13 reflects a deficit position. It is notable that the deficit arising in the year 2012-13 is contributed by the financial effect of the proposed additional assets i.e. in-motion wagon loading system, single rail line with related assets, reclaimers and replacement of 2 ship unloaders assumed to be in place at the beginning of the financial year 2012-13. If these proposed new facilities are not commissioned at the beginning of the financial year 2012-13, then the deficit estimated in the cost statement for the year 2012-13 may turn out to be surplus position which in fact may call for further reduction in the tariff. That being so, 9.5% reduction effected in the tariff is subject to the condition that the additional assets on in-motion wagon loading system, single rail line along with the complementary assets and replacement of ship unloaders will be commissioned by the SWPL by 1 April 2012. The SWPL should report the factual position in this regard on or before 31 March 2012. The MOPT is also advised to monitor progress in this regard and report whether all the assets related to in-motion wagon system, single rail line along with related assets and reclaimers, two ship unloaders are in place as on 31 March 2012. If these assets are not commissioned as presumed here, ahead of schedule review of SWPL tariff will be carried out duly adjusting the surplus accrued to them in the years 2010-11 and 2011-12.

- (xxv). (a). Though in the original and the revised proposal, the SWPL had proposed to rationalise the existing two slab berth hire at Berth No 6A into single slab, while furnishing the reply to the queries raised by us it has agreed to continue with the existing slab structure. The existing slab structure is, therefore, continued subject to effecting 9.5% reduction in the existing berth hire in line with the decision taken by this Authority.
- (b). While prescribing the concessional tariff, the SWPL has considered an exchange rate of Rs.46.25 for the purpose of conversion of exchange dollar denominated rate into rupee terms. The exchange rate considered at the time of the last general revision of Scale of Rates of SWPL was 1 US \$ = Rs.44.62 as against the exchange rate of 1 US \$ = Rs.45.05 at the time of concluding this case. The tariff guidelines do not allow restatement of the coastal vessel rates at the time of tariff revision exercise. The objective of the relevant guidelines is to ensure that the coastal vessels are not burdened periodically on account of the accumulated effect of fluctuation in the exchange rate. The existing berth hire prescribed for coastal vessels are reduced by 9.5% without any restatement of foreign exchange rate.
- (xxvi). The penal rate of interest for delayed payment is proposed at 15% In The SWPL has stated that since the PLR is concept done away by banks on RBI guidelines, linking penal interest to PLR is no more feasible.

The prevailing Prime Lending Rate (PLR) of the State Bank of India is 12.25%. The proposed provision relating to penal rate of interest on delayed payments by users and delayed refunds by SWPL is updated with interest rate of 14.25% being 2% above the prevailing PLR of the State Bank of India in line with the 2005 tariff guidelines.

- (xxvii). Some of the general terms and conditions such as criteria for determining foreign / coastal vessel, concessional rate for coastal cargo/ container/ vessels, tariff approved by this Authority are ceiling level proposed by the SWPL, etc., which are not found to be in line with the tariff guidelines and the prescription in the Scale of Rates of the other private terminals are modified.
- (xxviii). The proposed note no 13 about levy of service tax, educational cess are not prescribed in the Scale of Rates of other Port Trusts and Private Terminals and hence not included in the case of the SWPL. Such taxes and cess are, however, to be levied as per the extant Government instructions.
- (xxix). The SWPL has proposed to introduce the definition of the term wharfage. Wharfage is stated to cover dues recoverable on all cargo imported or exported or transhiped and handled by SWPL. Generally all cargo whether import/ export or transshipment handled by the operator is liable to pay wharfage unless an exception is provided in the Scale of Rates. The proposed note does not in fact define the term 'wharfage', hence, it is not found necessary to incorporate the same in the Scale of Rates.
- (xxx). The SWPL has proposed to delete the existing charges for water supply prescribed in its Scale of Rates and has given reference to the rates prescribed in the Scale of Rates of MOPT for levy of tariff for this service.

The SWPL has not confirmed that it will not offer the service of supply of water to vessels. It is relevant to state that the modified income estimate considered income from water supply at the level reported in the year 2009-10. That being so, it may appropriate to have a rate in the Scale of Rates for this service so that tariff arrangement will be in place if the service is offered. The existing rates for supply of water after effecting 9.5% reduction are prescribed in the revised Scale of Rates.

- (xxxi). The SWPL has proposed to delete the existing separate wharfage and cargo handling charges prescribed for thermal coal on the grounds that it does not propose to handle this cargo. The actual traffic as well as projection do not show any thermal coal traffic. That being so, the proposal of the SWPL to delete the separate entry for thermal coal is accepted. The existing description stating all types of coal other than thermal coal is retained in the existing SOR.
- (xxxii). The list of services under the cargo handling charge for berth no 5A covers unloading of cargo from ship to berth, movement from berth to SWPL stackyard and also includes movement of cargo within the stack yard and unloading cargo from railway wagons or vice versa as per the existing Scale of Rates. The SWPL has proposed to delete services of movement of cargo within the stack yard and unloading cargo from railway wagons or vice versa from the existing note without explaining any reasons therefor. Since the impact and reasons for the deleting the said services is not explained by the SWPL, the existing note is allowed to continue.
- (xxxiii). The existing SOR stipulates that dunning and lashing will be arranged by users at their cost to the satisfaction of master of the vessel. The SWPL has proposed to modify the said note stating that the dunning and lashing inclusive of suitable labour and material shall have to be arranged by users at their cost to the satisfaction of master of the vessel. Since the proposed modification is only to remove the ambiguity and is not intended to change the position prevailing in the existing SOR, and there has not been any objection from the users, the modification proposed in the existing provision is accepted.

- (xxxiv). As per the revised tariff guidelines, the private operators are required to propose incentive for better performance of the terminal and disincentive for performance below the benchmark level. Despite agreed by the SWPL in the last tariff revision, the SWPL has not proposed incentive/ disincentive scheme in the current proposal. The SWPL is again advised to formulate such scheme at the time of its next proposal for review of tariff.
- (xxxv). 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 2013, the validity of the revised Scale of Rates of the SWPL is prescribed till on 31 March 2013.
- (xxxvi). Since the validity of the existing SOR of the SWPL is till 30 September 2010, and the revised Scale of Rates will come into effect 30 days after the date of its notification in the Gazette revised Scale of Rates, the SWPL is allowed to continue with the existing Scale of Rates till 31 December 2010. The revised Scale of Rates is made effective from 1 January 2011. The effect of allowing the existing tariff arrangement to continue till 31 December 2010 is considered while determining the quantum of tariff reduction.

14.1. In the result, and for the reasons given above, and based on collective application of mind, this Authority approves the revised Scale of Rates of the SWPL attached as **Annex - II**.

14.2. The revised Scale of Rates and conditionalities of the SWPL will come into effect from 1 January 2011 and shall be in force till 31 March 2013. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.

14.3. The tariff of the SWPL has been fixed relying on the information furnished by the operator and based on various 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, it may require the SWPL to file a proposal ahead of the schedule to review its tariff and to set off fully the advantage accrued on account of such variations in the revised tariff.

14.4. In this regard, the SWPL is requested furnish a report of the actual physical and financial performance within 15 days of completion of each quarter of a year in the same format in which the cost statement for the tariff proposals are filed. The report should also be accompanied with the reasons for variation from the estimates relied upon for fixing the tariff in force. If a variation of (+)/(-)20% is observed between the actual and the estimates for two consecutive quarterly period, TAMP will call upon the concerned operator to submit their proposal for an ahead of scheduled review. If the SWPL fails to file a tariff proposal within the time limit to be stipulated by TAMP, this Authority will proceed *suo motu* to review the tariff.

(Rani Jadhav)
Chairperson

Consolidated Cost statement of South West Port Limited

		Rs. in lakhs								
S. No	Particulars	A C T U A L S			Estimates furnished by SWPL at the existing Tariff			Estimates at the existing Tariff level as modified by TAMP		
		2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2010-11	2011-12	2012-13
	Traffic (In MTs)	4.40	4.63	4.32	4.35	4.65	5.25	4.35	4.65	5.25
	Capacity Utilization	88.0%	92.6%	86.5%	87.0%	93.0%	105.0%	87.0%	93.0%	105.0%
I	Total operating Income									
	(ii) Cargo Handling Income	6,838	6,663	6,297	5,925	6,309	7,145	5,958	6,337	7,187
	(iii) Vessel related income	2,498	2,924	2,919	2,046	2,174	2,462	2,031	2,121	2,411
	(iii). Other Income	3	1	54				1.50	1.50	1.50
	Total (i to iii)	9,339	9,588	9,270	7,971	8,483	9,606	7,990	8,459	9,599
II	Operating Costs									
	(i) Operating & Direct Labour	1,462	1,462	1,382	1,663	1,877	2,188	1,444	1,602	1,876
	(ii) Repairs & Maintenance	248	471	371	511	692	728	392	408	548
	(iii) Equipment Running Costs	405	433	412	670	636	647	447	504	655
	(iv) Maintenance dredging	7	37	26	147	153	158	147	152	158
	(v) Royalty / revenue share	896	873	825	776	826	936	780	830	941
	(vi) Lease Rentals to Port	226	237	335	352	369	388	352	369	388
	(vii) Insurance	98	132	122	140	147	181	143	143	181
	(viii) Other expenses	12	21	23	24	25	26	24	25	26
	Total (i to viii)	3,352	3,665	3,496	4,282	4,726	5,252	3,729	4,033	4,773
III	Depreciation	1,448	1,521	1,546	1,585	1,889	2,250	1,583	1,588	2,261
IV	Overheads									
	(i) Mangement & Administration overheads	344	418	521	573	630	693	541	561	582
	(ii) General Overheads	50	63	84	87	90	94	87	90	94
	(iii) Preliminary & Upfront payment write-off	37	37	37	10	10	10	37	37	37
	Total (i to iii)	431	518	642	670	730	797	665	688	713
	Total Expenses	5,231	5,705	5,684	6,537	7,345	8,299	5,977	6,310	7,747
V	Operating Surplus/(Deficit) - (I - II - III - IV)	4,107	3,884	3,586	1,434	1,138	1,308	2,013	2,149	1,852
VI	Finance & Miscellaneous Income (FMI)									
	(i). Other Income	5	65.53	45.44	-	-	-	-	-	-
	(ii) Credit back of Security Deposit refundable at the end of the project period	0.3	0.4	0.4	0.2	0.2	0.2	0.46	0.51	0.57
	Subtotal FMI	5.12	65.93	45.84	0.2	0.2	0.2	0.5	0.5	0.6
VII	Finance & Miscellaneous Expenses (FME)	-	-	-	-	-	-	-	-	-
VIII	FMI less FME (VI - VII)	5.1	65.9	45.8	0.2	0.2	0.2	(0.5)	(0.5)	(0.6)
IX	Surplus / Deficit	4,112	3,949	3,632	1,434	1,138	1,308	2,014	2,150	1,852
X	Net Capital Employed	18,639	17,197	15,723	19,043	24,267	23,717	14,457	12,962	21,411
XI	RoCE for the past period @ 15% for the years 2007-08 to 2009-10 as per the last Order. ROCE @ 16% in the current exercise	2,796	2,580	2,358	3,047	3,883	3,795	2,313	2,074	3,426
XII	RoCE adjusted for capacity utilization	2,796	2,580	2,358	3,047	3,883	3,795	2,313	2,074	3,426
XIII	Net Surplus / (Deficit) [IX-XII]	1,317	1,370	1,273	(1,613)	(2,744)	(2,487)	(299)	76	(1,573)
XV	Total Surplus for the year 2006-07 based on review of actuals vis a vis the estimates considered in the last Order and the surplus accrued in 2007-08 to 2009-10 based on actuals							7,051		
XVI	50% of the surplus for the years 2006-07 and 2007-08 to 2009-10 considered for adjustment. (SWPL has considered to adjust 50% of the surplus assessed by it for the years 2007-08 to 2009-10)				1,488			3,525.4		
XVII	Adjustment of 50% of gain accrued in three years				248	248	248	1,175.12	1,175.12	1,175.12
XVIII	Net Surplus / (Deficit) after adjustment of past Surplus				(1,365)	(2,496)	(2,239)	877	1,251	(398)
XIX	Net Surplus / (Deficit) as a % of operating income				-17%	-29%	-23%	11.0%	14.8%	-4.1%
XX	Average net surplus / deficit for the three years 2010-11 till 2012-13					-23%			6.6%	

Cost Statement for Cargo Handling Activity

Rs. in lakhs

Sr. No.	Particulars	Estimated by SWPL at existing tariff			Modified Estimates by TAMP		
		2010-11	2011-12	2012-13	2010-11	2011-12	2012-13
	Cargo	4.35	4.65	5.25	4.35	4.65	5.25
I	Operating Income						
	Cargo handling income	5,925	6,309	7,145	5,958	6,337	7,187
	Other income	-	-	-	1.50	1.50	1.50
	Operating Income	5,925	6,309	7,145	5959	6338	7188
II	Direct Operating Expenses						
	(i) Operating & Direct Labour	1,593	1,770	2,077	1,383	1,534	1,798
	(ii) Repairs & Maintenance + Labour	361	542	578	292	308	448
	(iii) Equipment Running Costs	670	636	647	447	504	655
	(iv) Royalty / revenue share	776	826	936	780	830	941
	(v) Lease Rentals as per concession agreement	140	147	154	140	147	154
	(vi) Insurance	79	99	123	82	95	123
	(vii) Other expenses	24	25	26	24	25	26
	Total	3,643	4,045	4,541	3,149	3,443	4,145
III	Depreciation	1,164	1,468	1,829	1,162	1,167	1,840
IV	Allocated share of Overheads						
	(i) Management & Admin overheads	426	469	516	402	417	433
	(ii) General Overheads	65	67	70	65	67	70
	(iii) Preliminary expenses & Upfront Payment write-off	10	10	10	37	37	37
	Total	500	545	595	503	521	539
V	Operating Surplus (I) – (II) – (III) - (IV)	619	250	180	1,145	1,207	663
VI	Credit back of Security deposit	-	-	-	0.46	0.51	0.57
VII	Surplus / deficit	619	250	180	1,146	1,207	664
VIII	Capital Employed for the activity	10,702	16,325	16,148	6,459	5,384	14,245
IX	RoCE-Maximum permissible (16%)	1,712	2,612	2,584	1,033	861	2,279
X	RoCE adjusted for Capacity utilization	1,712	2,612	2,584	1,033	861	2,279
XI	Net Surplus / (Deficit) (X) - (XIII)	(1,094)	(2,362)	(2,404)	113	346	(1,615)
XII	Surplus / deficit gain accrued in 2006-07 and 2007-08 to 2009-10 considered for adjustment by us. The SWPL has considered to adjust the surplus assessed by it for the years 2007-08 to 2009-10.		628		2,636		
XIII	Adjustment of gain accrued over three years beginning from 2010-11.	105	105	105	879	879	879
XIV	Net Surplus / (Deficit) after adjustment of past Surplus	(989)	(2,257)	(2,299)	992	1,225	(736)
XV	Net Surplus / (Deficit) as a % of operating income	-16.7%	-35.8%	-32.2%	16.6%	19.3%	-10.2%
XVI	Average net surplus / deficit for the three years 2010-11 till 2012-13		-28%			7.6%	

Cost statement for Berth Hire Activity

Sr. No.	Particulars	Estimated by SWPL at existing tariff			Modified Estimates by TAMP		
		2010-11	2011-12	2012-13	2010-11	2011-12	2012-13
I	Operating Income						
	Berth Hire	2046	2174	2462	2031	2121	2411
	Total Revenue	2,046	2,174	2,462	2,031	2,121	2,411
II	Direct Operating Expenses						
	(i) Operating & Direct Labour	70	108	111	61	67	79
	(ii) Repairs & Maintenance incl. Labour	150	150	150	100	100	100
	(iii) Maintenance dredging	147	153	158	147	152	158
	(iv) Lease Rentals payable as per concession agreement (water area 60500 sq mtr)	211	222	233	211	222	233
	(v) Insurance	61	48	58	61	48	58
	Total	640	681	711	580	590	628
III	Depreciation	421	421	421	421	421	421
IV	Allocated share of Overheads						
	(i) Management & Administration overheads	147	162	178	139	144	149
	(ii) General Overheads	22	23	24	22	23	24
	Total	169	185	202	161	167	173
	Total Expenses						
V	Operating Surplus / (Deficit) (I) – (II) – (III) – (IV)	816	888	1128	868	943	1188
VI	Allocated FME Less FMI						
VII	Surplus / deficit (V) + (VIII)	816	888	1128	868	943	1188
VIII	Capital Employed for the activity	8339	7940	7567	7998	7579	7166
IX	RoCE - Maximum permissible (16%)	1334	1270	1211	1280	1213	1146
X	RoCE adjusted for Capacity utilization	1334	1270	1211	1280	1213	1146
XI	Net Surplus/ (Deficit) (X) - (XIII)	(519)	(383)	(83)	(411)	(270)	42
XII	Surplus / deficit gain accrued in 2006-07 and 2007-08 to 2009-10 considered for adjustment by us. The SWPL has considered to adjust the surplus assessed by it for the years 2007-08 to 2009-10.		860		889		
XIII	Adjustment of gain accrued over three years beginning from 2010-11.	143	143	143	296	296	296
XIV	Net Surplus / (Deficit) after adjustment of past Surplus	(375)	(239)	61	(115)	26	338
XV	Net Surplus / (Deficit) as a % of operating income (XVII) in %	-18.3%	-11.0%	2.5%	-5.7%	1.2%	14.0%
XVI	Average net surplus / deficit for the three years 2010-11 till 2012-13		-9.0%			3.8%	

SOUTH WEST PORT LIMITED

SCALE OF RATES

1. DEFINITIONS - GENERAL

In this Scale of Rates unless the context otherwise requires, the following definitions shall apply:

- (i). **“Per Day”** means per calendar day unless other wise stated.
- (ii). **“SWPL”** means South West Port Limited a company incorporated in India, its successors and assigns.
- (iii). **“Port”** means the Mormugao Port Trust (MOPT) whereas **“Terminal”** means South West Port Limited (SWPL), now or hereafter operated by South West Port Limited.
- (iv). **“Coastal Vessel”** means any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal license issued by the competent authority.
- (v). **“Coastal Cargo”** means any cargo, which the vessel discharges at one Indian port after shipment from another Indian port or vice versa irrespective of its actual origin or destination.
- (vi). **“Foreign Cargo”** means any cargo other than coastal cargo.
- (vii). **“Foreign-going Vessel”** means any vessel other than a coastal vessel.
- (viii). **“Tonne”** or **“MT”** means one Metric Tonne of 1,000 kilograms or one cubic metre.

2. GENERAL TERMS AND CONDITIONS

- (i). The Status of the vessel, as borne out by its certification by the Customs or the Director General of Shipping, is the relevant factor to decide whether vessel is *‘coastal’* or *‘foreign-going’* category for the purpose of levying vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.
- (ii).
 - (a). A foreign-going vessel of Indian flag having a General Trading License can convert to coastal run on the basis of a Customs Conversion Order.
 - (b). A foreign-going vessel of foreign flag can convert to coastal run on the basis of a Coastal Voyage License issued by the Director General of Shipping, Government of India only.
 - (c). In cases of such conversion, Coastal rates shall be payable from the time the vessel starts loading coastal goods.
 - (d). In cases of such conversion, coastal rates shall be chargeable only till the vessel completes coastal cargo discharging operations; immediately thereafter, foreign going rates shall be chargeable.
 - (e). For dedicated Indian coastal vessels having a Coastal License from the Director General of Shipping, no other documents will be required to be entitled for coastal rates.

- (iii). Wherever rates of vessel related charges have been denominated in US dollar terms the charges shall be recovered in Indian Rupees after conversion of US currency to its equivalent Indian Rupees at the market-buying rate notified by the Reserve Bank of India, State Bank of India or its Associates or any other Public Sector Banks as may be specified from time to time. The date of entry of the vessel into the port shall be reckoned with as the day for such conversion.
- (iv). A regular review of exchange rate shall be made once in thirty days from the date of arrival of the vessels in cases of vessels staying in the port for more than thirty days. In such cases, the basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of the review.
- (v).
 - (a). The cargo related charges for all coastal cargo, other than thermal coal, POL including crude oil, iron ore and iron pellets, should not exceed 60% of the normal cargo / container related charges.
 - (b). In case of cargo related charges, the concessional rates should be levied on all the relevant handling charges for ship-shore transfer and transfer from / to quay to / from storage yard including wharfage.
 - (c). Cargo from a foreign port, which reaches an Indian Port 'A' for subsequent transshipment to Indian Port 'B' will be, levied the concessional charges relevant for its coastal voyage. In other words, cargo from / to Indian ports carried by vessel permitted to undertake coastal voyage will qualify for the concession.
 - (d). The charges for coastal cargo / vessels shall be denominated and collected in "Indian Rupee".
- (vi). For the purpose of calculating the dues the unit by weight shall be 1 tonne or 1000 kilograms, the unit by volume measurement shall be 1 cubic metre and the unit by capacity measurement for liquids in bulk shall be 1000 litres.
- (vii). In calculating the gross weight or measurement by volume or capacity of any individual item, fractions upto 0.5 shall be taken as 0.5 unit and fractions of 0.5 and above shall be treated as one unit, except where otherwise specified.
- (viii). Interest on delayed payments / refunds:
 - (a). The user shall pay penal interest on delayed payments under this Scale of Rates. Likewise, the SWPL shall pay penal interest on delayed refunds.
 - (b). The rate of penal interest will be 14.25%. The penal interest rate will apply to both the SWPL and the port users equally.
 - (c). The delay in payments by the users will be counted only 10 days after the date of raising the bills by the SWPL. 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.
 - (d). The delay in refunds will be counted only 20 days after the date of completion of services or on production of all the documents required from the users, whichever is later.
- (ix). All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.
- (x).
 - (a). The rates prescribed in the Scale of Rates are ceiling levels, likewise, rebates and discounts are floor levels. The SWPL may, if it so desires, charge lower rates and / or allow higher rebates and discounts.

- (b). The SWPL may also, if they so desire, rationalise the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalisation gives relief to the user in rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling level.
- (c). The SWPL should notify the public such lower rates and / or rationalisation of the conditionalities governing the application of such rates and continue to notify the public any further changes in such lower rates and / or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP.
- (xi). Users will not be required to pay charges for delays beyond reasonable level attributable to the SWPL.

PART I - VESSEL RELATED CHARGES

SECTION – A – PORT DUES and SECTION – B – PILOTAGE FEES

These services will be rendered to the vessels entering the SWPL's berth numbers 5A and 6A by the Mormugao Port Trust as per their approved Scale of Rates. The charges shall be payable directly to the Mormugao Port Trust by masters / owners / agents of the vessel.

SECTION - C - BERTH HIRE CHARGES

Berth Hire Charges at Berth numbers 5A and 6A shall be payable to SWPL by masters / owners / agents of the vessel at the following rates.

BERTH NO.5A (Maximum LOA of Vessel 190 mtrs. in conjunction with another vessel of LOA 225 mtrs. at Berth No.6A)

Sl.No.	Class of Vessel	Rate per GRT per hour or part thereof	
		Foreign going Vessel (in US \$)	Coastal Vessels (in Rs).
1.	All Vessels	0.0113	0.31

BERTH NO.6A (Under Mechanised Operation system)

Sl.No.	Class of Vessel	Rate per GRT per hour or part thereof	
		Foreign going Vessel (in US \$)	Coastal Vessels (in Rs.)
1.	Upto 30,000 GRT	0.0249	0.68
2.	30,001 GRT and above	0.0294	0.79

Notes:

- (1). Berth Hire charges includes charges for services rendered and facilities provided at the Berth, such as occupation of berth, overtime at berth, removal of rubbish collected on board by the vessel and delivered on the wharf, cleaning of Berths, fire watch, etc.
- (2). The above charges are leviable against Masters, Owners or Agents of vessels and other floating craft approaching or lying at or alongside berths per GRT per hour or part thereof.
- (3). The Berth hire charges leviable per vessel is subject to a minimum of US\$ 588.25 in case of foreign going vessel and Rs.15748.80 in case of coastal vessel.

- (4). The period of berth hire shall be calculated from the time the vessel occupies the berth.
- (5). No berth hire charges shall be payable for the period when loading / unloading operations cannot be carried out due to non-availability of the shore cranes / mechanical handling system of SWPL, due to breakdown or any other reason attributable to SWPL.
- (6). (i). Berth hire shall stop 4 hours after the time of vessel signaling its readiness to sail.
- (ii). The time limit of 4 hours prescribed for the cessation of berth hire shall exclude the ship's waiting time for want of favorable tide conditions, inclement weather, and due to lack of night navigation.
- (iii). The master / agent of the vessel shall signal readiness to sail only in accordance with favorable tidal and weather conditions.
- (iv). The Penal Berth hire shall be equaled to one-day's (24 hours) berth hire charge for a false signal.
- "False signal" would be when the vessel signals readiness and asks for a pilot in anticipation even when she is not ready for un-berthing due to engine not being ready or cargo operation not completed or such other reasons attributable to the vessels. This excludes the signaling readiness when a vessel is not able to sail due to unfavorable tide, lack of night navigation or adverse weather conditions."
- (7). The de-ballasting time allowed at berth numbers 5A and 6A shall be 3 hours and beyond that penal berth hire charges shall be levied at five times the normal berth hire charges, the incidence being reduced to per hour or part thereof, that may be applicable to the vessel. This will be in addition to the normal berth hire charges applicable for the entire duration of the vessel's stay at the berth.
- (8). Vessels banked on offside of another vessel at these berths, berth hire charges shall be 50% of normal charges payable by such vessels.
- (9). The provisions of the License Agreement shall govern priority Berthing and charges on it, if any. Whenever the priority berthing is granted to a vessel, a fee equivalent to Berth Hire charges for a single day (24 hours) or @ 75% of the Berth Hire charges calculated for the total period of actual stay at the Berth, whichever is higher, shall be levied.
- (10). (i). For providing ousting priority to a vessel, a fee equivalent to berth hire charges for a single day (24 hours) or @100% of the berth hire charges calculated for the total period of actual stay of the vessels at berth, whichever is higher, shall be levied.
- (ii). In addition, shifting out / in charges of the vessels shall be levied on the vessels, which are provided ousting priority.
- (iii). Ousting priority at berth no.6A will be accorded only when a discharge / load rate of 25,000 MT of cargo per weather working day cannot be achieved due to restrictions placed by the vessels.

SECTION – D

CHARGES FOR SUPPLY OF WATER TO VESSELS AND MISCELLANEOUS SERVICES

Charges for water supplied to vessels shall be payable to by masters / owners / agents of the vessel at the following rates:

Sl. No.	Particulars	Rate per 1000 litres	
		Foreign-going Vessel (in US\$)	Coastal Vessel (in Rs.)
1.	At Berth	3.3069	88.55

PART - II CARGO RELATED CHARGES

SECTION – A

WHARFAGE CHARGES AT BERTH NOS. 5A AND 6A

Wharfage on the cargo handled at berths numbers 5A and 6A shall be payable directly to SWPL, at the rates specified below, by importer or exporter of cargo, on the manifested quantity of cargo, which is declared in the Bill of entry filed with the Customs:

Sl. No.	Particulars of Commodity	Unit	Rate for Import / Export (in Rs.)	
			Foreign Cargo	Coastal Cargo
1.	Coal (all types except thermal coal)	MT	27.15	16.29
2.	Metallurgical Coke / Coke / Charcoal	MT	40.73	24.44
3.	Limestone	MT	9.05	5.43
4.	Iron Ore Pellets	MT	27.15	27.15
5.	Metal products, Steel Coils, Slabs	MT	27.15	16.29
6.	Any other bulk cargo not specified above	MT	27.15	16.29

SECTION - B

CARGO HANDLING CHARGES

Cargo Handling Charges at Berth numbers 5A and 6A shall be payable on the manifested cargo directly to SWPL by importer or exporter of cargo at the rates specified below:

At Berth No.5A

Sl. No.	Particulars of Commodity	Unit	Rate for Import / Export (in Rs.)	
			Foreign Cargo	Coastal Cargo
1.	Iron Ore Pellets	MT	126.70	126.70
2.	Metal products, Steel Coils, Slabs	MT	143.90	86.34
3.	Any other bulk cargo not specified above	MT	135.75	81.45

At Berth No.6A

Sl. No.	Particulars of Commodity	Unit	Rate for Import / Export (in Rs.)	
			Foreign Cargo	Coastal Cargo
1.	Coal (all types except thermal coal)	MT	91.13	54.66
2.	Metallurgical Coke / Coke (all types) / Charcoal	MT	129.51	77.70
3.	Limestone	MT	119.91	71.95
4.	Iron Ore Pellets	MT	126.70	126.70
5.	Metal products, Steel Coils, Slabs	MT	143.90	86.34
6.	Any other bulk cargo not specified above	MT	135.75	81.45

Notes:

- (1). At the berth number 5A, Cargo Handling Charges shall cover the following services:
 - Unloading of cargo from ship to the berth or vice versa,
 - Movement of cargo from the berth to SWPL stackyard or vice versa,
 - Movement within the SWPL stackyard,
 - Unloading from railway wagons or vice versa.

- (2). At the berth number 6A Cargo Handling Charges shall cover the following services:
- Unloading of cargo from ship to the berth or vice versa,
 - Movement of cargo from the berth to SWPL stackyard or vice versa,
 - Movement within the SWPL stackyard,
 - Loading on railway wagons for rail delivery or vice versa.
- (3). Covering of Wagons by tarpaulin / plastic cover is not included in above handling charges prescribed in the schedule.
- (4). The dunnaging and lashing (inclusive suitable labour & material) will have to be arranged by the users at their costs to the satisfaction of the Master of the vessel.
- (5). 50% of the Cargo Handling Charges shall be payable before the cargo is received for handling. Balance 50% of the Cargo Handling charges shall be payable before the clearance / shipment of the cargo.

SECTION – C

GROUND RENT / STORAGE CHARGES

The storage charges for cargo stored in the stackyard of SWPL shall be as follows:

I. Ground rent / storage charge for import / inward cargo

(in Rs. per MT per day for the balance cargo in SWPL)

Sl. No.	Particulars of Commodity	Rate for first Five days remaining after the free period	Rate for Sixth day to Tenth day	Rate for Eleventh day to Twentieth day	Rate for Twenty-first day onwards
1.	Coal (all types)	9.05	22.63	45.25	90.50
2.	Metallurgical Coke / Coke (all types) / Charcoal	13.58	36.20	67.88	135.75
3.	Limestone	9.05	22.63	45.25	90.50
4.	Any Other dry bulk cargo not specified above	13.58	36.20	67.88	135.75

Notes:

- (1). *THREE Free Days* shall be allowed, after complete discharge of vessel's cargo or when the last package is discharged. For the purpose of calculation of free period, Sundays, Customs notified holidays and Terminal's non- working days shall be excluded.
- (2). *Ground rent / storage charges* shall be payable for all days including Sundays and Customs notified holidays for stay of cargo beyond the prescribed free days.
- (3). After 21 days beyond Free Days, the balance cargo shall be liable to be shifted to other place out of SWPL area at the sole cost and consequences to the importer / exporter.
- (4). For levy of ground rent / storage 'Day' shall be reckoned as from 7.00 a.m. to 7.00 a.m. of the following day.

II. Ground rent / Storage charges for Export / Outward cargo

(in Rs. per MT per day for the balance cargo in SWPL)

Sl. No.	Particulars of Commodity	Rate for first Five days remaining after the Free Period	Rate for Sixth day to Tenth day	Rate for Eleventh day to Twentieth day	Rate for Twenty-first day onwards
1.	Iron Pellets	9.05	22.63	45.25	90.50
2.	Metal products, Steel Coils, Slabs and other general bulk cargo	4.53	9.05	22.63	45.25

Notes:

- (1). In case of export cargo, Seven Free Days shall be allowed from the day the first lot of cargo / consignment has been received. For the purpose of calculation of free period Sundays, Customs notified holidays and Terminal's non-working days will be excluded.
- (2). After the prescribed free days, ground rent / storage charges shall be payable for all days including Sundays and Customs notified holidays as stated above.
- (3). After 21st day beyond free days, the balance cargo shall be liable to be shifted to other place out of SWPL area at the sole cost and consequences to the exporter.
- (4). For levy of ground rent / storage 'Day' shall be reckoned as from 7.00 a.m. to 7.00 a.m. of the following day.
- (5). If the entire cargo accumulated is not within the free period and the balance cargo is earmarked / linked to the next ship, further free period will be allowed from the date of production of documentation in support of this claim. Otherwise, penal ground rent at the appropriate rate applicable as per the rates prescribed in the above schedule shall be payable.

General Note to Section C:

- (1). Storage charges / ground rent on cargo shall not accrue for the period when the SWPL is not in a position to deliver / ship the cargo when requested by the user due to reasons attributable to SWPL.

SECTION – D

DUST SUPPRESSION CHARGES

The Dust Suppression Charges for water sprayed for suppression of dust for effective pollution control shall be levied on manifested quantity on Coal, Coke and Limestone at the following rates:

For Coal, Limestone and Coke: Rs.1.95 per MT

This shall be levied from the stage of unloading from the vessel till the cargo is loaded onto railway wagons including storage at SWPL stackyard.

Part- III

OTHER SERVICES

1. VISITOR ENTRY PASS

	Yearly	Monthly	Daily
(a). Per Application	Rs.181.00	Rs. 45.25	Rs.18.10
(b). Per Replacement	Rs. 45.25	Rs. 45.25	Rs.18.10

2. VEHICLE ENTRY PASS

Per Entry	Rs.67.90
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Note: The vehicle entry fee will not be levied on vehicles entering / leaving the SWPL berths for delivery / dispatch of cargo.

3. PHOTOGRAPHY

(a). Film Shooting and Photography	Rs.7692.50 per day
(b). Taking Photographs of Goods handled	Rs. 452.50 per day
(c). Taking Photographs of Crews and Others	Rs. 226.25 per day
(d). Videography (related to operational activities)	Rs. 2262.50 per day

4. CRANE HIRE CHARGES

The hire charges for the SWPL's cranes installed at berth nos.5A and 6A shall be payable directly to SWPL for use for the purposes other than for cargo handling as per following rates:

(a). For 110/42 MT capacity mobile harbour cranes	Rs. 22625.00 per hour
(b). For others cranes	Rs. 13575.00 per hour

SOUTH WEST PORT LIMITED

SCALE OF RATES as on 1st January 2011

1. DEFINITIONS - GENERAL

In this Scale of Rates unless the context otherwise requires, the following definitions shall apply:

- (i). **“Per Day”** means per calendar day unless other wise stated.
- (ii). **“SWPL”** means South West Port Limited a company incorporated in India, its successors and assigns.
- (iii). **“Port”** means the Mormugao Port Trust (MOPT) whereas **“Terminal”** means South West Port Limited (SWPL), now or hereafter operated by South West Port Limited.
- (iv). **“Coastal Vessel”** means any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal license issued by the competent authority.
- (v). **“Coastal Cargo”** means any cargo, which the vessel discharges at one Indian port after shipment from another Indian port or vice versa irrespective of its actual origin or destination.
- (vi). **“Foreign Cargo”** means any cargo other than coastal cargo.
- (vii). **“Foreign-going Vessel”** means any vessel other than a coastal vessel.
- (viii). **“Tonne”** or **“MT”** means one Metric Tonne of 1,000 kilograms or one cubic metre.

2. GENERAL TERMS AND CONDITIONS

- (i). The Status of the vessel, as borne out by its certification by the Customs or the Director General of Shipping, is the relevant factor to decide whether vessel is *‘coastal’* or *‘foreign-going’* category for the purpose of levying vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.
- (ii).
 - (a). A foreign-going vessel of Indian flag having a General Trading License can convert to coastal run on the basis of a Customs Conversion Order.
 - (b). A foreign-going vessel of foreign flag can convert to coastal run on the basis of a Coastal Voyage License issued by the Director General of Shipping, Government of India only.
 - (c). In cases of such conversion, Coastal rates shall be payable from the time the vessel starts loading coastal goods.
 - (d). In cases of such conversion, coastal rates shall be chargeable only till the vessel completes coastal cargo discharging operations; immediately thereafter, foreign going rates shall be chargeable.
 - (e). For dedicated Indian coastal vessels having a Coastal License from the Director General of Shipping, no other documents will be required to be entitled for coastal rates.

- (iii). Wherever rates of vessel related charges have been denominated in US dollar terms the charges shall be recovered in Indian Rupees after conversion of US currency to its equivalent Indian Rupees at the market-buying rate notified by the Reserve Bank of India, State Bank of India or its Associates or any other Public Sector Banks as may be specified from time to time. The date of entry of the vessel into the port shall be reckoned with as the day for such conversion.
- (iv). A regular review of exchange rate shall be made once in thirty days from the date of arrival of the vessels in cases of vessels staying in the port for more than thirty days. In such cases, the basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of the review.
- (v).
 - (a). The cargo related charges for all coastal cargo, other than thermal coal, POL including crude oil, iron ore and iron pellets, should not exceed 60% of the normal cargo / container related charges.
 - (b). In case of cargo related charges, the concessional rates should be levied on all the relevant handling charges for ship-shore transfer and transfer from / to quay to / from storage yard including wharfage.
 - (c). Cargo from a foreign port, which reaches an Indian Port 'A' for subsequent transshipment to Indian Port 'B' will be, levied the concessional charges relevant for its coastal voyage. In other words, cargo from / to Indian ports carried by vessel permitted to undertake coastal voyage will qualify for the concession.
 - (d). The charges for coastal cargo / vessels shall be denominated and collected in "Indian Rupee".
- (vi). For the purpose of calculating the dues the unit by weight shall be 1 tonne or 1000 kilograms, the unit by volume measurement shall be 1 cubic metre and the unit by capacity measurement for liquids in bulk shall be 1000 litres.
- (vii). In calculating the gross weight or measurement by volume or capacity of any individual item, fractions upto 0.5 shall be taken as 0.5 unit and fractions of 0.5 and above shall be treated as one unit, except where otherwise specified.
- (viii). Interest on delayed payments / refunds:
 - (a). The user shall pay penal interest on delayed payments under this Scale of Rates. Likewise, the SWPL shall pay penal interest on delayed refunds.
 - (b). The rate of penal interest will be 14.25%. The penal interest rate will apply to both the SWPL and the port users equally.
 - (c). The delay in payments by the users will be counted only 10 days after the date of raising the bills by the SWPL. 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.
 - (d). The delay in refunds will be counted only 20 days after the date of completion of services or on production of all the documents required from the users, whichever is later.
- (ix). All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.
- (x).
 - (a). The rates prescribed in the Scale of Rates are ceiling levels, likewise, rebates and discounts are floor levels. The SWPL may, if it so desires, charge lower rates and / or allow higher rebates and discounts.

- (b). The SWPL may also, if they so desire, rationalise the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalisation gives relief to the user in rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling level.
- (c). The SWPL should notify the public such lower rates and / or rationalisation of the conditionalities governing the application of such rates and continue to notify the public any further changes in such lower rates and / or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP.
- (xi). Users will not be required to pay charges for delays beyond reasonable level attributable to the SWPL.

PART I - VESSEL RELATED CHARGES

SECTION – A – PORT DUES and SECTION – B – PILOTAGE FEES

These services will be rendered to the vessels entering the SWPL's berth numbers 5A and 6A by the Mormugao Port Trust as per their approved Scale of Rates. The charges shall be payable directly to the Mormugao Port Trust by masters / owners / agents of the vessel.

SECTION - C - BERTH HIRE CHARGES

Berth Hire Charges at Berth numbers 5A and 6A shall be payable to SWPL by masters / owners / agents of the vessel at the following rates.

BERTH NO.5A (Maximum LOA of Vessel 190 mtrs. in conjunction with another vessel of LOA 225 mtrs. at Berth No.6A)

SI.No.	Class of Vessel	Rate per GRT per hour or part thereof	
		Foreign going Vessel (in US \$)	Coastal Vessels (in Rs).
1.	All Vessels	0.0113	0.31

BERTH NO.6A (Under Mechanised Operation system)

SI.No.	Class of Vessel	Rate per GRT per hour or part thereof	
		Foreign going Vessel (in US \$)	Coastal Vessels (in Rs.)
1.	Upto 30,000 GRT	0.0249	0.68
2.	30,001 GRT and above	0.0294	0.79

Notes:

- (1). Berth Hire charges includes charges for services rendered and facilities provided at the Berth, such as occupation of berth, overtime at berth, removal of rubbish collected on board by the vessel and delivered on the wharf, cleaning of Berths, fire watch, etc.
- (2). The above charges are leviable against Masters, Owners or Agents of vessels and other floating craft approaching or lying at or alongside berths per GRT per hour or part thereof.
- (3). The Berth hire charges leviable per vessel is subject to a minimum of US\$ 588.25 in case of foreign going vessel and Rs.15748.80 in case of coastal vessel.

- (4). The period of berth hire shall be calculated from the time the vessel occupies the berth.
- (5). No berth hire charges shall be payable for the period when loading / unloading operations cannot be carried out due to non-availability of the shore cranes / mechanical handling system of SWPL, due to breakdown or any other reason attributable to SWPL.
- (6). (i). Berth hire shall stop 4 hours after the time of vessel signaling its readiness to sail.
- (ii). The time limit of 4 hours prescribed for the cessation of berth hire shall exclude the ship's waiting time for want of favorable tide conditions, inclement weather, and due to lack of night navigation.
- (iii). The master / agent of the vessel shall signal readiness to sail only in accordance with favorable tidal and weather conditions.
- (iv). The Penal Berth hire shall be equaled to one-day's (24 hours) berth hire charge for a false signal.
- "False signal" would be when the vessel signals readiness and asks for a pilot in anticipation even when she is not ready for un-berthing due to engine not being ready or cargo operation not completed or such other reasons attributable to the vessels. This excludes the signaling readiness when a vessel is not able to sail due to unfavorable tide, lack of night navigation or adverse weather conditions."
- (7). The de-ballasting time allowed at berth numbers 5A and 6A shall be 3 hours and beyond that penal berth hire charges shall be levied at five times the normal berth hire charges, the incidence being reduced to per hour or part thereof, that may be applicable to the vessel. This will be in addition to the normal berth hire charges applicable for the entire duration of the vessel's stay at the berth.
- (8). Vessels banked on offside of another vessel at these berths, berth hire charges shall be 50% of normal charges payable by such vessels.
- (9). The provisions of the License Agreement shall govern priority Berthing and charges on it, if any. Whenever the priority berthing is granted to a vessel, a fee equivalent to Berth Hire charges for a single day (24 hours) or @ 75% of the Berth Hire charges calculated for the total period of actual stay at the Berth, whichever is higher, shall be levied.
- (10). (i). For providing ousting priority to a vessel, a fee equivalent to berth hire charges for a single day (24 hours) or @100% of the berth hire charges calculated for the total period of actual stay of the vessels at berth, whichever is higher, shall be levied.
- (ii). In addition, shifting out / in charges of the vessels shall be levied on the vessels, which are provided ousting priority.
- (iii). Ousting priority at berth no.6A will be accorded only when a discharge / load rate of 25,000 MT of cargo per weather working day cannot be achieved due to restrictions placed by the vessels.

SECTION – D

CHARGES FOR SUPPLY OF WATER TO VESSELS AND MISCELLANEOUS SERVICES

Charges for water supplied to vessels shall be payable to by masters / owners / agents of the vessel at the following rates:

Sl. No.	Particulars	Rate per 1000 litres	
		Foreign-going Vessel (in US\$)	Coastal Vessel (in Rs.)
1.	At Berth	3.3069	88.55

PART - II CARGO RELATED CHARGES

SECTION – A

WHARFAGE CHARGES AT BERTH NOS. 5A AND 6A

Wharfage on the cargo handled at berths numbers 5A and 6A shall be payable directly to SWPL, at the rates specified below, by importer or exporter of cargo, on the manifested quantity of cargo, which is declared in the Bill of entry filed with the Customs:

Sl. No.	Particulars of Commodity	Unit	Rate for Import / Export (in Rs.)	
			Foreign Cargo	Coastal Cargo
1.	Coal (all types except thermal coal)	MT	27.15	16.29
2.	Metallurgical Coke / Coke / Charcoal	MT	40.73	24.44
3.	Limestone	MT	9.05	5.43
4.	Iron Ore Pellets	MT	27.15	27.15
5.	Metal products, Steel Coils, Slabs	MT	27.15	16.29
6.	Any other bulk cargo not specified above	MT	27.15	16.29

SECTION - B

CARGO HANDLING CHARGES

Cargo Handling Charges at Berth numbers 5A and 6A shall be payable on the manifested cargo directly to SWPL by importer or exporter of cargo at the rates specified below:

At Berth No.5A

Sl. No.	Particulars of Commodity	Unit	Rate for Import / Export (in Rs.)	
			Foreign Cargo	Coastal Cargo
1.	Iron Ore Pellets	MT	126.70	126.70
2.	Metal products, Steel Coils, Slabs	MT	143.90	86.34
3.	Any other bulk cargo not specified above	MT	135.75	81.45

At Berth No.6A

Sl. No.	Particulars of Commodity	Unit	Rate for Import / Export (in Rs.)	
			Foreign Cargo	Coastal Cargo
1.	Coal (all types except thermal coal)	MT	91.13	54.66
2.	Metallurgical Coke / Coke (all types) / Charcoal	MT	129.51	77.70
3.	Limestone	MT	119.91	71.95
4.	Iron Ore Pellets	MT	126.70	126.70
5.	Metal products, Steel Coils, Slabs	MT	143.90	86.34
6.	Any other bulk cargo not specified above	MT	135.75	81.45

Notes:

- (1). At the berth number 5A, Cargo Handling Charges shall cover the following services:
 - Unloading of cargo from ship to the berth or vice versa,
 - Movement of cargo from the berth to SWPL stackyard or vice versa,
 - Movement within the SWPL stackyard,
 - Unloading from railway wagons or vice versa.

- (2). At the berth number 6A Cargo Handling Charges shall cover the following services:
- Unloading of cargo from ship to the berth or vice versa,
 - Movement of cargo from the berth to SWPL stackyard or vice versa,
 - Movement within the SWPL stackyard,
 - Loading on railway wagons for rail delivery or vice versa.
- (3). Covering of Wagons by tarpaulin / plastic cover is not included in above handling charges prescribed in the schedule.
- (4). The dunnaging and lashing (inclusive suitable labour & material) will have to be arranged by the users at their costs to the satisfaction of the Master of the vessel.
- (5). 50% of the Cargo Handling Charges shall be payable before the cargo is received for handling. Balance 50% of the Cargo Handling charges shall be payable before the clearance / shipment of the cargo.

SECTION – C

GROUND RENT / STORAGE CHARGES

The storage charges for cargo stored in the stackyard of SWPL shall be as follows:

I. Ground rent / storage charge for import / inward cargo

(in Rs. per MT per day for the balance cargo in SWPL)

Sl. No.	Particulars of Commodity	Rate for first Five days remaining after the free period	Rate for Sixth day to Tenth day	Rate for Eleventh day to Twentieth day	Rate for Twenty-first day onwards
1.	Coal (all types)	9.05	22.63	45.25	90.50
2.	Metallurgical Coke / Coke (all types) / Charcoal	13.58	36.20	67.88	135.75
3.	Limestone	9.05	22.63	45.25	90.50
4.	Any Other dry bulk cargo not specified above	13.58	36.20	67.88	135.75

Notes:

- (1). *THREE Free Days* shall be allowed, after complete discharge of vessel's cargo or when the last package is discharged. For the purpose of calculation of free period, Sundays, Customs notified holidays and Terminal's non- working days shall be excluded.
- (2). *Ground rent / storage charges* shall be payable for all days including Sundays and Customs notified holidays for stay of cargo beyond the prescribed free days.
- (3). After 21 days beyond Free Days, the balance cargo shall be liable to be shifted to other place out of SWPL area at the sole cost and consequences to the importer / exporter.
- (4). For levy of ground rent / storage 'Day' shall be reckoned as from 7.00 a.m. to 7.00 a.m. of the following day.

II. Ground rent / Storage charges for Export / Outward cargo

(in Rs. per MT per day for the balance cargo in SWPL)

Sl. No.	Particulars of Commodity	Rate for first Five days remaining after the Free Period	Rate for Sixth day to Tenth day	Rate for Eleventh day to Twentieth day	Rate for Twenty-first day onwards
1.	Iron Pellets	9.05	22.63	45.25	90.50
2.	Metal products, Steel Coils, Slabs and other general bulk cargo	4.53	9.05	22.63	45.25

Notes:

- (1). In case of export cargo, Seven Free Days shall be allowed from the day the first lot of cargo / consignment has been received. For the purpose of calculation of free period Sundays, Customs notified holidays and Terminal's non-working days will be excluded.
- (2). After the prescribed free days, ground rent / storage charges shall be payable for all days including Sundays and Customs notified holidays as stated above.
- (3). After 21st day beyond free days, the balance cargo shall be liable to be shifted to other place out of SWPL area at the sole cost and consequences to the exporter.
- (4). For levy of ground rent / storage 'Day' shall be reckoned as from 7.00 a.m. to 7.00 a.m. of the following day.
- (5). If the entire cargo accumulated is not within the free period and the balance cargo is earmarked / linked to the next ship, further free period will be allowed from the date of production of documentation in support of this claim. Otherwise, penal ground rent at the appropriate rate applicable as per the rates prescribed in the above schedule shall be payable.

General Note to Section C:

- (1). Storage charges / ground rent on cargo shall not accrue for the period when the SWPL is not in a position to deliver / ship the cargo when requested by the user due to reasons attributable to SWPL.

SECTION – D

DUST SUPPRESSION CHARGES

The Dust Suppression Charges for water sprayed for suppression of dust for effective pollution control shall be levied on manifested quantity on Coal, Coke and Limestone at the following rates:

For Coal, Limestone and Coke: Rs.1.95 per MT

This shall be levied from the stage of unloading from the vessel till the cargo is loaded onto railway wagons including storage at SWPL stackyard.

Part- III

OTHER SERVICES

1. VISITOR ENTRY PASS

	Yearly	Monthly	Daily
(a). Per Application	Rs.181.00	Rs. 45.25	Rs.18.10
(b). Per Replacement	Rs. 45.25	Rs. 45.25	Rs.18.10

2. VEHICLE ENTRY PASS

Per Entry	Rs.67.90
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Note: The vehicle entry fee will not be levied on vehicles entering / leaving the SWPL berths for delivery / dispatch of cargo.

3. PHOTOGRAPHY

(a). Film Shooting and Photography	Rs.7692.50 per day
(b). Taking Photographs of Goods handled	Rs. 452.50 per day
(c). Taking Photographs of Crews and Others	Rs. 226.25 per day
(d). Videography (related to operational activities)	Rs. 2262.50 per day

4. CRANE HIRE CHARGES

The hire charges for the SWPL's cranes installed at berth nos.5A and 6A shall be payable directly to SWPL for use for the purposes other than for cargo handling as per following rates:

(a). For 110/42 MT capacity mobile harbour cranes	Rs. 22625.00 per hour
(b). For others cranes	Rs. 13575.00 per hour

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/12/2010 - SWPL - Proposal from the South West Port Limited for general revision of Scale of Rates for its multipurpose cargo berth no.5A and 6A at the Mormugao Port Trust.

A summary of comments received from the user / user organisations and comments of South West Port Limited (SWPL) thereon are tabulated below:

Sl. No.	Comments of users / organisation bodies	Comments of SWPL
1.	Mormugao Port Trust	
(i).	The periodicity of tariff revision is 3 years, however SWPL has proposed revision for 2 years i.e. from 1 April 2010 to 31 March 2012.	No comments furnished.
(ii).	The total traffic handled by SWPL for the year 2008-09 was 4.63 MMT. However, traffic projections for the year 2010-11 to 2012-13 is in order of 4.15 MMT, 4.45 MMT and 5.15 MMT respectively which appears to be at lower side.	
(iii).	The cargo handling income for the year 2008-09 was Rs.66.43 crores. For the year 2010-11 to 2012-13, the cargo handling income is estimated at the lower level of Rs.60.85 crores, 64.78 crores, and Rs.74.68 crores respectively.	
(iv).	Average increase in operating cost excluding depreciation is estimated at 10.35% for the projected period of 3 years. The share of Management and Administrative overheads to operating cost excluding depreciation is 13.30% for the projected years.	
(v).	The upper revision proposed is @ 32% for cargo related charges as against asking rate of 22% as per Form 3A (consolidated income and cost statement).	
(vi).	Surplus accrued for three years 2007-08 to 2009-10 is Rs.15.36 crores. 50% of this is set off over a period of three years (2010-11 to 2012-13), Rs.2.56 crores each year. The surplus has been wrongly added to the deficit in the projected years. The net deficit (average) for the projected year (2010-11 to 2012-13) works out @ 16%.	
(vii).	The cargo handling activity is proposed to be in deficit at 24% for the projected period of 3 years (2010-11 to 2012-13) as against 32% upper revision has proposed.	
(viii).	In Form 5B(I) - Cost statement for cargo handling activity, the income under wharfage and dust suppression is estimated to reduce at the proposed tariff. Similarly, total direct expenses is estimated at higher level for the next 3 years at proposed tariff.	
(ix).	The vessel related activity is proposed to be in deficit @ 16.10% for the next 3 years i.e. 2010-11 to 2012-13 at existing tariffs. However, no upper revision is proposed in this activity.	
(x).	The statement of comparison of actuals vis-à-vis estimates shows that the actual operating surplus for the year 2007-08 and 2008-09 is Rs.40.62 crores and Rs.38.99 crores as against the estimated	

	operating surplus of Rs.25.37 crores and Rs.24.21 crores respectively. Thus, there was a variation of Rs.15.25 crores and Rs.14.78 crores between actuals and estimated surplus for the year 2007-08 and 2008-09.	
(xi).	At page no.34 of the proposal, it is stated that development of berth no.7 is the reason for the lower traffic projection. Since SWPL has captive cargo, and berth no.7 will be commissioned only in 2013-14, the argument for lower traffic projection does not hold good. Besides, the requirement of Jindal Steel Ltd. (JSWL), who have been almost the only user of Berth No.5 and 6 is expected to double soon.	
(xii).	The capital investment of Rs.90 crores projected in the proposal is mainly on inmotion wagon loading and mobile unloaders. At page 35, SWPL anticipates volumes to go up considerably. But, in contradiction to this statement traffic is taken on the lower side.	
(xiii).	Norms set up for fixation of upfront tariff for PPP projects are considered in the proposal which in our opinion may not be applicable.	
(xiv).	SWPL has disputed that CHLD levy on cargo handled by them by ship's gear at their terminal and referred the matter for arbitration. However, they are paying this levy regularly. In the proposal submitted by SWPL, the CHLD levy paid to the port for handling steel by ship's gear has not been separately indicated and therefore port is not in a position to comment specifically on this issue.	
(xv).	The SWPL is not allowed to handle geared vessels as per the license agreement. In view of this the MOPT had objected to such handling by SWPL. However, the SWPL was later permitted to handle geared vessels for export of steel coils subject to payment of CHLD levy towards loss of employment to the CHLD workers on account of such handling. As this activity resulted in loss of revenue to the port, the MOPT believes that the SWPL should compensate the CHLD levy to it. On this issue the SWPL went into arbitration and is paying the levy under protest. However, the SWPL has stated that if TAMP allows this levy as an input cost, it will withdraw their arbitration. As the levy is actually being paid by the SWPL, the MOPT does not have any objection if the CHLD levy is considered as an input cost while revising its tariff for this commodity.	<p>(i). Clause no. 6.1.6 of the Licence Agreement pertaining to 'Right to Allow the Use of Ship's Gears states thus:-</p> <p>(Quote) The Licensee shall have the right to allow the use of ship's gears as and when felt necessary (Unquote).</p> <p>This stipulation in the Licence Agreement clearly gives the absolute, unfettered and unhindered right to SWPL to allow the use of Ship's Gears, as an when it feels necessary.</p> <p>(ii). Clause no. 6.1.1(g) of the Licence agreement pertaining to 'Obligations of the Licensee-Principal Obligations of the Licensee' states thus:-</p> <p>(Quote) Subject to the provisions of this Agreement, generally perform and undertake, within the Licensed Premises, all services which the Licensor is required to perform and undertake under the provisions of Section 42 of the Major Port Trust Act, 1963 (Unquote).</p> <p>(iii). Clause no. 6.1.1(g) read, with sub-sections 3 and 3A of section 42 of Major Port Trusts Act, 1963, makes it absolutely clear that the Board has authorized SWPL to perform any of the services mentioned in sub section 1. It is to be noted the Licence Agreement has been approved by the Central Government and thus SWPL is empowered to carry out the services of the Board.</p>

		<p>(iv). Clause no. 9.3 of the Licence agreement pertaining to 'Non-Interference states thus:- (Quote) Subject to the provisions of this Agreement, the Licensor shall not interfere or cause any hindrance in the design, construction, operation, maintenance and repair of the Terminal save as may be necessary to protect public health and safety or for the discharge of its statutory duties. At the request of the Licensee, the Licensor shall use its best efforts to alleviate any interference by third parties in the Terminal (Unquote).</p> <p>(v). Clause no. 9.6 of the Licence Agreement pertaining to 'No Hindrance' states thus:- (Quote) The Licensor shall ensure that construction/development and operation of the Port will not adversely affect or cause hindrance to the construction/development and operation of the Terminal (Unquote). These two clauses, viz. 9.3 and 9.6 do not permit MOPT to interfere or cause hindrance in the operation of the Terminal. MOPT, on the unfounded grounds that SWPL cannot use the Ship's Gears and if it is done SWPL should pay to MOPT the CHLD levy or employ CHLD Labour, has forced SWPL to pay to MOPT the CHLD Levy, under protest, whenever Ship's Gears have been used for handling the steel cargo. This action of MOPT was not in consonance with the provisions of clauses 9.3 and 9.6 of the Licence Agreement.</p> <p>(vi). SWPL also informed MOPT that SWPL is the Terminal Operator and hence is not required to engage the Stevedore or CHLD labour to handle the cargo.</p> <p>(vii). As all the pleadings of SWPL were rejected by MOPT, SWPL had no other alternative, but to raise a dispute and refer the matter for Arbitration under the relevant clause no. 14 of the Licence Agreement.</p> <p>(viii). During the process of Arbitration (which is in progress), MOPT also attempted to make the Unions a party in the Arbitration proceedings. This proposition of MOPT was rejected by the Learned Arbitrator.</p> <p>(ix). SWPL has paid so far an amount of over Rs.59.00 lakhs to MOPT towards CHLD Levy under protest.</p> <p>(x). SWPL hence requests TAMP to include CHLD levy as input cost while revising the tariff when Ship's Gears are used.</p> <p>(xi). SWPL has also to state that MOPT had earlier taken the stand that in view of the provisions of the Licence Agreement, SWPL is required neither to engage CHLD labour nor pay CHLD levy. This stand was subsequently reversed, for reasons unknown.</p>
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<p>(xvi).</p>	<p>As per the license agreement MOPT has no obligation to dredge berths operated by SWPL beyond 13 mtrs. However, during annual maintenance dredging at the ports, dredging is done at berths 5A & 6A on behalf of SWPL and the cost is being reimbursed by the SWPL to the port. The SWPL has paid Rs.30 lakhs on 3 June 2010 to the port for dredging done during 2008. The SWPL is still to pay the claim of Rs.1,46,74,826/- for dredging done for the year 2009. In view of the non payment, the MOPT has requested TAMP that the dredging cost as claimed by the SWPL should not be taken into consideration as an input cost while revising the tariff.</p>	<p>(i). Clause no. 5.3 of the Licence Agreement pertaining to Capital Dredging states thus:- (Quote) The capital dredging alongside the berths and approach to the berths as per the limits set out in Appendix V, dumping of the dredged material, clearing the water area and salvaging of any debris or structures or any other obstructions both under and over water shall be carried out by the Licensee at its cost. The Licensee may utilise the dredged material, if required, and if the dredged material is found suitable, for reclamation of the Licensed Premises. The minimum possible depth to be dredged is – 13.00 metres for the basin area and – 13.50 metres alongside the berths. The decision of the Licensor's Chief Engineer or its authorised representative shall be final in all matters connected with the dredging--- (Unquote).</p> <p>(ii). Clause no. 6.2.1(III) pertaining to the Licence Agreement 'Obligations of the Licensor/ Services to be provided' states thus:- (Quote) Maintenance dredging alongside the berths and the approaches thereto as per Appendix V for adequate draft (Unquote).</p> <p>(iii). The draft agreement forwarded by MOPT to ABG/SWPL in the year, 1996, stated as follows: (Quote) The maximum possible depth to be dredged is – 13.00 metres for the basin area and – 13.50 metres alongside the Berths (Unquote). As seen in clause no. 5.3 of the Licence Agreement, the above clause in the draft agreement was changed from maximum possible depth to minimum possible depth in clause no. 5.3 of the Licence Agreement as stated above. This means that there is no restriction for SWPL to increase the Capital Dredging depth beyond -13m and -13.5m.</p> <p>(iv). Similarly, the draft agreement specified: (Quote) However, the Maintenance Dredging alongside the berths and the approaches thereto shall be the responsibility of the Licensor (Unquote).</p> <p>(v). It can be seen that, as against the provision in the draft agreement, clause 6.1.1(III) of the Licence agreement specifies as follows:- (Quote) Maintenance Dredging alongside the berths and approaches thereto as per Appendix V for adequate draft (Unquote).</p> <p>(vi). As SWPL is empowered by the Licence Agreement to carry out Capital Dredging to -13 as minimum possible depth, the word adequate in clause no. 6.2.1(III), which relates to the Capital Dredging depth, shows that depth upto which Maintenance Dredging is to be carried out by MOPT is upto the adequate depth, i.e. depth upto which SWPL carries out Capital Dredging.</p>
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(vii). It is to be noted that Appendix V shows the limits/boundaries within which Capital Dredging has to be done by SWPL, as stated in clause 5.3 of Licence Agreement. Appendix V also shows the Capital Dredging depths.

(viii). Again, though Appendix V specifies the outer limits/boundaries within which SWPL is required to carry out Capital Dredging, MOPT has charged SWPL for Capital Dredging and Maintenance Dredging done by it beyond the eastern side of SWPL's dredging limits/boundary, i.e. near the 'Turning Circle'.

(ix). As MOPT forced SWPL to pay for the Maintenance Dredging carried out by it beyond -13 and -13.5, SWPL had to pay, under protest the amount of Maintenance Dredging as claimed by MOPT.

(x). As all the pleadings of SWPL were rejected by MOPT, SWPL had no other alternative, but was forced to raise the dispute and refer the matter for Arbitration under the relevant clause no. 14 of the Licence Agreement.

(xi). Besides the payment on Capital Dredging made by SWPL to MOPT, the following payments towards Maintenance Dredging, have been made by SWPL to MOPT, UNDER PROTEST. As can be seen, the claim amounts towards Maintenance Dredging have been increased progressively, year-after-year :-

- (a) Maintenance Dredging for the year 2006 – Rs.12,36,283/-
- (b) Maintenance Dredging for the year 2007 – Rs.21,30,334/-
- (c) Maintenance Dredging for the year 2008 – Rs.30,61,260/- (advised by MOPT, vide letter dated 4/5/2010.)
- (d) Maintenance Dredging for the year 2009 – Rs.1,46,74,826/- (advised by MOPT, vide letter dated 4/5/2010). The amount is exclusive of Fuel Excavation.

(xii). It may be also seen that for the year, 2009, the amount claimed is Rs.1,46,74,826/-, which is almost twelve times higher than that for the year, 2006 and about five times higher than that of the year, 2008.

(xiii). As the amount claimed by MOPT of Rs.1,46,74,826/- was abnormally high, SWPL had to seek clarifications from MOPT on the same and also carry out verification of sounding charts and quantities.

(xiv). The payment of Rs.1,46,74,826/- has since been made to MOPT.

(xv). Thus, it is an item of input and has to be considered while revising the tariff.

<p>(xvii).</p>	<p>In para 1.4 of the revised proposal dated 23 June 2010, the SWPL has stated that Goa State Pollution Control Board (GSPCB) has directed the terminal operator not to handle coal by road. The MOPT is of the opinion that this contention of the GSPCB is not correct since as per the agreement dated 11 April 1999, the terminal operator is required to provide facility for handling bulk cargo by road and GSPCB cannot lay down the project parameters. Hence, TAMP is requested to examine the issue and evaluate in accordance with the license agreement while prescribing the tariff for handling the cargo by road.</p>	<p>(i). GSPCB is concerned with the pollution emanating not only from the project area, but all along the route of conveyance of cargo where the pollution is likely to occur.</p> <p>(ii). Transport of cargo, especially coal, by road from Mormugao Harbour to the places in Goa, Karnataka and Maharashtra is through the thickly populated areas of Headland-Sada and Vasco. Thus, in order to minimize the possible pollution of the areas, or to eliminate it to the extent possible, GSPCB has issued the directive to SWPL to transport coal only by rail or sea mode.</p> <p>(iii). Letter on the similar lines was also addressed by GSPCB to the Deputy Chairman, MOPT, on 26.07.2005 [copy attached] and as far as SWPL is aware, Dy. Chairman has not contested the directive of GSPCB.</p> <p>(iv). The Licence Agreement entered into between MOPT and SWPL does not specify transport of cargo by road.</p> <p>(v). In fact, clause no. 6.2.1(XII) pertaining to 'Obligation by the Licensor/Services to be Provided' specifies as follows :- (Quote) Provide marshalling yard and make arrangements for bringing in the rakes, in parts, for loading/unloading and taking out the same after being loaded/unloaded by the Licensee. Haulages and other charges, as applicable outside the Licensed Premises from times to time, will be collected from the consignors/consignees directly by the Licensor (Unquote).</p> <p>(vi). This clause makes it completely clear that the cargo has to be transported by railway rakes.</p> <p>(vii). Further, clause no. 2.1 of the Licence Agreement pertaining to 'Grant of Licence' specifies thus :- (Quote) The Licensee shall construct the berths and provide high rated handling equipment for handling of coal and other general and dry bulk cargo, consistent with the site conditions at Mormugao (Unquote).</p> <p>(viii). 'Site Conditions' comprise of tidal variation winds, currents, soil strata etc., as defined in Appendix VI of the Licence Agreement.</p> <p>(ix). SWPL has provided the required high rated equipment to handle the cargo.</p> <p>(x). Clause no. 8.1(b) of the Licence Agreement pertaining to Transfer After the Licence Period/General Scope of Transfer states, inter alia, the following :- (Quote) Transfer and hand over to the Licensor all the permanent civil structures, equipment, machinery, ancillaries, other movable assets belonging to the Licensee. However, the items of</p>
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		<p>equipment as listed in Appendix IX may either be owned or taken on lease by the Licensee from the date of installation till the expiry of the Licence Period or termination, subject to Article 6.1.11 and handed over to the Licensor on expiry of the Licence Period—(Unquote).</p> <p>(xi). Appendix IX of the Licence Agreement pertaining to 'List of Core Assets to be handed over by the Licensee' states as follows :- (Quote)</p> <ol style="list-style-type: none">1. Ship to store handling equipment, installed on the berths, comprising: Rail mounted Quay side Gantry Crane(s) for loading/unloading operations, and/or Rail mounted Electric level luffing wharf crane(s) for loading/unloading operations.2. Railway wagon loading equipment, installed inside the terminal comprising: Railway wagon loading hopper(s) with chutes and discharge mechanism. (Unquote) <p>(xii). As seen in clause 8.1(b) and Appendix IX, it is clear that the Licence Agreement specifies only 'Rail Wagon loading equipment, installed inside the terminal', as the core assets to be handed over by the Licensee to the Licensor. This also very clearly shows that the Licence Agreement envisages the loading of cargo by rail and not by road.</p> <p>(xiii). Taking into account of all these, TAMP has specified the tariff for haulage of cargo by rail mode only.</p> <p>(xiv). A writ petition was filed in the High Court of Bombay at Goa by certain parties against the decision of MOPT to transfer handling of coal/coke from Berth no. 10 and 11 to Berths no. 5A and 6A.</p> <p>(xv). The High Court of Bombay at Goa, in its order dated 20.9.2005, [Annexure-C] on the above – referred writ petition, had directed the Secretary, Ministry of Shipping, to decide about handling of coal, subject to compliance of the directions of GSPCB.</p> <p>(xvi). During the meeting called by the Secretary (Shipping), SWPL had stated that the Terminal was designed, as per the Licence Agreement, to haul cargo by rail mode only. However, it can consider road mode if MOPT provides the area of about 10,000 sq. m. behind berth no. 7 for storage of cargo. This would be done by installing additional equipment. Though having given positive signals initially to this proposal of SWPL, MOPT ultimately did not take any action in the matter.</p>
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(xvii). After detailed discussions with the importers, the representatives of MOPT, SWPL and GSPCB, the (then) Secretary (Shipping) arrived, inter alia, at the following decisions, vide his reference no.DD/13011/1/2005-MoPT dated 15/12/2005, a copy which is attached]:-

- a. Considering the constraints in the premises licensed to SWPL, MOPT would continue to handle bulk coal/coke at Berth no. 11, subject to maintenance of cleanliness.
- b. As SWPL would not be able to handle road borne cargo at its premises, it was not considered appropriate to modify the fundamental clause of the Licence Agreement with regard to Minimum Guaranteed Throughput.
- c. Environment protection measure would be implemented in consultation with GSPCB.

(xviii). Further, the High Court of Bombay at Goa, disposed of on 30/4/2008 [copy attached], the writ petition filed by M/s.Maheshwari Brothers against the Board of Trustees of Mormugao Port Trust, when the Senior Counsel for the Board of Trustees of Mormugao Port Trust stated that the ship of the petitioners would be allowed to handle coal at Berth no. 10 and 11, subject to they taking pollution control measures.

(xix). Again, the High Court of Bombay at Goa, in its Oral Judgment dated 5/5/2008 [copy attached] on several writ petitions filed by different coal importers, viz. M/s.Tata Metaliks Ltd., M/s.Kirloskar Ferrous Ind. Ltd. Shri. R.V. Gumaste, M/s.Kalyani Steel Ltd., Shri. Madan Umakant Takale against the Board of Trustees of Mormugao Port Trust, stated, inter alia, that the Board of Trustees of Mormugao Port Trust would be bound to act in accordance with the Secretary Shipping's order dated 15.12.2005, as regards handling of coal/coke at Berth no. 10 and 11.

(xx). It is clear from these above – referred orders of the High Court that coal/coke would be continued to be handled at Berth no. 10 and 11 by the coal importers, who generally transport the same by road mode.

(xxi). Minimum Guaranteed Throughput (MGTP) for SWPL is 5.0 million tonnes, as per clause no.7.3.3 of the Licence Agreement. Considering the average storage capacity of about 1.50 lakh tonnes, SWPL has to achieve the turn arounds of over 30 nos. for this MGTP.

These turn-arounds are abnormally high compared to MOPT's turn-arounds of about 12 nos., for their storage capacity of 1 million tonnes and handling cargo of about 12 million tonnes in its MoHP.

		<p>(xxii). Thus, in order to achieve the MGTP of 5 million tonnes, with very high no. of turn-arounds, the rail mode has been considered in SWPL's Licence Agreement.</p> <p>(xxiii). It is also stated that, SWPL has handled and also will continue to handle-cargo of different importers who are carrying it by rail mode. Thus, there is no discrimination. The only requirement is the rail mode and quick evacuation of cargo.</p> <p>(xxiv). Despite the directives of GSPCB not to transport coal cargo by road, SWPL is willing to handle cargo by road mode provided the productivity does not suffer, MGT is not affected, Unit Cost does not go up and the additional area mentioned in para xvi above is made available by MOPT.</p>
2.	Mormugao Port Users Association	
	No comments to offer.	No comments

2. The revised proposal of SWPL dated 23 June 2010 was forwarded to the MOPT and the users / user associations consulted earlier for their comments, if any. We have not received any separate comments from MOPT and users / user association on the revised proposal of the SWPL except Indian National Shipowners' Association (INSA). The comments received from INSA were forwarded to SWPL as feedback information. The SWPL has not furnished any remarks on the comments of INSA. The main points made by INSA are summarised below:

- (i). The Form 6 which is expected to give analysis of efficiency and cost reduction achieved is not submitted. It is a very important element that assists in assessing the proposal.
- (ii). The proposal when analysed for only cargo Handling Income and Operating cost, depicts the following:

Cargo Handling Income Vs Cargo Handling (Operating Cost)						
Particulars	Actuals			At Existing Tariff & Projected Tariff		
	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Traffic (in MTs)	4.40	4.63	4.32	4.35	4.65	5.25
Cargo Handling Income	6988	6865	6533	6058	6441	7277
Total Operating Cost (I to X)	3441	4042	3681	4300	4743	5270
Cargo Handling Income/ ton	159	148	151	139	139	139
Cargo Handling Operating Cost/ ton	78	87	85	99	102	100
	Change in Per ton Income over 09-10			-8%	-8%	-8%
	Change in Handling Cost/ ton over 09-10			16%	20%	18%

- (iii). If the storage charges of 4.74 crores earned during 2007-08 as highlighted being exceptional was discounted at average of what's earned in other two years i.e. 1.27 crores & 2.54 crores respectively or (the average projected for future three years i.e. 1.09 crores, 1.16 crores & 1.33 crores respectively), the average income per ton during the past three years is steady around Rs.148-151 per ton. It is also observed that more than 90% of the cargo handled is one commodity i.e. Coke or Coal which only helps to understand the uniformity. It is not understood why the income per ton should get reduced by 8% to Rs.139 / ton during next three years.

- (iv). Though there has been a fall reflected in the income per ton, the operating cost per ton during the past three years shows increase by 10% from Rs.78 per ton in 2007-08 to Rs.87 & 85 per ton during the next two years. And for the next three years when a fall in per unit income is predicted, the cost per unit is forecasted to increase by 16 to 20% over the per unit cost of 2009-10.
- (v). Efficiency, productivity and additional capital cost should reflect in the per unit cost of handling. It's the ultimate measure and is presumed to be the purpose of Form 6.

Otherwise guarantee of minimum return on Capital by TAMP will actually become Guarantee of protecting inefficiency and negligence at the cost of trade which ultimately gets passed to the transaction cost of every import/export. The per unit handling cost at the proposed tariff is in fact showing an increase of 23 to 27% which is difficult to accept as normal.

- (vi). The figures in form 7 submitted raise questions on how good are the estimates of SWPL. Because, in spite of the actual volumes being lesser than the estimates in all three years from 2007 to 2010, the port net surplus shows positive variance of as much as +200%. At the time of fixing previous tariff, the three year estimate was shown as net deficit of Rs.(1316) lakhs, where as the port had a positive gross variance with net surplus of Rs.1842 lakhs.
- (vii). While the terminal deserves to be congratulated for it's performance, there is all the reason to believe that maintaining the trend will not be very ambitious target for a private operator.
- (viii). With reference to the comparison of actuals vis-à-vis estimates provided earlier, the SWPL has shown a net surplus of 839 (actuals) against the net deficit of (890) of estimates for the year 2007-08. Likewise, during the year 2008-09, a net surplus of 518 (actuals) has been exhibited against the net deficit of (769) of estimates. Whereas during the year 2009-10 only net surplus of 485 (actuals) against 343 of estimates given earlier has been achieved by the private terminal. Hence, there is no necessity for the proposed tariff hike.
- (ix). It's mentioned in the proposal that the operator will be incurring dredging cost due to dispute with the port. Users should not be made to pay for the actions of any of the operator and the additional expenditure should be disallowed from the proposal.
- (x). It's also mentioned that the operator has contracted and outsourced various cargo handling activities. Cost and contracted rates are taken to consider the guaranteed net surplus. We hope that these contract rates have been verified for reasonableness. Otherwise a private operator will have no incentive to reduce it's cost so long as users are paying for it and his returns remain protected.
- (xi). With other private bulk handling ports in close vicinity, there is greater need to lay emphasis on unit cost reduction to maintain the returns envisaged.
- (xii). It's been noticed that Mormugao port charge foreign going tariff for cargo related charges for cargo shipped between two Indian ports just because the vessel is a foreign going. The issue has been raised with the port under copy to TAMP and may be clarified during the hearing.

3. A joint hearing in this case was held on 22 July 2010 at the MOPT premises. At the joint hearing, SWPL and MOPT have made the following submissions:

SWPL

- (i). We are unable to achieve the Minimum Guaranteed Throughput (MGT) because of storage yard constraints and inadequate rail evacuation facilities.

- (ii). We have not achieved the MGT of 5 Million Tonnes not because of our inefficiency. Our efficiency is one of the best in the world. Physical constraints are the impediment.
- (iii). Yard turn-around is the main issue. The proposed in motion wagon loading facilities may help in this regard if wagon availability is ensured.
- (iv). Bill for dredging furnished by MOPT for 2009-10 was very high. We have sought clarification from port which is awaited.
- (v). Proposed capital additions mainly relate to inmotion railway loading system. This will not significantly improve capacity. But, with the same number of rakes, we can turn around wagons faster.

MOPT

- (i). SWPL has not created road based evacuation facilities. There is no specification in the concession Agreement that SWPL will handle only rail borne cargo.
- (ii). SWPL has not reimbursed dredging cost to us for the last 2 years. But they claim it in cost statement. Please don't consider the notional cost claimed by them.
- (iii). In motion railway system is an additional investment which is not specifically mentioned in the License Agreement, because the facility will come in an additional land sought outside the licensed area. This requires Government approval.
- (iv). For steel cargo handled at SWPL, MOPT is willing to deploy our labour for steel as per rules. SWPL may deploy its own labour but has to pay notional charges to us for loss of employment of CHLD labours. The matter is under Arbitration.
