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## **TARIFF AUTHORITY FOR MAJOR PORTS**

**G No. 12**

**New Delhi, 22 January, 2011**

### **NOTIFICATION**

In exercise of the powers conferred under Section 48 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the Paradip Port Trust (PPT) for revision of tariff for cargo handling by Paradeep Phosphates Limited at Fertilizer Berth No. 1 as in the Order appended hereto.

**(Rani Jadhav)**  
Chairperson

**Tariff Authority for Major Ports**  
**Case No. TAMP/28A/2009-PPT**

**The Paradip Port Trust (PPT)**

- - - -

**Applicant**

**O R D E R**

(Passed on this 29<sup>th</sup> day of November 2010)

The Paradip Port Trust (PPT) had entered into an agreement in August 1985 with the Paradeep Phosphates Limited (PPL) for construction and operation of a captive berth when the PPL was a Public Sector Undertaking. PPT by letter dated 28 September 2005 filed a proposal with this Authority (i) for amendment to the said agreement and (ii) for revision of cargo and berth hire charges and introduction of minimum guarantees etc., stating that PPL ceased to be a PSU in February 2000. It had also brought out that the dispute between PPT and PPL sequel to the revision of cargo related charges in October 1993 was referred to arbitration and an award was pronounced in December 2002. The arbitrator quashed the enhancement of rates from October 1993 and ruled that rates revised by TAMP shall be effective from 1 April 1999 and thereafter. A revision petition was subsequently filed by PPT before the Secretary, Ministry of Law and Justice, GOI.

2. In the general rate revision proposal submitted in September 2005, PPT had proposed charges to be levied for Fertilizer Berths I and II respectively allotted to PPL and IFFCO. PPT was informed that subsequent to the Notification of the revised tariff guidelines dated 31 March 2005, except in the case of authorisation under Section 42 of the MPT Act, 1963, this Authority would not take up individual cases of bilateral agreements which the ports might enter with other organizations for allotment of berths. The Port was also informed that this Authority would henceforth accord approval only to cost based rates for use of different facilities in the Scale of Rates and the ports are at liberty to operate within the ceiling so fixed.

3. A joint hearing on the port's proposal dated 28 September 2005 was held on 4 June 2007 when it came to light that litigation was pending before the Hon'ble Orissa High Court and the Court had passed an interim Order staying the operation of the Arbitration Award. The Port subsequently informed that it would submit a separate proposal after necessary consultation with PPL. It was thereupon decided that till such time an agreed proposal is filed and disposed of by this Authority, the existing arrangement, subject to the Orders by the competent authorities in the litigation between the parties, would apply.

4.1. By its letter dated 26 May 2009 PPT again requested this Authority to revise and equate the rates of the captive berth of PPL to that of IFFCO with a minimum guaranteed throughput clause with effect from 01.03.2002.

4.2. By letter dated 4 June 2009, PPT was addressed as under:

- (i). The Agreement entered between PPT and PPL in August 1985 contains a clause that consolidated cargo charges can be revised only by mutual consent. Further, there is no provision in the Agreement for stipulating any minimum guaranteed throughput.
- (ii). Since PPL is not agreeing for any revision of charges, no proposal with mutual consent could be submitted.
- (iii). For fixing the tariff this Authority is guided by the port-wise cost plus return on capital employed approach. PPT while requesting this Authority to revise and equate the rates of Fertilizer Berth No.1 with that of the Fertilizer Berth No. II

has not furnished any cost justifications for the proposed charges to be levied for both the fertilizer berths.

4.3. By letter dated 5 June 2009 PPT informed this Authority that it had withdrawn the easementary rights granted to PPL by invoking clause 21 of the agreement dated 3 August 1985. PPT requested this Authority to delete from PPT SOR the separate rates prescribed for PPL and to provide for recovery from PPL all the charges -- Cargo handling charges, vessel related charges and right of way charges for the conveyor gallery, pipeline etc -- as applicable to general public.

4.4. PPT was informed vide letter dated 27 July 2009 to detail the revenue implication of levying vessel related charges, cargo related charges and license fees on PPL at par with any other port users availing the port facilities. PPL was further requested to state whether the withdrawal of the easementary rights by invoking the PPT – PPL Agreement dated 3 August 1985 has the approval of the Government of India.

4.5. Aggrieved by the action of PPT to withdraw the easement rights, PPL approached the Hon'ble High Court of Orissa which granted interim stay in the matter. By letter dated 17 July 2009 PPL, forwarded to this Authority a copy of the Order dated 8 July 2009 of the Hon'ble High Court of Orissa. It also stated that PPT's proposal dated 26 May 2009 does not contain the cost based rates and the port has not consulted PPL before submitting the proposal.

4.6. As per the Order dated 8 July 2009 of the Hon'ble High Court of Orissa, this Authority has to approve the rates for captive berth of PPL at Paradip Port preferably within a period of six months from the date of production of a certified copy of the said Order.

5.1. Under letter dated 13 July 2009 PPT submitted a copy of the High Court Order dated 8 July 2009 and requested to revise and equate the rate of the captive berth of PPL to that of IFFCO with a minimum guaranteed throughput clause with effect from 1 March 2002.

5.2. PPT was informed by our letter dated 27 July 2009 that the rates levied by PPT for the captive berth of IFFCO was not cost based but a rate decided by mutual consent of PPT and IFFCO. It was, therefore, advised to file a well analyzed self contained proposal with all the requisite details including cost justification to enable this Authority to fix an appropriate rate for the captive berth of PPL.

5.3 PPT submitted its proposal vide letter dated 19 August 2009 without all the requisite documents. Several supporting documents were received subsequently vide PPT's letter dated 25 August 2009. The salient features of the proposal are as under:-

- (i). Tariff for the Fertilizer Berth No. I (FB-1) is proposed to be revised from 1 April 1999.
- (ii). Tariff for the proposed revision is on cost plus return on capital employed basis.
- (iii). Fixed berth hire charges for FB-1 are proposed at Rs. 39. 20 lac per month at par with captive fertilizer berth No. II used by Indian Farmers Fertilizer Co-operative (IFFCO).
- (iv). For calculation of costs, direct expenses have not been considered. All indirect expenses have been apportioned to the FB-1 on the basis of income generated from the principal activities of the port.
- (v). For calculation of costs, cargo handled at FB-1 is taken at 1.5 Million tons per annum or actual cargo handled whichever is less.
- (vi). For calculation of wharfage of FB-1, the capital employed for common purpose outside harbour area has been considered.

- (vii). Since PPL is not using the railway facilities and the conveyors to transfer cargo mechanically to their plant, the opportunity losses due to non use of these facilities have been considered in the cost sheet.
- (viii). Loss of revenue on account of estate management is also added to the cost sheet.
- (ix). The wharfage proposed for cargo handled by PPL at FB-I is as under:

Volume of Cargo	Wharfage rates for the period (In Rs.)			
	1.4.1999 to 31.03.2002	1.4.2002 to 31.03.2005	1.4.2005 to 31.3.2008	1.4.2008 onwards
Upto 5 lakhs	65.00	71.50	78.61	86.52
5-10 lakhs	55.00	60.50	48.40	53.24
10-15 lakhs	40.00	44.00	48.40	53.24
Above 15 lakhs	25.00	27.50	30.25	33.28

- (x). The above rates are at par with the rates charged in the IFFCO FB-II
- (xi). No annual minimum guaranteed throughput for cargo handled at FB-1 is proposed by PPT. However, the Port has requested TAMP to consider fixing an annual minimum guaranteed throughput taking into consideration the capacity of the berth and requirement of fertilizer raw materials by PPL.
- (xii). Whenever FB-1 is vacant or unutilized, PPT should be permitted to use the berth for handling cargo of other vessels, in which event the cargo charges at the usual scale of rates will accrue to the port and berth hire charges at the usual scale of rates will go to PPL.

5.4. The proposal dated 19 August 2009 from PPT was registered as a tariff case on 4 September 2009. A copy each of the PPT's letters dated 19 August 2009 and 25 August 2009 alongwith their enclosures were forwarded to PPL for remarks.

6. PPL by letter dated 16 October 2009 has offered its comments on PPT's proposal. The said comments were forwarded to PPT for remarks on 19 October 2009. The comments of PPL and the remarks offered thereon by PPT vide letter dated 11 November 2009 are as under:-

Sr. No.	Comments of PPL	Reply given by PPT
1	PPL disputes the claim of PPT that the Tariff for the proposed revision is on cost plus return on capital employed basis as per revised TAMP Guidelines.	The proposal for tariff revision is based on the cost plus return on capital employed, which is as per TAMP guidelines.
2	PPT needs to explain details of various indirect costs given in annexures and also provide proper proof of the numbers used. The method of apportioning indirect costs needs to be logical & scientific. The plea of uniform distribution of cost is not acceptable. (e.g. PPT's efforts in supervising other 13 berths is far more than PPL berth in view of the fact that PPL itself is doing all operations on its berth.	The details of indirect costs given in annexures are purely based on figures taken from audited annual accounts.  The indirect cost is for management of the entire port and it has nothing to do with whether the operation of the berth is managed by port or user of captive berth. Since PPT had 13 berths, the indirect cost is apportioned equally.
3	PPT has also failed to consider the initial cost funded directly by Govt. of India on behalf of PPL and the	The initial cost funded by Govt. of India on behalf of PPL has nothing to do with fixation of tariff as initially subsidized rate was

	recoveries already made from PPL's captive berth.	offered for the same.
4	PPT has considered several costs in its computations e.g. 'the maintenance of township, estate management, and non-utilization of Railway' which are not relevant for PPL berth and cannot be apportioned to PPL.	The cost relating to maintenance of township, estate management, non-utilisation of railway, etc. considered in relation to the operation of the entire port and same is apportioned equally for all berths
5	PPT has considered the rate of return on capital employed at 18% and 16% which looks too high. Generally a rate of 12% is quite reasonable and has been followed in many cases by the Govt. of India when cost based approach has been adopted.	The rate of return of 18% upto 2007 and 16% there after is as per the TAMP guidelines and same should not be disputed.
6	<p>PPT's desire to bring parity in the rates equating PPL with IFFCO does not seem to be based on a sound footing. The fact remains that, the agreement dated 3.8.1985 was executed between two identifiable entities i.e. PPT and PPL on mutually agreed terms within the framework of law and has already been acted upon for about last 25 years. The comparison with another Company like IFFCO with huge time lag between the dates of execution of the agreements, the costs involved and above all the conditions in each agreement are important factors for consideration. Comparison with IFFCO therefore is totally incorrect and unacceptable.</p> <p>In absence of detailed and authentic data the written down value of capital employed as on 31.3.1999 needs to be verified particularly keeping in mind direct funding for PPL project by Government of India.</p> <p>In calculation of fixed berth hire charges, cost of dredging operation is included. Dredging cost, we believe as a part of navigation cost is collected from the ships separately.</p> <p>PPL further submits that, as all fixed costs are more than adequately recovered by PPT as (PPL has already paid Rs. 8566.00 Lakhs towards fixed berth hire charges as per the agreement), there is no basis for levy of berth hire charge on PPL any longer.</p> <p>The reason and basis for putting the cut off date i.e. 02.08.2015 is not</p>	<p>The indirect cost is for management of the entire port and it has nothing to do with whether the operation of the berth is managed by port or user of captive berth.</p> <p>Even though PPL &amp; IFFCO were set up at different times, both the units are similar in nature and PPT has tried to bring parity between applicable rates for both the fertilizer manufacturers.</p> <p>The capital employed as on 31.03.1999 is based on the figures of audited annual accounts.</p> <p>In the calculation of fixed berth hire charges, cost of dredging operation is included and we would like to clarify that navigational cost recovered separately from ships include all cost involved in marine operations and doesn't include dredging cost.</p> <p>With regard to PPL's submission for not levying any berth hire charges as they have already paid Rs. 85.66 crore towards berth hire charges to PPT is illogical. Had the berth not been captive for PPL, PPT would have continued to levy berth hire to other users.</p>

	understood as no explanation is forthcoming from PPT.	
7	PPT talks of not considering 'any direct costs'. But as explained in the foregoing, since PPL takes care of all direct costs related to jetty this is how it should be in the proposal, 'Principal activities' of the Port has not been defined. Therefore the claim on the basis of apportionment generated from Principal activities can only be ascertained while taking up the entire activities of the Port. For instance, PPT is also the biggest estate owner in the area and therefore a very significant portion of its indirect costs need to be apportioned to that activity.	<p>For calculation of cost, PPT has taken all indirect expenses apportioned to FB-I on the basis of income generated from the principal activities of the port.</p> <p>The principal activities of the port are:</p> <p>Cargo handling Vessel related Railway operation Estate management</p> <p>The above activities encompass all activities of port. Hence, all indirect cost has been apportioned on the basis of income generated from above activities for the years under reference.</p>
8	The handling of cargo is taken as 1.5 million ton per annum for calculation of cost. The document annexed to the proposal does not contain any basis to come to such a conclusion. The handling of cargo is dependent on the efficiencies of the berth, productivity and plant operation and uninterrupted supply. We propose that this figure be fixed at 2 million ton.	<p>Paradip Port has considered the minimum throughput of 1.5 MTPA for Fertilizer Berth No.1 on the following factors:</p> <p>(a) Plant capacity of PPL 1.0 MTPA</p> <p>(b) Materials handling requirement 2.0 MTPA</p> <p>Minimum throughput: average of (a) and (b) above: 1.5 MTPA.</p>
9	For calculation of wharfage the capital employed for common purpose outside harbour areas has been considered. This is disputed by PPL. There is no "Quid Pro Quo" in the case of estate management and maintenance of township. Details of costs incurred on account of PPL captive berth has also not been supplied with the proposal.	<p>"Capital employed" for Paradip Port includes:</p> <p>Capital employed for berths</p> <p>Capital employed for other assets outside the berth</p> <p>Dispute by PPL notwithstanding as pointed out by PPL in this para – wharfage/cargo related charges need to take into account capital employed for all activities</p>
10	The proposal has considered as cost the alleged opportunity loss for non use of railway facilities of Port. The agreement between PPL & PPT dated 3. 8. 1985 at Clause 4 makes it abundantly clear that PPL is completely responsible to manage the facilities built by them for unloading of ships and transportation of cargo in any manner, mechanically or manually, and the	<p>By virtue of the agreement dated 03.08.1985, Paradip Port has implicitly permitted PPL to transfer cargo through conveyor/pipe lines without utilizing all railway facilities. This has caused non-utilization of railway facilities created by the Port. Hence, the opportunity cost has been taken into account.</p>

	Paradip Port Trust shall not be responsible in any manner whatsoever. PPL thus is not required to use PPT Railway facility. In view of the above, this claim is totally unacceptable.	
11	The loss of revenue on account of estate management is added to the costs. PPL disputes this item of proposal. PPL has nothing to do with loss or gain on account of estate management activities of PPT.	Since Estate activity is an integral part of the port operations, hence same has been apportioned for PPL berth as well.
12	PPL disputes the item of claim in respect of revision in wharfage charges for the cargo handled in PPL's captive berth.  The wharfage charges which are being paid now are already in excess of the actual costs and no further upward revision is justified. On the contrary, PPL is entitled to claim reduction on this score. The claim for parity in rates with IFFCO is also not tenable as IFFCO is governed under the terms of their agreement and PPL is governed under its own agreement. Repeated ref. to IFFCO is mischievous and is almost a back door attempt to bring changes in our agreement.	No comments offered by PPT
13	There is no provision in our agreement for a minimum guaranteed throughput and hence we opposed to this suggestion. Also looking at the performance figure, it can be concluded that this would not an issue. PPT's request for use of our berth needs further elaboration & discussion after resolution of all other issues.  In addition to above PPL would like to highlight. The practice of engagement of idle gangs and payment of idle wages be discontinued by PPT.	With regard to PPL's doubt regarding the units of the annexures in our letter dated 25 <sup>th</sup> August 2009, we would like to clarify that the figures of Annexure -2 & Annexure – 6 are Rs. in crore, the figures of annexure -1, 3, 4 , 5 & 7 are Rs. in lakhs and figures of Annexure – 8 are in Rupees.
14	<b>In summary PPL's views are:</b>  1) As has been admitted by PPT all that needs to be paid to is a fair and logical share of their indirect costs / or overheads plus a reasonable return on capital employed.  2) PPT therefore first needs to explain their various indirect costs and submit proper records to justify the figures (e.g. audited balance sheets, cost auditor's report). The chartered Accountant certificate	No separate comments offered by PPT.

	<p>are not valid since terms of scope and engagement of Chartered Accountants are not known and not supplied. PPL had no chance to interact with the Chartered Accountant.</p> <p>The cost sheet certified by the Chartered Accountant does not even represent proper units. For example the total cost incurred in 2007-08 is certified as Rs. 10,016.33 Crores which appears to be prima facie unrealistic.</p>	
	<p>3) The costs already apportioned and recovered from activities other than PPL berth operation of the Port need to be deducted.</p>	
	<p>4) Costs that are irrelevant to PPL berth (e.g. Railway facilities, estate activity loss) need to be totally removed.</p>	
	<p>5) A fair rule for apportioning based on efforts required by PPT management in a particular activity needs to be established and applied.</p>	

7. By our letter dated 27 October 2009, PPT was requested to furnish certain clarifications. By letter dated 20 November 2009, PPT furnished its comments. The details sought and got from the Port are juxtaposed below.

Sr. No.	Queries raised by TAMP	Reply given by PPT
1 (a)	In letter dated 26 May 2009, PPT has requested this Authority to approve the rates for the captive berth of PPL (FB-1) (i) from 1 March 2002 to 31 March 2002 (ii) from 1 April 2002 to 31 March 2005 (iii) from 1 April 2005 to 31 March 2008 and (iv) from 1 April 2008 onwards.	Out of the three letters, the letter dated 19 <sup>th</sup> August 2009 may please be treated as final. We request the Authority to revise the rates of FB-I for block periods of 3 years starting from 1 <sup>st</sup> April 1999. The revision sought, once in every three years, is as per TAMP guidelines. As per the Arbitration award dated 27.12.2002, the Joint Learned Arbitrator has also recommended revision of rates of PPL from 1 <sup>st</sup> April 1999.
1 (b)	PPT in its letter dated 13 July 2009 has requested this Authority to revise and equate the rate of the FB-I to that of IFFCO (FB-II) with effect from 1 March 2002. The Port has stated therein that it has no objection if old rates as in vogue from October 1993 onwards are allowed to continue till 28 February 2002	Please see above
1 (c)	By letter dated 19 August 2009,	Please see above

	PPT has proposed to revise the rates of FB – I for the periods (i) from 1 April 1999 to 31 March 2002 (ii) from 1 April 2002 to 31 March 2005 (iii) from 1 April 2005 to 31 March 2008 and (iv) from 1 April 2008 onwards																											
1 (d)	As different periods have been indicated in three different letters, PPT is requested to confirm the date from which it requires this Authority to revise the rates of the captive berth (FB - I) and to explain why it is necessary to revise the rates under different period slots.	Please see above																										
2(a)	The additional yearly income envisaged under PPT's proposal dated 19 August 2009 may please be quantified with working sheets	<p>The additional yearly income envisaged in our proposal dated 19<sup>th</sup> August 2009 is quantified as under:</p> <table border="1"> <thead> <tr> <th colspan="2" style="text-align: right;"><b>Rs. in.lacs</b></th> </tr> <tr> <th>Year</th> <th>Additional Income</th> </tr> </thead> <tbody> <tr> <td>1999-2000</td> <td>46.09</td> </tr> <tr> <td>2000-2001</td> <td>13.70</td> </tr> <tr> <td>2001-2002</td> <td>00.00</td> </tr> <tr> <td>2002-2003</td> <td>130.06</td> </tr> <tr> <td>2003-2004</td> <td>161.96</td> </tr> <tr> <td>2004-2005</td> <td>182.41</td> </tr> <tr> <td>2005-2006</td> <td>299.95</td> </tr> <tr> <td>2006-2007</td> <td>307.25</td> </tr> <tr> <td>2007-2008</td> <td>305.53</td> </tr> <tr> <td>2008-2009</td> <td>395.71</td> </tr> <tr> <td>Total</td> <td>1842.66</td> </tr> </tbody> </table>	<b>Rs. in.lacs</b>		Year	Additional Income	1999-2000	46.09	2000-2001	13.70	2001-2002	00.00	2002-2003	130.06	2003-2004	161.96	2004-2005	182.41	2005-2006	299.95	2006-2007	307.25	2007-2008	305.53	2008-2009	395.71	Total	1842.66
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Total	1842.66																											
2 (b)	To maintain a revenue neutral position with reference to the financial model considered in the last general revision of tariffs, PPT is requested to examine whether any adjustments would have to be made on the tariff for other commodities / services in its SOR due to the additional income, if any, that would be generated by levying the proposed rates on PPL.	<p>If the proposal for revision of Tariff for PPL berth is approved it will be necessary to make adjustments on the tariff for other commodities to maintain revenue neutral position as per TAMP guidelines.</p> <p>This, however, can only be ascertained after rates of FB-1 berth is revised by TAMP. The impact of increase in revenue on account after revision of tariff of FB-1 berth can be neutralized prospectively w.e.f. 01.04.2010 along with General Revision of tariff for PPT. The Port Trust would submit a proposal accordingly in the next revision of SOR due from 01.04.2010</p>																										
3 (a)	PPL in its letter dated 4 July 2009 addressed to this Authority (A copy of which was forwarded to PPT for remarks vide this office letter dated 13 July 2009) has stated that the application of PPT before the Appellate Authority challenging the Award dated 27 December 2002 of the Arbitrator is pending for adjudication. Please elucidate how the matter stands.	<p>The tariff dispute between PPL and PPT for the period from October 1993 to 31<sup>st</sup> March 1999 was adjudicated by a joint arbitrator Late Shri N.C. Jain, and then Joint Secretary (Law), Ministry of Justice &amp; Company Affairs and the award was pronounced on 27.12.2002.</p> <p>Aggrieved by the award of Late Shri Jain, PPT had preferred an appeal before the Appellate Authority, Additional Secretary, Ministry of Law &amp; Justice, New Delhi who has recently</p>																										

		passed orders upholding the award of the joint arbitrator, Late Shri Jain. PPT is now planning to file a Writ petition in the Hon'ble High Court of Orissa against the said order of the Appellate authority.																					
3 (b)	PPL in its letter dated 4 July 2009 has also stated that the Orders of the Hon'ble High Court of Orissa in the matter of execution of the Award has been challenged by way of Special Leave Petition in the Supreme Court of India and it is pending. Kindly elucidate and furnish the present status.	The special leave petition no. 14001/2009 was filed by PPL before the Supreme Court of India against the orders dated 1.8.2005 of Hon'ble High Court of Orissa in Writ petition No 8673/2004 and again vide order dated 17.3.2009 in WA No 109/2005 upholding the orders of the District Judge, Orissa in the execution case no. 3/2003.																					
4	All the eight Annexures received under PPT's letter dated 25 August 2009 bear the signature of a Chartered Accountant. PPT might have submitted to the C.A. various documentary evidences in the form of Annual Accounts, Audit Reports etc to enable him to certify the statements. To enable this Authority to verify the details furnished in the eight Annexures, requisite supporting documents may be submitted.	The requisite supporting documents relating to audited annual accounts of the port are furnished.																					
5 (a)	Kindly confirm that the year wise traffic handled at FB- 1 has been separately maintained and it has been accepted by PPL.	It is confirmed that the year wise traffic handled at FB-1 has been separately maintained and the same has not been disputed by PPL as they have paid the relevant charges to the port as per TAMP approved SOR.																					
5 (b)	The traffic handled at FB-1 during 2001-02 was only 2.96 lakh tonnes, whereas it ranged between 11.52 lakh tonnes and 22.14 lakh tonnes in the other three years. The reasons for the drastic drop in the traffic at the FB-1 in the year 2001-02 may please be elucidated.	During 2001-02, the PPL plant was shutdown for most of the time for internal problems; hence the quantity handled at FB-1 berth during 2001-02 was only 2.96 lakhs tons.																					
5 (c)	PPT is requested to indicate the year wise assessed capacity and capacity utilization of the Port as a whole and that of FB-1 since 1998-99 to 2008-09. The capacity figures may please be supported by detailed computation	<p>The year wise assessed capacity of the port in general and FB-1 in particular along with their capacity utilization from 1998-99 to 2008-09 is furnished below:-</p> <p style="text-align: right;"><b>Qty in M.tonnes</b></p> <table border="1"> <thead> <tr> <th>Year</th> <th>Capacity</th> <th>Capacity utilization</th> </tr> </thead> <tbody> <tr> <td>1997-98</td> <td>10.90</td> <td>13.30</td> </tr> <tr> <td>1998-99</td> <td>11.34</td> <td>13.11</td> </tr> <tr> <td>1999-00</td> <td>12.85</td> <td>13.64</td> </tr> <tr> <td>2000-01</td> <td>26.20</td> <td>19.90</td> </tr> <tr> <td>2001-02</td> <td>37.45</td> <td>21.13</td> </tr> <tr> <td>2002-03</td> <td>38.10</td> <td>23.90</td> </tr> </tbody> </table>	Year	Capacity	Capacity utilization	1997-98	10.90	13.30	1998-99	11.34	13.11	1999-00	12.85	13.64	2000-01	26.20	19.90	2001-02	37.45	21.13	2002-03	38.10	23.90
Year	Capacity	Capacity utilization																					
1997-98	10.90	13.30																					
1998-99	11.34	13.11																					
1999-00	12.85	13.64																					
2000-01	26.20	19.90																					
2001-02	37.45	21.13																					
2002-03	38.10	23.90																					

		2004-05	39.00	30.10
		2005-06	51.40	33.11
		2006-07	56.00	38.52
		2007-08	56.00	42.44
		2008-09	71.00	46.41
5 (d)	The year wise break-up of the management and general administration expenses may be furnished	The year wise break-up of the management and general administration expenses is furnished.		
5 (e)	The year wise break-up of the finance and miscellaneous expenditure may be furnished.	The year wise break-up of the finance and miscellaneous expenses is furnished.		
5 (f)	Kindly elucidate why loss from estate activity has to be considered as an item of expenditure while fixing tariff for cargo handling of PPL at FB-1. If the agreement dated 3 August 1985 with PPL stipulates anything in this respect, the details thereof may please be submitted	Since Estate activity is an integral part of the port operations, the expenditure in this regard has been apportioned for PPL berth as well.		
5 (g)	Also explain why the expenses on unutilized railway facilities have to be shared by PPL. If the agreement dated 3 August 1985 stipulates anything in this respect, the details thereof may please be submitted.	PPL transfers cargo handled at the FB-1 berth through conveyor/pipe lines without utilizing the available railway facilities at the port. All expenses of the port have to be shared proportionately by all port users including PPL. Hence, the opportunity cost has been taken into account.		
5 (h)	The management and general administration expenditure excluding depreciation, finance and miscellaneous expenditure excluding interest and loss from estate activity have been evenly distributed amongst the number of berths to arrive at the cost per berth. If the entire operation at the captive berth, FB-I, is carried out by PPL at its own costs, the propriety in arriving at the cost of berth in this manner may please be justified.	The indirect costs/expenses, like management and general administration expenditure excluding depreciation, finance and miscellaneous expenditure excluding interest and loss from estate activity are for management of the entire port and for all users of berths including FB-I berth and hence the same is apportioned to all berths including FB-I berth.		
5 (i)	The traffic handled at FB-1 during 1998- 99, 2001-02, 2004-05 and 2007-08 stood at 11.52 lakh tonnes, 2.96 lakh tonnes, 15.96 lakh tonnes and 22.14 lakh tonnes respectively. While arriving at the rate per tonne, the quantum of traffic taken into consideration is 11.52 lakh tonnes, 2.96 lakh tonnes, 15.00 lakh tonnes and 15.00 lakh tonnes respectively. Kindly clarify why, for deriving the rate, the quantum of tariff has not been maintained at actuals.	The IFFCO rates are furnished since the operation of PPL and IFFCO berth are one and the same. To arrive at the rate of FB-I berth, the port has taken actual traffic or 15lakh tons, whichever is less since in all the years under reference from 1998-99 till 2006-07, the traffic has been at the level of 15.0 lakh tons or less except for 2007-08 where it stood at 22.14 lakh tons. The actual traffic of 2007-08 can not be taken as a determinant of rates for next three years since only in this year PPL has done extremely well.		
5 (j)	The rates derived for PPL have been Rs. 63.88 per tonne, Rs. 315.09 per tonne, Rs. 81.24 per tonne and Rs. 73.91 per tonne for the four different time slots; whereas the rates proposed to match them with that of IFFCO are Rs. 65 per	To arrive at the rate of FB-I berth, the port has taken actual traffic or 15lakh tons, whichever is less since in all the years under reference from 1998-99 till 2006-07, the traffic has been at the level of 15.0 lakh tons or less except for 2007-08 where it stood at 22.14 lakh tons. The rate of IFFCO is shown for comparison		

	tonne, Rs. 71.50 per tonne, Rs. 78.65 per tonne and Rs. 86.52 per tonne. It is not clear why at all the cost statements have to be prepared if the sole intention is to fix a rate for FB-1 on par with that of the IFFCO berth. Kindly note that the rates proposed in this manner do not jell well with the statement of PPT that 'the tariff for the proposed revision is on cost plus return and on capital employed basis as per the revised TAMP guidelines' vide para 2 of its letter dated 19 August 2009.	and same is proposed for fixation of rate for PPL berth since the nature of operation of both the berths is one and same.
6	The year wise components considered under estate income and estate expenditure may please be furnished with documentary evidence	The year wise components considered under estate income and estate expenditure is furnished.
7 (a)	The year wise break-up of expenditure on management and general administration may please be furnished with documentary evidence	The year wise break-up is furnished.
7 (b)	The year wise break-up of expenditure on finance and miscellaneous expenditure may please be furnished with documentary evidence.	The year wise break-up is furnished.
7 (c)	Kindly clarify how the management and general administration expenditure, retirement benefit and items relating to previous years (IRPY) have been apportioned under cargo handling and storage, port and dock charges and railway earnings	These indirect costs have been apportioned on the basis of income generated from four principal activities of the port, i.e. Cargo handling, port& Dock Charges, railway earnings and Estate Rentals.
8 (a)	The year wise break-up of direct expenses may please be furnished with documentary evidence.	The year wise break-up of direct expenditure relating to railway activity is furnished.
8 (b)	The year wise break-up of indirect expenses may please be furnished with documentary evidence.	The year wise break-up of indirect expenditure relating to railway activity is apportioned on the basis of income generated from four principal activities and the basis of apportionment, details of total indirect cost and documentary evidence are furnished.
8 (c)	Kindly submit documentary evidence substantiating that the Railway Traffic during 1998 – 99, 2001 – 02, 2004 – 05 and 2007 – 08 stood at 15.00 Million Tonnes, 15.00 Million Tonnes, 15.00 Million Tonnes and 20.00 Million Tonnes respectively.	The documentary evidence of railway traffic handled during 1998-99, 2001-02, 2004-05 and 2007-08 is furnished.
8 (d)	Kindly elucidate the basis on which the PPL Traffic has been uniformly estimated at 1.5 Million Tonnes during 1998 – 99, 2001 – 02, 2004 – 05 and 2007 – 08.	The throughput of 1.5 MTPA for FB-I is considering on the following factors: (a) Plant capacity of PPL 1.0 MTPA

		(b) Materials handling requirement 2.0 MTPA  Minimum throughput: average of (a) and (b) above: 1.5 MTPA
8 (e)	Kindly justify the basis on which the cost of unutilized railway facility by PPL has been arrived at.	The cost of unutilized railway facility is arrived by taking into account the total expenditure on railway activity of port and percentage of PPL throughput with that of total railway traffic of port. For better understanding same is explained as follows:  $\text{Cost of un-utilised railway facility} = \frac{\text{Total expenditure on railway activity of port}}{\text{Total Railway traffic}} \times \text{PPL traffic}$
9 (a)	It is presumed that the asset wise details included are the "net block" i.e. gross block minus depreciation. Kindly confirm.	It is confirmed that the Net block of fixed assets, i.e. Gross block minus depreciation is shown in the statement.
9 (b)	Substantial amounts have been shown under work-in-progress. As per clause 2.9.3 of the revised tariff guidelines, work-in-progress will not form a part of capital employed.	The work-in-progress has been excluded from the capital employed and revised cost statement is enclosed
9 (c)	It is presumed that the asset wise details furnished are for the port as a whole. PPT has arrived at the capital employed per berth by dividing the aggregate capital employed by the number of berths at the Port. Since the exercise is to fix the tariff for the cargo handling by PPL at FB-I, PPT is requested to justify the manner in which the capital employed for FB-I has been arrived at.	Since it is not possible to identify capital employed position berth-wise, the only alternative available is to divide total capital employed with number of berths.
9 (d)	To arrive at the rate of return of FB-I, the capital employed has been considered at Rs. 1223.89 lakhs, Rs. 1309.62 lakhs, Rs. 1373.43 lakhs and Rs. 1385.57 lakhs respectively for the years 1998 – 99, 2001 – 02, 2004 – 05 and 2007 – 08. As per para 1 of the Agenda Item No. 15 (02)/2009 – 10, the estimated cost of setting up of the captive berth was Rs. 15.50 crores. The capital cost of the FB-1 may please be substantiated on the basis of the documents referred to herein.	The cash voucher in support of loan received from Govt. of India amounting Rs. 15.60 crore towards PPL berth indicating the ministry letter is enclosed. Other documents including the letter from the Ministry have been lost in the super cyclone of October, 1999.
9 (e)	The basis of applying the rate of return at 18% upto 2004 – 05 and at 16% for the year 2007 – 08 may please be clarified.	The rate of return of 18% upto 2004-05 and 16% there after has been taken into account as per the TAMP guidelines.
10 (a)	Kindly confirm that the details furnished in these Annexures are	The details furnished in the annexures are exclusively for FB-I.

	exclusively pertaining to FB-1.	
10 (b)	Along with letter dated 19 August 2009, PPT has forwarded two Annexures to this Authority. Annexure 1 hereto and Annexure 7 to letter dated 25 August 2009 pertain to the berth hire charges of FB-I. The expenditure on maintenance dredging for 1998 – 99 shown in the former Annexure is Rs. 92.30 lakhs whereas the said expenditure is shown as Rs. 133.58 lakhs in the later Annexure. Kindly confirm with documentary evidence the correct expenditure incurred on maintenance dredging during 1998 – 99.	It is to confirm that the correct expenditure incurred on maintenance dredging for 98-99 was Rs. 133.58 lakhs. The documentary evidence in the form of relevant extracts of audited accounts is attached.
10 (c)	As per Annexure 8, the capital cost of the berth as on 31 March 1986 stood at Rs. 2296.37 lakhs. As per Agenda Item No. 15 (02)/2009- 10, the estimated costs of the berth was Rs. 1550 lakhs. Kindly confirm with documentary evidence the capital cost of the fertilizer berth No. 1 at its date of commissioning.	The actual capital cost of construction of FB-I is Rs. 2296.37 lakhs. Relevant schedule of audited accounts evidencing the same is attached.
10 (d)	Capital cost of the berth as on 31 March 1986 has been arrived at after adding Rs. 107.27 lakhs towards capital dredging. It appears that the capital dredging has been apportioned on the basis of total number of berths. The year in which the capital dredging was carried out and documentary evidence substantiating the apportionment of capital dredging cost to FB-I may please be furnished	The WDV of capital dredging at the end of the financial year in which FB-I was commissioned, i.e. FY 1985-86 has been taken into account and is apportioned by the total number of berths. The relevant extracts of audited accounts relating to WDV of capital dredging cost are enclosed.
10 (e)	The apportioned capital dredging cost of Rs. 107.27 lakhs has been arrived at by dividing Rs. 85817522 by eight. The sanctity of these figures may please be explained.	The WDV of capital dredging cost as on 31.03.1986, the year in which FB-I was commissioned is Rs. 8,58,17,522. As on 31.03.1986, the port had 8 berths, and the expenditure is apportioned by 8 to arrive the cost of dredging for FB-I.
10 (f)	To calculate the depreciation the life of the berth has been taken as seventy five years. Kindly furnish the basis thereto.	For calculation of depreciation, the life of berth has been taken as 75 years, which is as per the guideline of ministry and same is furnished.
11 (a)	PPT in its letter dated 19 August 2009 has stated that though it has not proposed any minimum guaranteed throughput, this Authority may consider to fix it keeping in view the capacity of the berth and requirement of fertilizer raw materials by PPL. However, PPT has not furnished the capacity of the berth and the requirement of fertilizer raw materials by PPL. The requisite details may be furnished	PPT is of the view that TAMP may request PPL to submit documents in support of their plant capacity.  FB-I berth with mechanical unloading systems should have at least 1.5 million ton cargo handling capacity and accordingly the annual minimum guaranteed cargo may kindly be fixed.

	for consideration of the request of the port.	
11 (b)	After considering the traffic per year so far handled by PPL, PPT is requested to reconsider whether it is necessary to fix any minimum guaranteed throughput.	Yes, it is necessary to fix the minimum guaranteed throughput for FB-I berth. If not, it will be unfair since IFFCO operating from an adjacent berth with similar operations has annual minimum guaranteed throughput of 2.50 million tons.
11 (c)	PPT has stated that as and when the FB-1 is vacant/unutilized, the Port trust should be permitted to use the berth for handling cargo/ vessel berthing at the usual scale of rates. Kindly state whether in the past such utilization of the berth has taken place and if so how the cargo handling charges and berth hire charges were shared between PPL and PPT. Also please state whether the agreement dated 3 August 1985 provides for such an arrangement.	Agreement is silent on use of FB-I berth by port as and when it remains vacant. On a few occasions the FB-I berth was utilized by port in the past, where all cargo related charges were recovered by port and berth hire charges were paid to PPL. This model may be considered for approval.

8. A joint hearing in this case was held on 9 December 2009. The PPT made a power point presentation of its proposal. The Paradip Port Trust and the Paradeep Phosphates Limited made their submissions. The gist of the joint hearing held is as under:

**PPT**

- (i). We have considered the figures for the first year of each of the 3 year tariff block.
- (ii). Port has created different infrastructure and many of them are common to all the facilities. Common cost should be borne by all the activities carried out inside the port.
- (iii). PPL has asked for lot of information under RTI Act and we have furnished them. If anything more is required by them, we will be glad to share with them.
- (iv). There are differences between PPT and PPL on many areas. The reference to TAMP is only with reference to tariff and that too, for the period after 1 April 1999.
- (v). The original contract do not give break up of the rates specified therein nor is the contract specifies any particular methodology to be adopted for determining tariff. We do not know the different cost elements that had gone into the initial tariff.

**PPL**

- (i). We agree that TAMP should adjudicate upon the tariff payable from April 1999.
- (ii). We are unable to furnish the cost break up of initial tariff mentioned in the contract.
- (iii). The agreement between PPT and IFFCO is much later than ours. PPT is not justified in attempting to enforce a later contract on us.

- (iv). The proposal of PPT does not fit into the TAMP guidelines. Many cost items like deficit of estate activity, opportunity cost of railway operations, port hospital, township, etc. are not relevant to our operation.
- (v). Cost of dredging is expenditure relevant to vessel operations of conservancy and pilotage. Port levies port dues and pilotage on our vessels. Loading dredging cost again to determine fixed berth hire is a double cushion to the port.
- (vi). We don't have any specific suggestion on the allocation of different costs. But, we request TAMP to consider only the relevant costs as per the guidelines and equitable apportionment of such costs.

9.1. As agreed at the Joint hearing, PPL was requested to furnish the designed capacity of the cargo handling facilities of the Fertilizer Berth No. I and also to submit its Audited Accounts for the last three years. Under letter dated 5 January 2010, PPL furnished its audited annual accounts and balance sheets for the years 2006-07, 2007-08 and 2008-09. It also furnished the designed capacity of the cargo handling facilities of the FB-1 as under.

- (i). LIQUID CARGO (MT/HOUR)
  - Ammonia : 500
  - Phosphoric Acid : 750
  - Sulphuric Acid : 300

- (ii). SOLID CARGO (MT/HR)

Sr. No.	Cargo	Unloader No.1		Unloader No.2	
		Peak Load	Average Load	Peak Load	Average Load
1.	Rock Phosphate	1300	715	900	600
2.	Sulphur	1500	870	Nil	Nil
3.	Muriate of Potash	1000	485	—	—

(Unloader No. 2 is not used for unloading sulphur and Muriate of Potash.)

9.2. PPL vide letter dated 23 December 2009, *inter alia*, informed that it is expected to handle atleast 2 Million MT of cargo for next three years which would go further to about 4 to 5 Million MT with increased operation.

10.1. By letter dated 15 December 2009, PPT was requested to furnish the details pertaining to the capacity and capacity utilisation of port as a whole as well as FB-I separately, for all the years under consideration, based on the position recognised by the Government. Port was also requested to furnish the cost statements in the prescribed proforma for submission of tariff proposal (following the approved method of allocation of overheads with explanation for the basis adopted) for the principal activities for all the years under consideration:

10.2. PPT under letter dated 15 December 2009 furnished the following details:-

Particulars	1998-99	2001-02	2004-05	2007-08
WDV of Capital cost – Rs. In Lakhs	1987.02	1922.92	1794.73	1698.58
Total Annual Cost including ROCE – Rs. In Lakhs	710.29	924.69	1210.14	1102.93

Capacity – (Million Tons per annum) as per Ministry	0.84	1.05	1.30	3.47
Wharfage Rate – Rs. Per ton (based on capacity)	84.56	88.07	93.09	31.78
Wharfage rate – 1.5 million ton capacity per annum	47.35	61.64	80.67	73.53

10.3. Under letter dated 15 December 2009, PPT also informed this Authority that in view of the objections raised by PPL during the joint hearing in comparing the rates of FB-1 with that of FB-2 operated by IFFCO, the wharfage rates of Rs. 65.00, Rs.71.50, Rs.78.61 and Rs. 86.52 proposed in PPT's letter dated 19 August 2009 may be treated as withdrawn.

10.4. In the letter dated 15 December 2009, PPT reiterated its stand that the expenditure spent by Port for estate development needs to be borne by the users of all the fourteen berths. It also stressed that since the port has developed an elaborate railway infrastructure for use by all port users, all the users have to share the cost of development of the railway infrastructure whether they actually use it or not.

10.5. As the plant capacity of PPL is 7,20,000 MT, according to PPT, the material handling requirement of the plant will be twice its capacity and hence the port's projection of 1.5 Million Tonnes capacity for the FB-1 is justified.

10.6. PPT in letter dated 15 December 2009 also reiterated that the maximum realization of FB-1 can be achieved only by introducing annual minimum guaranteed throughput.

11.1. By letter dated 13 January 2010, PPT submitted a statement showing the capacity and capacity utilization of the port and FB-1 as under:-

**Figures in Million Tons**

Sl. No.	Year	Port as a whole			FB-1		
		Capacity	Quantity handled	% utilisation	Capacity	Quantity handled	% utilisation
1	1998-99	11.34	13.11	115.61	0.84	1.15	136.90
2	1999-00	12.85	13.64	106.15	0.85	1.14	134.12
3	2000-01	26.20	19.90	75.95	0.85	0.77	90.59
4	2001-02	37.45	21.13	56.42	1.05	0.30	28.57
5	2002-03	38.10	23.90	62.73	1.30	1.24	95.38
6	2003-04	39.00	25.31	64.90	1.30	1.41	108.46
7	2004-05	39.00	30.10	77.18	1.30	1.60	123.08
8	2005-06	51.40	33.11	64.42	3.00	2.11	70.33
9	2006-07	56.00	38.52	68.79	3.47	2.25	64.84
10	2007-08	56.00	42.44	75.79	3.47	2.21	63.69
11	2008-09	71.00	46.41	65.37	3.47	1.87	53.89
Total			307.57			16.05	

11.2. PPT also submitted cost statements for the years 1998-99 to 2008-09 for the principal activities.

12. With reference to the totality of the information collected during the processing of the case, the following points emerges for consideration:

- (i). By virtue of an agreement dated 3 August 1985 signed between the Paradip Port Trust (PPT) and Paradip Phosphate Limited (PPL), the PPL is allowed an exclusive use of a berth (FB-1) at PPT subject to the rates specified therein. Clause 1 of the said agreement specifies that the rates specified initially can be suitably enhanced at such intervals as it would be mutually agreed upon by the parties from time to time. Absence of mutual consent is one of the primary reasons for the controversy traversing through arbitrators and various litigations before reaching this Authority for fixing the rates in view of the directions issued by the Hon'ble High Court of Orissa.
- (ii). Generally, this Authority prescribes ceiling rates in the scale of rates of a port trust which are leviable for provision of different services and use of various facilities of that port. This Authority ordinarily does not take up any individual case arising from bilateral agreements for fixing separate rates, unless exceptional situation is made out. In the instance case, the Arbitrator in his award pronounced in December 2002 ruled that TAMP has to revise the rates with effect from 1 April 1999. The Hon'ble High Court of Orissa has also directed this Authority to adjudicate the matter relating to tariff fixation for the captive berth of PPL. It is noteworthy that both the parties, PPT and PPL agreed that tariff should be fixed by this Authority for the captive berth with effect from 1 April 1999.
- (iii). This Authority has fixed tariff for some of the exclusive berths at New Mangalore Port Trust (NMPT) which are being used by Kudermukh Iron Ore Company Limited (KIOCL) and Mangalore Refinery Petrochemicals Limited (MRPL). In both the cases the relevant agreements between the port and the concerned parties contain a broad methodology which should be followed for determining the rates payable by the parties to the port trust. The agreement between PPT and PPL is completely silent on this aspect. When specially asked in the joint hearing, both the parties confirmed that they did not know the different cost elements that had gone into the initial tariff which is specified in the agreement itself. Therefore, we do not have the benefit of knowing how the initial tariff was determined. Tariff guidelines of 2005 prescribe a port-wise cost plus return approach for determining tariff of the existing ports and private terminals thereat. Even prior to announcement of the tariff guidelines of 2005, the same cost plus approach was followed for determining the port tariff. In the absence of any specific methodology agreed upon between the parties, the general cost plus method followed needs to be adopted in this case also. Though the PPL has at one place disputed the cost plus approach followed by PPT to formulate its proposal, it has agreed that the PPT is entitled to recover logical share of indirect cost and overhead plus admissible return on the relevant capital.

Viewed from this perspective, the initial proposal of PPT to set the rates for fertilisers handled by PPL at par with the rates prescribed for IFFCO cannot be agreed to. The rates payable by IFFCO are governed by a separate agreement entered by PPT with them. The rates leviable in the IFFCO case are not determined by a third party by applying any standard tariff fixing method but decided among the parties by contract. We cannot compel some other party who is not only a stranger to the contract of IFFCO but also entered into a separate contract with PPT to be bound by the former contract.

- (iv). It may be significant here to point out that the tariff guidelines of 2005 broadly prescribe the principles and approaches to tariff setting but do not go into the

micro level of cost analysis by dictating the method to be followed to determine the relevant cost items and the basis of allocation of cost to different activities. Allocation of cost between various activities of different port trusts has evolved over a period of time and more or less the same approach is followed at all the major ports while fixing their scale of rates.

- (v). As mentioned earlier, a specific tariff setting arrangement is prescribed in the respective agreements signed by the NMPT with KIOCL and MRPL. Comparing the instant case with the MRPL does not appear to be relevant because of the special funding arrangement in that case and the consequent operation of a specific escrow account which do not arise in the case of PPL. This case may be somewhat similar to the arrangement that exists between NMPT and KIOCL for handling iron ore and iron ore pallets. The methodology prescribed in that case is also specific to the case and evolved in an Inter-Ministrial Meeting concluded in 1992. The terms of providing the facilities and services are, however, not comparable with those of PPL. Nevertheless, the principle to the extent found relevant to the case of PPL are borrowed for deciding the matter.
- (vi). One of the main issues which arises for consideration is whether tariff should be fixed relying upon the actual traffic or the designed capacity of the facilities. The PPT initially framed its proposal with reference to traffic which is restricted 1.5 million tonne per annum. Subsequently, the proposal was revised to take into consideration the capacity. The tariff guidelines of 2005 require tariff to be fixed based on traffic. Fixing tariff based on capacity is undoubtedly a sound practice. The recent tariff guidelines for PPP projects issued in 2008 adopt such a methodology. But, capacity based tariff fixation can be more objectively applied for fixing tariff for the future period. In the instant case, the tariff is to be set retrospectively from April 1999. If tariff is fixed based on capacity and actual traffic handled during this period is less than the capacity, then the cost allocated based on capacity calculation will remain under-recovered to the extent of the difference between the actual traffic and the capacity. Absence of Minimum Guaranteed Throughput (MGT) condition in the agreement is also an impediment in adopting a capacity based method.
- (vii). The PPT has requested this Authority to prescribe the Minimum Guaranteed Throughput in the instance case. As observed by PPL, the relevant agreement does not prescribe any MGT nor contains any enabling provision for introduction of such stipulation. In any case, it is not the mandate of this Authority to prescribe Minimum Guaranteed Throughput for different facilities of a port trust which is to be decided between both the parties as the part of licensing arrangement and if necessary, with the approval of the Government of India.
- (viii). The PPT has proposed revision in berth hire charges and wharfage for cargo handled by the PPL at berth No FB1. The PPT has submitted that the entire cargo handling operation at the captive jetty is done by the PPL as per the agreement, hence there is no direct expense incurred by the port in this regard. The port, therefore, proposes to recover only the indirect expense relating the management and administration and finance expense and return on capital employed while arriving at the revised wharfage rate. Apart from that, loss from estate activity and expense on unutilised railway facility are also factored while arriving at the rate. The PPL in principle agrees that the PPT should be compensated for the indirect expense/ overheads for common assets and the facilities but has disputed some of the items reckoned by the PPT and has disagreed with the method of allocation followed by the PPT.

- (ix). Citing that the estate activity is an integral part of the port operations, the PPT has apportioned the loss in the estate activity to PPL berth and proposed to recover it as part of the tariff from the PPL. The PPL has disputed the inclusion of this item on the grounds that it is not concerned with the loss or gain on estate management activities of PPT.

This Authority has always held that port estate should be optimally and commercially exploited so that estate revenue can supplement the port's core functioning. As per the Government instructions, Estate rentals are fixed based on market rates and revised once in five years. That being so, it is not clear how this activity would depict revenue deficit, if the rates are fixed as per the Guidelines. As a matter of fact, in the last 13 years since this Authority came into existence, PPT has not filed any proposal for revision of Estate rentals. It does not appear reasonable to require PPL to bear part of the deficit in the activity, when the benefits of lower rates are enjoyed by somebody else. The PPT is advised to initiate immediate appropriate action to make the estate activity self supporting. The proposal of PPT to allocate part of the deficit in estate activity to PPL is rejected.

The expenditure of staff quarters should generally form part of the management and general overheads. From the proposal filed by the PPT, it is not clear whether the expenditure of staff quarters is captured as part of management and general expense or covered under the estate activity. If the expenditure on staff quarters do not form part of the management and general expense, then the net expenditure on staff quarters may be quantified and taken under Management & General expenses. The share to be allocated to the FB1 will follow the basis prescribed for other management and general expense.

- (x). The PPT has apportioned the expenses incurred on railway activity not utilised by the PPL stating that all the users have to share the cost of development of the railway infrastructure whether they actually use it or not.

As per the agreement entered between the PPT and PPL, the PPL is completely responsible to manage the facilities built by them for unloading/loading onto ships, storage, handling and transportation of cargoes in any manner, mechanically or manually. The PPT itself admits that PPL do not use the railway facilities and the conveyors to transfer cargo mechanically to their plant. Further, Railway activity by itself is one of the Principal activities and the expenses connected with the activity cannot be treated as an allocable overhead item. Hence contention of the PPT requiring the PPL to share the notional opportunity cost for services not availed by them is found to be unreasonable and deserves to be rejected.

- (xi). All the assets of a Port Trust are generally identified with one of the Principal Revenue earning activities. Besides, certain common assets exist (like administrative office, building, etc.) for which depreciation is charged under the head Management and Administration expenses. These assets are also entitled to earn return. All revenue earning activities should contribute towards common assets created which are not directly earning revenue. Such common assets should be identified and the Written Down Value (WDV) of common assets must be apportioned to the principal activities on the ratio of gross value of the assets borne directly by the principal activities to the total gross assets value of the port and return thereon should be allowed at the applicable rates. The return on common assets allocable to the sub activity should also follow the basis discussed later.

(xii). With the general principles elaborated above, the issue of allocation of cost is discussed below.

(xiii). Handling charges :

- (a). The PPT has apportioned management and administration expenses and the admissible finance and the miscellaneous expenses to all the principal activities on the basis of the income and the allocable expenses pertaining to the cargo handling activity is apportioned to the cargo activity by the PPL based on the number of berths. Though the overall approach followed by the PPT seems to be agreeable, the basis of allocation is not found to be scientific. The PPL has also objected to the method of allocation of the indirect expenses based on the number of berths.

Form 5 of the format prescribed by this Authority for filing tariff proposals broadly prescribes the method of allocation of management and general overheads and the finance and miscellaneous expenses between principal activities which can be followed instead of the approach adopted by PPT.

Management and administration expense and the FME so allocated to the cargo handling activity may be apportioned to the PPL facility based on the ratio of the actual tonnage handled at the FB1 to the total volume of cargo handled by the port in each of the years. It is relevant to state here that in case of KIOCL and also in case of MRPL, the share of management expense is allocated based on the share of wharf length of the respective facility to the total wharf length of the port. But, such an allocation does not recognise the difference in the output of different berths mainly due to type of cargo and handling methodology. Consequently, it burdens certain segment of cargo and tilts in favour of bulk commodities handled by mechanised means. In order to achieve equitable allocation of common costs and overhead, it is more appropriate to adopt tonnage ratio.

- (b). The capital employed for common assets outside harbour area are considered for the purpose of computing return while determining the handling rate. The PPT has not considered working capital in computation of capital employed probably because no working capital is involved as the entire operations at the captive berth is carried out by PPL.

The PPT is entitled to claim return on written down value on common assets allocable to this activity. While doing so, the PPT should not include any other assets which are directly relevant to some other revenue earning activities. For reasons explained earlier, the estate related assets and railway related assets which are not relevant to the PPL activity should not be considered. Also, return is not admissible on work-in-progress as per Clause 2.9.3. of the tariff guidelines.

- (c). Citing that the capital employed cannot be identified berth-wise, the PPT has allocated the capital employed for common purposes to berth no.FB1 based on number of berths.

The method of allocation of common asset value (written down) based on number of berth is not appropriate as stated earlier. The WDV of common assets allocated to the cargo handling activity is to be

allocated to the FB1 based on the ratio of tonnage as suggested for recovery of management and administration expense.

- (d). The Port has considered return on capital employed at uniform rate of 18%. The PPL has stated that the return should be computed at 12% to 18%. The Authority has allowed ROCE at different percentage in each of the years since 1998-99 while determining the tariff of Major Port Trusts. The ROCE is, therefore, to be computed at the percentages indicated for each of the years in the table given in the subsequent analysis.

(xiv). Berth Hire :

- (a). PPL has argued that the loan of Rs.15.60 crores taken by PPT from Government of India towards construction of the FB-1 has since been repaid in full by the port. Since PPL has been paying Rs.30 lakhs per month towards fixed berth hire charges to PPT as per the Agreement, PPL is of the view that the entire capital cost of the berth (Rs.24.03 crores as on 31 March 1986) alongwith interest would have been recovered from PPL by 31 March 1997 and hence there is no justification in PPT recovering the berth hire charges from PPL any more. As for allowing return on capital employed, the sources of funds are not relevant and the yearly fixed berth hire charges paid by PPL to PPT can in no way be considered as a reimbursement of any loan, the contention of PPL that no fixed berth hire charges should be levied any more deserves out right rejection. Return is to be allowed at the applicable rate on the written down value of the facility, as per the books of PPT.
- (b). For the purpose of determining fixed berth hire charge, the PPT has included the cost of maintenance dredging. The PPL has stated that since the dredging cost forms part of navigation cost and is collected from the ships separately in form of the port dues and pilotage, it should not be considered for determining the berth hire charge.

The cost of channel dredging is recovered by way of port dues and pilotage whereas the dredging along side the berth is allocable to the berth hire as per the instructions given in the format prescribed by this Authority. To the extent of expenditure incurred for dredging alongside the berth No.FB1, PPT deserves to be compensated for the same. The dredging cost should be allocated between the berths based on the quantum of silt dredged at each of the berths as per the format prescribed.

- (c). The capital employed includes value of capital dredging also. In view of the explanation given in case of the maintenance dredging, the capital employed should include only the WDV value of capital dredging done alongside FB1.
- (d). Whilst the port has proposed to allocate the Management and Administration Expenses and the Finance and Miscellaneous Expense of the cargo handling activity to determine the rate for handling cargo at FB1, it has not allocated indirect expenses for working out the berth hire charge of FB1. The allocable management and the administration expense and the admissible FME expense pertaining to vessel related activity should be apportioned to the general berthing activity. The share of overheads of the berthing activity should be allocated to FB1 on the basis of GRT of vessels handled at FB1 to the total GRT handled in the port in a year. The same approach should be adopted

in respect of allocation of return on common assets pertaining to Vessel Related activity to the sub-activity of berthing and then to the FBI.

- (e). Normally, berth hire is recovered on per GRT per hour basis. The agreement specifies the rate on a monthly basis. Hence, fixed berth hire is allowed to be prescribed.
- (f). The PPT has proposed tariff w.e.f 1 April 1999 for individual cycles relying upon the position obtained for the first year of the respective tariff cycle. The tariff guidelines of 2005 stipulate three years tariff cycle and for the period prior to the 2005 guidelines two years tariff cycle was followed by this Authority. The final tariff is determined based on the average position of each of the years in tariff cycle. The approach adopted by PPT to consider only the first year of each tariff cycle is not in line with the general approach followed.

The instant case is to determine the tariff for the past period from April 1999 onwards based on the actuals. Determining the rate for the block of the tariff cycle based on the average position obtained for the block of three years may not serve any useful purpose. That being so, and also to make the entire process simple and easier for verification of figures with the books of accounts, the PPT is advised to propose year-wise rate for the past period with necessary calculations and supporting documents.

- (xv). The discussion above is summarised in the table below for adoption by the PPT for reformulation its proposal for fixation of annual rates for operations by PPL at FB1 w.e.f. 1 April 1999.

A. Computation of Berth Hire

Sr. No.	Particulars	Basis of allocation, if any/ Explanatory note
(i).	Depreciation on Capital cost of berth no.FB1 and capital cost of dredging along side berth no FB1.	Rate of depreciation adopted by the port in the books of accounts
(ii).	Maintenance Dredging cost (along side the berth if incurred for berth FB1)	On the quantum of silt dredged.
(iii).	Management and Administration Expense on common expenses	<p>(a).The actuals reported in Annual Accounts to the vessel related activity to be apportioned following the basis prescribed in Form 5 of the format prescribed by this Authority for filing the tariff revision proposal.</p> <p>(b). Allocable management and the administration expense pertaining to vessel related activity should be apportioned to the general berthing activity following the method prescribed in Form 5.</p> <p>Apportion the share of management and administration expenses so apportioned to general berthing activity to berth No FB1 in the GRT Ratio.</p>

(iv).	Allocation of Finance Expense (excluding interest on loan, one time expenses, VRS compensation, etc. allocated to the berth hire)	As prescribed for management and administration expense at (iii) above.																						
(v).	Capital Employed																							
	(a). Berth cost of FB1 and the capital dredging cost along side berth FB1	Written Down Value (WDV) of Berth Cost of Berth no FB1 plus the capital dredging cost along side berth no FB1 at the end of each financial year																						
	(b). Common assets	(a) Apportion the WDV of common assets of the port to the vessel related activity on the ratio of gross value of asset under the vessel activity to the total gross value of assets of the port.  (b). The WDV of common assets so apportioned to the vessel related activity to be apportioned to general berthing activity in the ratio of gross asset value of berthing activity to the gross value of the vessel related activity. The WDV of common assets apportioned to general berthing activity is to be apportioned to berth FB 1 on the GRT ratio.																						
	Total Net Fixed Assets [v(a) + (b)]																							
(vi).	Return on Capital Employed at the applicable rate i.e.																							
	<table border="1"> <tr> <td>1999-2000</td> <td>20%</td> </tr> <tr> <td>2000-01</td> <td>19.5%</td> </tr> <tr> <td>2001-02</td> <td>19.5%</td> </tr> <tr> <td>2002-03</td> <td>18.5%</td> </tr> <tr> <td>2003-04</td> <td>18.5%</td> </tr> <tr> <td>2004-05</td> <td>17.5%</td> </tr> <tr> <td>2005-06</td> <td>15%</td> </tr> <tr> <td>2006-07</td> <td>15%</td> </tr> <tr> <td>2007-08</td> <td>16%</td> </tr> <tr> <td>2008-09</td> <td>16%</td> </tr> <tr> <td>2009-10</td> <td>16%</td> </tr> </table>	1999-2000	20%	2000-01	19.5%	2001-02	19.5%	2002-03	18.5%	2003-04	18.5%	2004-05	17.5%	2005-06	15%	2006-07	15%	2007-08	16%	2008-09	16%	2009-10	16%	
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2006-07	15%																							
2007-08	16%																							
2008-09	16%																							
2009-10	16%																							
(vii).	Total Cost Plus Return (i+ii+iii+iv+vi)																							
(viii).	Proposed fixed berth hire charge (Rs. per month ) [Sr no.vii/12]																							

(\*)GRT ratio = 
$$\frac{\text{Actual GRT of the vessels handled at berth No FB1}}{\text{Total actual GRT of vessels handled by port}}$$

B. Computation of Handling Charge:

Sr. No.	Particulars of item	Basis of allocation, if any/ Explanatory note
A.	Traffic handled at the port (in lakhs tonnes)	Actuals
B.	Traffic handled at FB1 (in lakh tonnes)	Actuals
C.	Share of indirect Expenses allocated to cargo handling and storage activities to be allocated to the FB1	
(i).	Management and general Expenses	(a).Apportion the actuals reported in Annual Accounts to the cargo handling activity following the basis prescribed in Form 5 of the format prescribed by this Authority for filing the tariff revision proposal.  (b). Share of management and administration expenses so apportioned to cargo handling activity to be apportioned to berth No. FB1 in the Tonnage Ratio (**)
(ii).	Finance and Miscellaneous Expense (excluding interest on loan, one time expenses, VRS compensation, etc.)	As prescribed for management and administration expense at C (i) above.
(iii).	Return on Capital Employed	
	(a). Written down value on common assets	(a). Apportion WDV of common assets of the port to the cargo handling activity in the ratio of gross value of direct assets of the cargo handling activity to gross asset value of the port.  (b). WDV of common assets so apportioned to the cargo handling activity to be apportioned to FB1 activity on the Tonnage Ratio
	(b). Return on Capital Employed (at % of return given in the first table)	
(iv).	Total Cost Plus Return [i+ii+iii(b)]	
(v).	Proposed wharfage rate Rs. per Tonne [Sr. no.iv / B]	

(\*\*)Tonnage ratio = Actual Traffic handled in lakh tonnes at berth No FB1

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Total actual traffic handled by port in lakh tonnes

- (xvi). The PPT may file the proposal for fixation of berth hire charge and wharfage charge annually for the period from 1 April 1999 till the financial year 2009-10 based on actual audited figures.

In the case of the KIOCL as well as MRPL the rates are approved by this Authority annually based on the actuals furnished by the port. The final wharfage rate approved by this Authority is applied for the immediate succeeding year on adhoc basis till the final rates are prescribed for that year based on the proposal filed by the port on actuals. Consequent to the fixation of final rate, adjustment is done to the extent of short / excess recovery between the port and the concerned parties. In the instant case also, the same approach as explained hereunder can be followed:

- (a). The annual final rate prescribed for the immediate previous year i.e. 2009-10 will act as the ad-hoc rate for the succeeding year i.e 2010-11 till the actuals for the year 2010-11 are finalised.
- (b). The PPT should file the proposal annually for fixation of rates at the end of financial year based on the actual figures pertaining to the PPL activity and following the guidelines prescribed above.
- (c). The billing done at the ad-hoc rate should to be adjusted based on the final rate fixed by this Authority annually and short recovery or refund to be settled between the parties.

13. In view of the analysis made above, the PPT need to rework the expenses allocable to the berth No FB1 following the methodology given above. That being so, the rates proposed by the PPT in the current proposal for the cargo handled by PPL cannot be approved. The PPT is advised to file expeditiously its proposal for fixation of fixed berth hire charge and wharfage charge for handling cargo at berth operated by PPL from the years 1999-2000 onwards to 2009-10 based on the actuals and following the methodology explained above. Before forwarding its proposal to this Authority, PPT is advised to allow 15 days time to the PPL to verify the figures.

(Rani Jadhav)  
Chairperson

