

(To be published in Part - III Section 4 of the Gazette of India, Extraordinary)

**TARIFF AUTHORITY FOR MAJOR PORTS**

G. No.190

New Delhi, 18 September 2002

**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 Mormugao Port Trust for general revision of its Scale of Rates as in the Order appended hereto.

**( S. Sathyam )**  
Chairman

**Tariff Authority for Major Ports**  
**Case No. TAMP/37/2002-MOPT**

The Mormugao Port Trust

- - - -

Applicant

**ORDER**

(Passed on this 27<sup>th</sup> day of August 2002)

This case relates to a proposal received from the Mormugao Port Trust (MOPT) for a general revision of its Scale of Rates (SOR).

2.1. The MOPT has given the following reasons for proposing a comprehensive revision of its SOR:

(i). The tariffs in respect of different principal activities were last revised as indicated below:

| Sl. No. | Principal Activity                    | Brief description of charges  | Revision effected from          |
|---------|---------------------------------------|---|---------------------------------|
| 1.      | (a). Cargo Handling and Storage       | 1) Wharfage on General Cargoes, POL, Miscellaneous charges.<br>2) Handling charges of Iron ore at Berth no. 9 (MOHP) and Warehousing and Storage charges. | October, 1996<br><br>June, 2000 |
|         | (b). Cargo handling Labour charges    | Rationalisation of percentage levy into per tonne rate.   | July 2001                       |
| 2.      | Port and Dock Facilities for Shipping | Port Dues, Pilotage. Shifting charges and Berth Hire/Anchorage charges, charges for Supply of water to vessels.   | Sept., 2001                     |
| 3.      | Estate Rentals                        | Licence fee on Port and foreshore lands, shed rent, rent on open plot etc.  | June 2000                       |
| 4.      | Railway workings                      | Haulage on Trunk wagons, shut out charges, Shunting in and out of oil installations.  | June 2001                       |

(ii). The TAMP has directed that the validity of the above Orders be made co-terminus with the impending revision of the cargo handling charges due in June 2002.

(iii). To bridge the gap between the income and the expenditure due to overall increase in the wages and pension.

(iv). To recover the rising cost of operations from the individual segments by applying cost recovery principles.

(v). To generate adequate surplus to meet the growing requirements for creation and updating of the Port infrastructure in order to remain globally competitive.

(vi). To provide efficient and cost-effective service and mandatory appropriations to the Pension Fund.

2.2. (i). The proposal was approved by Board of Trustees of the MOPT in their special meeting held on 11 March 2002 as indicated below:

| SL. NO.  | Name of the Service/ Sub-activity | Percentage increase required as per Cost statement | Percentage increase proposed |
|----------|-----------------------------------|--|------------------------------|
| 1        | 2                                 | 3  | 4                            |
| <b>I</b> | <b>Cargo Handling and Storage</b> | <b>25%</b>   | <b>25%</b>                   |
| a).      | Ore handling Activity             | 17%  |                              |
| b).      | General Cargo and Ores            | 139%   |                              |
| c).      | Warehousing                       | 419%   |                              |
| d).      | POL 85%+                          | -  |                              |

| SL. NO.    | Name of the Service/ Sub-activity    | Percentage increase required as per Cost statement | Percentage increase proposed |
|------------|--------------------------------------|--|------------------------------|
| 1          | 2                                    | 3  | 4                            |
| <b>II</b>  | <b>Port and Dock Facilities</b>      | <b>58%</b>   | <b>50%</b>                   |
| a).        | Berthing and Mooring<br>27%+         | -  |                              |
| b).        | Pilotage and Towage                  | 82%  |                              |
| c).        | Port Services                        | 191%   |                              |
| d).        | Water supply to Shipping             | 556%   |                              |
|            |                                      |  |                              |
| <b>III</b> | <b>Railway charges</b>               | <b>71%</b>   | <b>50%</b>                   |
| <b>IV</b>  | <b>Estate Rentals 3%+</b>            | <b>-</b>   | <b>-</b>                     |
| <b>V</b>   | <b>Cargo Handling Labour Charges</b> | <b>19%</b>   | <b>19%</b>                   |

- (ii). The Percentage increase is proposed only in the principal activities and not for each service, since the required rate of increase under the individual activities ranges from 17% to 556%; and, the other major ports are also going in for revision of tariffs on the principal activity basis only.
- (iii). Apart from general revision of rates, the following changes are proposed:
- (a). The spectrum of cancellation of pilot charges is widened.
  - (b). Double banking charges on transhippers at west of break-water.
  - (c). Shifting charges in respect of vessels of 25000 GRT and above.
  - (d). Anchorage charges in respect of mini bulk carriers upto 1800 GRT at the same rate prescribed for launches, fishing trawlers etc.
  - (e). Lumpsum levy applicable to vessels of size 50000 to 100000 DWT in addition to the berth hire; and, the concession of 25% applicable to the vessels of size 160000 DWT and above in the berth hire charges are merged with the berth hire charges.
  - (f). Additional berth hire charges at 5 times the normal rate if a vessel is not ready to vacate the berth within 3 hours after the completion of cargo or after the expiry of notice given by the Traffic Manager or Deputy Conservator to so vacate the berth, whichever is later.
  - (g). Penal berth hire charges at 5 times the normal rate are proposed to be charged beyond the deballasting time of 3 hours allowed at berth no.9.
  - (h). Cancellation charges for cancellation of water supply after barge as left station, the detention charges for water barge and charges for minimum requisition of water supply by barge.
  - (i). Charges for use of tugs are rationalised by proposing rates for 'upto 30 tonnes bollard pull' and for 'above 30 tonnes bollard pull'.
  - (j). The level of plot turnover is increased whereas the rate of rebate allowed is kept the same.
  - (k). Cargo handling labour charges in respect of 15 items like lime stone, iron crafts, bentonite, machinery, billets, etc. are proposed.
  - (l). Hire charges for use of ports' Reach Stacker and Flotilla.

2.3. The relevant observations of the Trustees in the Board of the MOPT dissenting with the proposal are summarised below:

- (i). The methodology of the revision proposal is essentially based on the increased cost of operations, increased salaries and wages to employees, future cost of operations and return on capital employed. During the last 4 years, the port has inflated its future cost of operations to get a higher rate of revision whereas the actual expenditure incurred was less than that projected.

The annual rate of inflation is considered @ 10% as against 2% announced by the Government.

- (ii). There is no logic in increasing the vessel-related charges by 50% when an increase of 15% has already been granted by the TAMP in September 2001. The fact that whether the trade can bear such an increase or not in the context of global recession does not seem to have been taken into consideration.
- (iii). Pension liability must be met out of the reserves built over the years since pension fund was not established in the past.
- (iv). Substantial one time arrears of terminal benefits paid to the retiring employees or the pensioners should be amortised or phased out over several years.
- (v). The reduction in deballasting time from 5 hours to 3 hours was not discussed in the Board meeting. Deballasting time of one hour in excess of three hours will be charged 5 times of 8 hours (normal berth hire) i.e. 40 hours, which is very harsh and must, therefore, be retained at 5 hours.
- (vi). A 19% hike in the tariff of the CHLD is not justified considering the fact that the new rates were framed and made effective from June 2001. The proposed hike was not discussed with the CHLD Advisory Committee. A number of new cargoes with new rates have been introduced for which the basis and manner of calculation are not known; and, which are not discussed with the Unions etc. for fixing the datum.

The calculation of the wages and levies of labours should have been done on the basic pay of the newly recruited workers and not on the retired/retiring workers, which are almost 100% higher. Making payments to workmen and labour on the basis of new pay scales and, charging the port users at a different rate are not correct.

- (vii). All the levies which were collected in the past for a specific purpose should have been discontinued after having achieved the purpose e.g.- 25% additional levy collected from the stevedores towards wage revision arrears, which have been collected in full and payments have been made, Rs. 1.50 per tonne for VDA arrears and Rs. 2 per tonne for gratuity etc. These levies should have been excluded while formulating the new CHLD charges.

2.4. In this backdrop, the MOPT has requested this Authority to approve its proposals mentioned in paragraph 2.2 above.

3.1. In accordance with the procedure prescribed, a copy of the proposal was forwarded to various concerned port users and representative bodies of port users for comments. The comments received from them are summarised below:

**Mormugao Ships Agents Association (MSAA)**

- (i). The revenue of the port has increased not only from an increase in the number of vessels handled but also from an increase in the traffic of bigger size vessels and 15% increase effected in the vessel-related tariffs by the TAMP in September 2001. The increase in the traffic has also increased the operating income from cargo handling activity, railways and estate rentals. The depreciation of rupee in the last one year from May 2001 to May 2002 has also benefited the port.
- (ii). Though it is convenient to increase the tariff for the principal activities rather than individual service, this will result in cross-subsidisation of one service with the other, e.g. instead of

17% and 419% increase envisaged in the iron ore and warehousing activity respectively the proposal indicates a 25% increase in all the cargo handling activities. It is, therefore, better to increase the rates for the services separately.

- (iii). During the last revision of port charges, the Authority had, in consideration of huge deficit appearing in the 'Supply of water to Shipping activity', advised the MOPT to bifurcate the cost of water supply to shipping and internal consumption and refine the cost statements by including the cost of basic infrastructure for supply of water to shipping at the berths in the Berth hire activity for consideration at the time of next general revision of its SOR. The current proposal indicating a huge increase of 556%, under the heading water supply needs to be looked into.
- (iv). The MOPT must identify the areas/projects where further services for efficient handling of cargoes in addition to the existing facilities may be provided which will match the cargo projections both in terms of volume and nature of cargoes. Since iron ore continues to dominate the cargo constituting 78% of the traffic handled, new facilities for better handling of this cargo can be identified.
- (v). The freight earned by the shipowners is showing a declining trend in today's competitive world. The increase in the port charges will further reduce the margin of earnings.
- (vi). The Compensation Tonnage Tax (CTT) is shown as a vessel-related charge and is wrongly collected from the shipowners instead of the cargo interests since the last revision. The classification of the CTT be charged to a cargo-related charge as earlier as this is imposing a wrong burden on the shipowners.
- (vii). Since the impact of last increase has been more than 260% over the than existing rates, a rebate rather than an increase must be given to the coastal vessels whose owners have been worst hit.
- (viii). The proposed reduction of time allowed for deballasting at berth no. 9 from 5 hours to 3 hours will be too short for a ship to achieve in view of the fast speed of the mechanical loading at that berth.
- (ix). The increase proposed in the Pilotage fee on Transhippers is for double banking of transhippers, which is payable by the vessel-owners. Since the transhipper facility is provided by the exporters; and, there has been no change in that facility, the need for the proposed increase is to be reconsidered.
- (x). At serial number 1 of Section C(i) of Berth hire charges, the rate for slab of GRT 30,001 to 35,000 requires correction as even with the proposed 50% increase, the rate should be USD 0.04701 and not 0.05784.
- (xi). The proposal must be postponed till such time the situation warrants a further increase in the port charges.

**Essar Steel Limited (ESSAR)**

- (i). Our operations at Berth no. 7 carried out through our cranes are similar to the transhippers operations; however, the charges paid by us @ Rs. 13.20 per operation are much higher than the levy of Rs. 4.50 per tonne paid by the transhippers at the port. Since we are already paying the monthly lease rent for the area occupied by us as well as the wharf dues on the cargo, the cost advantages which would have accrued to us by having a shore based crane and making operation similar to the transhipper operations are nullified.
- (ii). The traffic forecast of Berth no. 7, (the exclusive coastal berth for small size vessels for handling general cargo and having cranes) seems very bright in view of the users already preferring this berth due to the facilities available. The proposed charge of Rs. 13.20 per tonne may therefore, be modified and brought down to a level of Rs. 4.50 per tonne which is proposed to be charged on the transhippers so that levy can be reduced to a bearable level and the cranes can be used to their fullest potential.

**Jindal Vijayanagar Steel Limited (JVSL)**

- (i). Steel industry in India is presently undergoing a very bad phase which may be reasoned as industrial recession in India, over capacity and imposition of anti-dumping duties by USA combined by stagnant domestic market. The GOI is already taking necessary initiative to revive the ailing steel industry by allowing concessions, having dialogues with the USA, etc. This is, therefore, not a right time to increase the tariffs, which is not in conformity with the Government policy at the national level. The proposed increase in the cost of activities affecting us will be unbearable.
- (ii). The MOPT does not appear to have taken into account "what the trade can bear". Despite being one of the biggest users of the port for general cargo, no discussions to ascertain our capacity to bear the increased costs were held.
- (iii). The sub-activity costs and the basis on which such costs are computed are not indicated in the proposal, in the absence of which it is not feasible to understand the rationale of rate revision.  
The rate revision exercise seems to be based on the increased cost of operations by recovering cost of inefficient activities/operations from the users. The cost increase must necessarily flow from management innovations and higher efficiency.
- (iv). There is no correlation between the inflation figures of 2-3% in the last several years and the tariff increase.
- (v). Deepening of Berth no. 11 combined with introduction of total length restrictions of two vessels on berth no. 10 and 11 has prevented us from nominating panamax vessels and thus deprived of the freight differential advantage between the panamax and handimax vessels which is approximately \$1 pmt. in addition to the benefit of faster discharge rate.
- (vi). The increase in the throughput and high berth occupancy of Berth no. 10 and 11 have resulted in pre-berthing waiting period of 5 days on an average per vessel entailing an outgo of approximately Rs.17 lacs per vessel towards payment of demurrage.  
  
No increase, therefore, must be approved in wharfage, plot rent, haulage as well as vessel-related charges; and, all the factors and circumstance shall be taken into consideration before deciding on any increase in the tariffs.
- (vii). The reasonableness/justification of an increase of 50% within a period of nine months in the haulage charges may be examined in light of the staggering increase of 80% allowed by the TAMP in June 2001; and, the existing haulage charges at other major ports. The charges must be linked with total track line KMs and shunting operations.

**Goa Mineral Ore Exporters Association (GMOEA)**

- (i). There has been consistent wide gaps between the MOPT's past proposals for tariff hikes and those allowed/approved by the TAMP, which suggest that the MOPT proposals are in reality unworkable and only reflect the ports attempts to get some benign increase from the TAMP by inflating the costs.
- (ii). (a). The 'cost plus' model envisages fixation of tariffs, which will enable recovery of the operating costs and a reasonable return on capital employed at a certain capacity utilisation and efficiency norms but not the recovery of any appropriation out of the surplus other than two mandatory reserves.  
  
The MOPT proposes to recover an amount of Rs. 15.20 crores and 25.20 crores during the year 2002-03 and 2003-04 respectively from the users towards appropriation to its pension fund (which on an average accounts for 7.34% of the capital employed) in addition to the charge to revenue for post retirement benefits under the head Financial and Miscellaneous expenditure. At the same time the working of the above figures is not clarified.
- (b). Pension and Gratuities, being the post retirement defined benefit plans, the accounting for this requires actuarial assumption to measure the obligation and the

expenses and, there is a possibility of actuarial gains and losses. The obligation has to be measured on discounted basis as these may be settled many years after an employee has rendered the related service. The defined benefit plans may be unfunded, or wholly/partly funded by way of contributions by an enterprise, and sometimes by its employees into an entity, or fund, that is legally separate from the reporting enterprise and from which the employee benefits are paid. The expenses recognised for defined benefit plan is not necessarily the amount of the contribution due for the period. The Accounting Standard - 15 issued by the Institute of Chartered Accountants also acknowledges this position.

- (c). The Balance Sheet of the MOPT does not indicate any provision for certain post-employment (defined) benefits such as pensions/gratuities, and such an expense included under the head Finance and Miscellaneous Expenditure averages approximately 11.4% of the capital employed of the MOPT. The position about the elements forming part of the retirement benefits as well as the basis on which it accounts for post retirement benefits is, therefore, not clear. Moreover, the behavior of expenditure cannot plausibly be explained unless it is accounted on payment. If that being the position, then a significant portion of the expenditure may relate to earlier accounting period.
- (d). The MOPT has not given details in respect of the actuarial valuation of its liability with the corresponding assumptions, the liability relating to earlier accounting periods, the funded amount, and, the shortfall sought to be met.
- (e). Any losses or inefficiencies in the fund management relating to retirement cannot be recovered from users by way of tariff revisions. It is a well-accepted accounting principle that prior period and extraordinary items must be excluded while determining current profits.

The port may be asked to get an actuarial valuation of its post employment defined benefit liabilities at each year-end; and, recovery through the tariff revision be restricted to current costs only. This liability on this account needs to be deducted for determining the capital employed of the Port.
- (f). The Port's accumulated reserves for development, repayment of loans and contingencies as at 31 March, 2001 stand at Rs. 5,321.27 lakhs, which may be used to meet the contingency arising in respect of unaccounted liabilities relating to the post retirement defined benefit plans relating to the earlier periods.
- (iii). (a). The MOPT has underestimated its income in the MOHP segment. The quantities estimated in the MOHP segment for the years 2001-04 are lower than those achieved in 2000-01, the reasons for which are nowhere explained. At the same time, the capital expenditure is projected to shoot up by Rs. 6,235.59 lakhs, a sum greater than 4 times the MOPT's reported capital employed in the MOHP in 2000-01.
- (b). The MOPT collects all the dues under the "Port and Dock" segment in respect of exports of iron ore transshipment which accounts for 45% of the exports of iron ore from Goa; and also, collects a rate averaging approximately Rs. 7 pmt. although it renders no service in respect of the quantity handled or shipped through these vessels. The average rate, therefore, works out to Rs. 71.02 instead of Rs. 64.40, which is the prescribed tariff.
- (iv). The absence of the ELT profitability statement and the consolidated statement for iron ore in the current proposal (as advised by the TAMP at the time of instituting the ELT scheme and also in its Order dated 9 August 2000 respectively), is conspicuous.
- (v). (a). Whereas the Operating Costs are projected to grow at a compounded rate of 5.88% over the period 1999-03, the estimated growth thereof for 2002-03 over 2001-02 levels is just 0.1% and yet the estimates for 2003-04 are higher than the estimates for 2002-03 by 10%.

- (b). As regards the growth in the Management and General Overheads, 2000-01 levels are higher than the 1999-00 levels by 40.75%. The higher base of 2000-01 i.e. Rs. 4,349.70 lacs has been maintained over the period 2001-03. The estimates for 2002-03 are marginally lower than the estimates of 2001-02 by 1.19% and again the estimates for 2003-04 are 10% higher than the estimates for 2002-03.

The level of Management and General Overheads, which is approximately 54% of the operating costs, is very high for absorption by the Port users. The TAMP has also remarked in its said order of 9 August 2001 that the astronomical rate of growth in the Management and General Overheads clearly indicates an increasing indulgence in expenditure not directly related to operations and, perhaps, adding irrelevancies which are avoidable and since the figures for 2001-02 and 2002-03 are only estimates, the MOPT shall have a re-look at such proposed expenditure and take mid-term corrective measures of cost control and cost reduction. The MOPT does not seem to have taken this suggestion into consideration.

It is necessary to provide norms for controlling such costs and their growth rate; and, the overheads need to be brought down to levels not exceeding 10% of operating costs if the Port and the industry is to operate viably in future.

- (c). Adequate care has not been taken in making the projections acceptable as by augmenting all the costs across the board by 10%, the MOPT has assumed all its expenditure as fixed, which is absurd. The inflation level in India being around 2% seems to have been reflected in the estimates for 2001-03, but not in the projections of 2003-04 and the reasons for projecting the expenditure of 2003-04 higher by 10% over 2002-03 levels has not been explained.

- (vi). (a). The calculation of the capital employed is not clear. During the period 1999-04, capital employed is estimated to grow at a compounded annual growth rate of 20.04% without any reduction in costs or any significant impact on the traffic volumes.

The growth in Capital during the projection period i.e. 2001-04 is 30.38% and during the same period the costs (excluding depreciation and net FME) has also increased by 4.70% but the traffic growth is restricted to just 4.45%. The qualitative aspects of the new capital deployed, thus, needs a fresh look.

- (b). High investments are made in social assets and in facilities that are significantly under-utilised. The TAMP has also committed to review the issue of non-operative and social assets, besides accepting the position that the port cannot pass on the cost of under-utilisation to the existing users.

The capital employed reported in the MOPT's proposals has never been reflected truly and is stated far in excess of the actual productive capital employed which includes an adhoc 8% net block towards social and unproductive assets.

- (c). Based on the compounded annual growth rate of 11.28% in the gross block in the past (for the period 1996-97 to 2000-01) and considering a depreciation of 3.25%, the gross block for the next 3 years is projected. The relationship between average gross block and depreciation (for the period 1998-99 to 2000-01), however, indicates the projected depreciation to be 5.75%.

- (d). Since the MOPT collects its dues from the users in advance i.e. before rendering the service, as such, logically, it may not need any working capital. The computation of the working capital as per the figures drawn from accounts & audit report for the year 1999-00 and 2000-01 indicates negative working capital to an extent of Rs. 792.77 lacs and Rs. 966.93 lacs respectively.

In the absence of information relating to the credit period normally enjoyed by the MOPT and other elements of current liabilities, it is difficult to estimate the extent to which working capital will be negative in the projection years. The capital employed is, therefore, restricted to gross block and insurance spares for our analysis.

As per the generally accepted accounting principles (AS-10), issued by the ICAI, the insurance spares are to be depreciated along with the relevant mother plant or equipment; however, the MOPT values these at cost and classify them as a part of its current assets. Since the MOPT gross block stands depreciated by 40% as at 31 March 2001, the value of these spares will also to be depreciated accordingly.

The extent of insurance spares contained in the assets of the MOPT is disclosed in the Audit Report and not in the MOPT's Accounts. The insurance spares are estimated @ 0.25%, 0.3% and 0.35% of the gross block for the period 2001-02, 2002-03 and 2003-04 respectively. The depreciation figure of Rs. 116.12 lacs in the year 1999-00 includes an amount of Rs. 105.97 lacs towards accumulated depreciation. Based on the above assumptions and adjustments, the capital employed and depreciation are worked out as below:

**Capital Employed**

Rs. In lacs

| Year    | Net block of productive fixed assets | Insurance spares | Total     | Average capital employed |
|---------|--------------------------------------|------------------|-----------|--------------------------|
| 1998-99 | 12,582.53                            | 159.85           | 12,742.38 |                          |
| 1999-00 | 14,101.87                            | 174.00           | 14,275.87 | 13,509.13                |
| 2000-01 | 15,740.59                            | 214.91           | 15,955.50 | 15,115.69                |
| 2001-02 | 17,342.34                            | 275.32           | 17,617.66 | 16,786.58                |
| 2002-03 | 19,505.55                            | 356.93           | 19,862.48 | 18,740.07                |
| 2003-04 | 21,912.77                            | 463.11           | 22,375.88 | 21,119.18                |

**Depreciation**

Rs. In lacs

| Year    | Depreciation on fixed assets | Depreciation on insurance spares | Total Depreciation |
|---------|------------------------------|----------------------------------|--------------------|
| 1999-00 | 1026.19                      | 10.15                            | 1,036.34           |
| 2000-01 | 800.74                       | 11.97                            | 812.71             |
| 2001-02 | 977.98                       | 14.82                            | 992.80             |
| 2002-03 | 1088.30                      | 18.85                            | 1,107.15           |
| 2003-04 | 1211.06                      | 24.24                            | 1,235.30           |

- (e). The projected growth in the capital employed (excluding social and unproductive assets) over the period 2002-04 is Rs. 4,758.22 lakhs and the reserves for "Replacement, Rehabilitation and Modernisation of Capital Assets" are aggregated to Rs. 12,305.97 lakhs as at 31 March 2001, a cost, already paid for by the users through tariffs and, therefore, shall be treated as fully subsidised and no return sought. An alternative treatment can be to set off depreciation costs against the utilised reserve i.e. to set off the incremental depreciation against this reserve and not treat it as a cost. If this is done, the depreciation costs for 2002-03 and 2003-04 will fall by Rs. 125.15 lakhs and Rs. 264.41 lakhs respectively, assuming depreciation to be 3.50% of gross block.
- (vii). (a). The ROCE cannot be equated with Return on Equity. The ROCE takes into account the cost of debt, a reasonable return on equity, the prevailing tax rate, and, prudential norms of debt-equity.
- (b). The increment of 6% (3% each towards the two mandatory reserves) could have been justified only when the Government lending rate was subsidised at 6%. When commercial lending rates are used as the base, such enhancements are not warranted. The MOPT's average borrowing cost for the last 4 years has been just under 9%.
- (c). In applying the ROCE of 19.5%, the impact of gearing is completely ignored. For an infrastructure project, a gearing of 70:30 (Debt:Equity) is considered reasonable. The relative ROCE of other infrastructure projects i.e. Power, Pipelines

and Roads assuming the cost of debt to be 14% and the prescribed norms for return on equity and capital gearing, the ROCE (with tax impact) comes to 11.10%, 9.90% and 12.30% and the ROCE (without tax impact) comes to 14.6%, 13.40% and 15.80% for the stated projects respectively. In the case of pipeline projects, the prescribed norm of 12% relates to return on net worth, which is the aggregate of equity and reserves; and, more akin to the MOPT case where reserves also forms a part of the capital employed. Since the MOPT does not pay an income tax, it would be appropriate to use the ROCE (without tax impact) for comparison.

- (d). All infrastructure projects referred above function in a riskier environment than the one in which MOPT operates, and therefore, an ROCE greater than 12% in the MOPT's case is not justified.
- (e). In the current recession times, even the Reserve Bank of India is taking steps to lower the lending rates in the country. Currently the Prime Lending Rate of the State Bank of India stands at 11%. Allowing ports such high returns in these times would, therefore, seem like an aberration.
- (viii). (a). The loading rate achieved by the transhipper being low compared to berth no. 9, the stay of such large sized vessels at the port is relatively longer at Mormugao as compared to ports in Australia and Brazil where such vessels can be fully loaded at berth.
- (b). In order to attract large sized vessels, which can load twice the quantity of Panamax size vessels if loaded at berth no. 9 upto the permissible draft, a rebate of 25% is allowed on such large sized vessels, which is currently in vogue. The TAMP has allowed this rebate to continue till the following general revision of the SOR due in June 2002 vide Order dated 30 December 2001

The income of the MOPT is projected after factoring this rebate. Since this is also a commercially sensitive issue to the buyers of iron ore from Goa who are effectively MOPT's largest users, this rebate may be maintained by inserting an appropriate entry in the Schedule of Rates.

- (ix). (a). With regard to the CHLD revision, consequent to the coming into force of the Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act, 1997, the issues regarding validity, interpretation and enforcement of the agreements entered into between the various transhipper owners and the Mormugao Dock Labour Board in respect of Transhipper Accord levy, are sub-judice before the Hon'ble High Court of Bombay, at Panaji.

Despite the clear position, the MOPT has proposed a "Transhipper Accord Levy" at Rs. 4.50 pmt for iron ore and Rs. 11.50 for iron ore pellet below the Notes to Cargo Handling Labour Charges without any justification. This sum is proposed to be charged as levy and not as tariff since no services are rendered.

- (b). The decision on this issue may be deferred pending the decision of the Hon'ble High Court of Bombay.
- (x). The projected ROCE earned by the MOPT for the period 2002-03 and 2003-04 after making adjustments contained in the above paras, other than reduction of management and general overheads comes to 36% and 23% respectively and the average ROCE comes to 29.27%, which is an astronomical return.
- (xi). (a). The proposal to levy a plot surcharge was initially mooted in 1983.
- (b). The MOHP usage statistics for the last years reveals that the Port has been achieving the required throughput from Berth 9. The MOHP was commissioned in 1980 and there has been no significant investment in the facilities since than. The plant today would stand fully depreciated. The current surcharge system adequately penalises temporary inefficiencies, if any. Therefore, the circumstances prompting the MOPT to step up the plot turnover ratios are unclear.

- (xii). The MOPT's figures and consequently its proposition that tariffs need to be hiked, cannot be believed. It has been demonstrated that even at current levels of tariffs and without adjustment of revenues for growth in volumes consequent to the capital deployment and, administration and general overheads, which are disproportionately high, the MOPT's ROCE exceeds 29%. If any revision is viewed at all, it must be downward and to the extent of not less than 14%.

**Goa Chamber of Commerce and Industry (GCCl)**

- (i). The MOPT has been requested time and again to submit a cost reduction plan that will ensure global competitiveness of the port so that accelerated Trade, and with it the economic health of Goa, can be ensured; till date, however, no such plan has been furnished and no plan implemented.
- (ii). Figures, especially the projections, supplied by the MOPT to justify a claim for tariff increase appear to have been both invented and concocted to justify the claims being made. Standard Accounting practices and commercially accepted norms have been ignored.

In an economic climate, which is extremely hostile to business when all margins are under pressure; and, the quality and the price competitiveness in demand being the only yardstick for survival, the MOPT must change its conception of the TAMP and the trade as a bottomless pork barrel.

- (iii). The argument over increase in wages due to awards from the Pay Commissions and VRS Scheme has already been given effect in the previous revisions approved by the TAMP. Perhaps, the MOPT has forgotten to delete this argument from its annual repertoire.

Trade is of the opinion that the MOPT can be efficiently run with a reduced work force to the extent of 1500 persons on the rolls of the MOPT. No serious attempt has been made in this direction. Even to the extent that employees have availed of the VRS/SVRS, the MOPT has not given effect of the reduced impact on the future cost of port operations in its submissions.

- (iv). Costs in India are rising at an average annual rate of less than 1.9%. The MOPT, therefore, cannot justify any tariff increase as a result of these low rates of inflation and the CPI especially since a large percentage of port revenue is linked to the US\$ which has appreciated by approximately 4.5% since the last revision. Along with the increase in the total costs there has been a more than compensatory increase in revenues from the increased number of vessels calls at the MOPT, larger proportion of bigger sized vessels calling in the past years and increased traffic of 17.5% at the MOPT in the past year alone.
- (v). In the present proposal, the MOPT has not shown any effect of the ELT scheme on the revenues and surplus accruing to it. Even requests made by the TAMP to enquire into the specific cost areas (like water to shipping) have been totally ignored. In such cases, the TAMP ought to take a serious view and prescribe a 'Nil' tariff.
- (vi). The MOPT refuses to dispel the mist and mysteries of its definition of capital employed. Trade suspects that even surplus bank balances lying in the current accounts are being treated as capital employed and the MOPT is charging 19.5% on these amounts. The amounts invested in buildings for staff quarters, hospitals and schools are also being included in the calculation instead of only operating assets.

The rate of 19.5% in the current economic scenario is preposterous. Entire capital employed by the MOPT has been generated from the surpluses by over charging the trade. Now, the MOPT wants to further rip off the trade on the amounts it has already accumulated from it.

- (vii). The TAMP makes use of a cost plus system to fix tariff for the recovery of costs but does not ensure that the MOPT controls its costs within the limits of efficient operation and financial controls using prudent restraints. The MOPT takes advantage of this and makes no attempt to reign in the costs because TAMP's track record has been to always award increases to the MOPT during tariff revision, albeit at a lower rate than proposed by it. Besides, to justify abnormally high increase in tariff, the MOPT has always been inflating

projection of future cost and deflating projection of future revenues. Had the MOPT been sincere and transparent, it would have highlighted the huge variances between its projected Budget Estimates and Audited Actuals and, had supplied the port users with reasons for such variances.

- (viii). Huge surplus has been generated in the past five years averaging Rs.25 crores per annum net of all the MOPTs' accounting gymnastics and are on an increasing trend. The trade has already paid for the operating assets even before these were provided. The reserves for capital replacement, rehabilitation and modernisation of assets and reserves for development, repayment of loans and contingencies have not been applied for the purpose for which they were intended but fritted away on investment in non-operating assets.
- (ix). Pension fund data comprising of a statement of Accounts of the Pension Fund as well as an actuarial valuation of the potential future surplus/deficit on account of the Pension Fund operations should have been made available to the port users, which was not done as it is an off Balance Sheet item. This justification appears to be a new ploy by the MOPT to extract its ounce of flesh from the trade and that too at a time when the trade is already bleeding.
- (x). The trade recommends not to consider any increase in tariffs specially, during the times of economic stress. The specific points requiring urgent consideration of the TAMP are indicated below:
  - (a). To obtain a Cost Reduction Plan from the MOPT within the prescribed time for a prescribed period. Such a plan shall be designed to measure and monitor cost reduction.
  - (b). To obtain a refined cost statements in respect of supply of water to shipping.
  - (c). To provide a detailed and transparent statement of Capital employed for calculation of the ROCE. To reconsider the economic rate in today's scenario as not exceeding 12% on the productive capital employed only.
  - (d). Compensation Tonnage Tax needs to be re-categorised as CRC and not VRC as presently classified.
  - (e). The coastal shipping rates being too high and a disincentive to the Indian shipping needs an urgent roll back. To consider abolishing the tariff relating to the vessels registered under the Inland Waterways Act because these vessels provide a cargo feed or passenger services to facilitate trade at the MOPT.
  - (f). Debballasting time shall not be lowered below 5 hours in view that it would effect the safety of vessels being debballasted and loaded at the same time at Berth no.9. The stress to the vessel might cause it to break apart or capsize either at the berth or later in the voyage posing risk to life as well as trade.
  - (g). To waive the pilotage on Transhippers as it is already being charged to double banking vessel. The Transhipper vessels providing a valuable service to the port will not call at the MOPT if they have to rely merely on existing port facilities.
  - (h). To enforce transparent accounting systems so that the costs and the revenues can be identified clearly against each other and failure by the MOPT to comply with shall result in an automatic freeze on all the tariffs and a possible roll back in some of the tariffs.

**Shipping Corporation of India limited (SCI)**

- (i). The throughput has gone up by about 13% in the period 2001 to 2002 as compared to the previous year, which is a commendable performance. Resultantly, the revenues generated have also increased and they shall be sufficient to meet the additional expenditure due to wage hike etc.

- (ii). The Chairman has in the Board Meeting indicated that the TAMP has, in its wisdom, invariably reduced the rates of revision proposed by the ports in the past. This clearly shows that the port has proposed such higher increase in the tariffs mainly because, it expects the TAMP to any way grant reduced increase only.
- (iii). It has been clarified by the MOPT that the operating expenditure has been controlled, infact brought down, while the operating income has gone up. Thus, there is no case for increase in the SOR. The sole reason for asking for increase seems to be for transferring funds to the pension fund of the employees.
- (iv). We are not in favour of any increase in the SOR of the MOPT and leave it to the wisdom of the TAMP to decide on this issue.

**Mormugao Stevedores' Association (MSA)**

- (i). The proposal was not discussed with the users to get their views.
- (ii). The proposal for an upward hike in the cargo handling labour charges was not discussed with the Advisory Committee for recommendations to the Board as per the specific understanding in the MOU of the merger settlement.
- (iii). At the time of conversion of old system of wages/levies, the new rates were originally calculated for a period of three years; however, as per the request of this Authority, the same were agreed for a period of two years w.e.f. 16 July 2001. Since not even one year is completed, the proposal to enhance the tariff by 19% is not justified.
- (iv). There is enough scope to give some relief to the stevedores as indicated below:
  - (a). The expenditure projected by the port is Rs. 19.52 crores for the year 2002-03, which should have been Rs. 16.50 crores as certain expenditure items are repeated. There is a clear surplus of Rs. 4.5 crores.
  - (b). The projected expenditure for 2002-03 includes Rs. 1.26 crores towards residual administrative expenditure under the head Management and General expenses which appears to be unwarranted in view of the fact that the salaries and allowances for Administration staff (i.e. Chief Manager, CHLD, Class III and IV employees) has already been provided for.
  - (c). A sum of Rs.3.60 crores provided towards transfer of Pension fund could have been adjusted against the surplus funds available under the Bonus fund, Reserve fund, Welfare fund in addition to the gratuity fund and pension fund as per the Balance sheet of the MDLB for the year ended March 1998. There may also be surplus achieved by the CHLD during the last three years after merger of the MDLB into the MOPT w.e.f. 1 April 1998.
- (v). No fresh recruitment of the cargo handling workers is required at this juncture as their average deployment is around 10 to 12 days a month. In case of bunching of vessels on rare occasions, the shortage of labour can be met by permitting employment of outside labour or by booking short handled workers or by allowing them to work overtime as new recruitment may cost over Rs. 1.50 lakh per annum.
- (vi). While arriving at the per tonne rate, care must be taken that the calculations are based on the actual wage paid and not on the highest wage limit.
- (vii). The proposal of rates for some new cargoes is not discussed with stevedores with regard to the manning scales, datum, charges, etc. as required by the settlement. No proper explanation was given to us by the CHLD are regards the method of calculation. The proposal hence, requires reworking before being taken up for discussion.
- (viii). There appears to be no need to revise the CHLD rates due to the improved financial position on account of substantial increase in the general cargo traffic.

- (ix). A number of special levies (besides general levies) created for meeting specific financial commitment due to WRC payments and other related arrear payments for which the government has not given any financial assistance are fully cleared by the stevedores and, there is no justification in continuing the same as the present wage agreement for the port and dock workers is valid till 2007 without any change except VDA.
- (x). A notional levy @ 230/460% of wages for grab operation in lieu of non-employment of gang workers cannot be continued as now there are very few gang man only for regular manual handling and even if they are required by the grab operating vessels, the CHLD is not in a position to supply the same.
- (xi). The increase in the traffic and fall in the average employment is mainly on account of improved method of handling with higher capacity of grabs instead of slings.
- (xii). A 19% increase will drive away the traffic to the private ports of Panjim and Karwar. Due to already high handling charges, efforts are on to find alternative places for discharging at the banks of the rivers of Mandori/Zuari. Ports like Calcutta, Mumbai, and Cochin are discussing reduction in the handling charges by reducing the expenditure.
- (xiii). A proposal about the revision of the old slabs (proposed by the MOPT) into viable units and the calculation of the rates thereon based on the October 2000 rate of wage scale as adopted originally; and also, on the basis of wage scale for new recruits as on January 2002 (since majority of the existing workers are new and the actual payment of wages to them are made on the basis of lower wage rates) is submitted for consideration.

3.2. A copy each of the comments received from the users was sent to the MOPT as feed back information.

4. The GMOEA has subsequently forwarded its additional comments on the issue of Transhipper Accord Levy and has stated that the levies proposed by the MOPT are ultra virus, unjustified, unwarranted and without authority of law and jurisdiction. The levies are in the nature of fee charged for the services rendered and since, no services are provided by the MOPT to the transhipper operations, the proposed levies are wholly unjustified. To substantiate these points, copies of the legal proceedings before the judicial commissions, High Court and Supreme Court of India have been produced. The GMOEA has explained various aspects of this matter and requested this Authority to defer the decision on this matter till various appeals pending for final hearing before the Hon'ble High Court are finally disposed off.

5. The Goa Custom House Agents' Association, the Indian National Shipowners' Association and the Container Shipping Lines Association (India) have not furnished comments, so far.

6. The MOPT has subsequently requested the Authority to incorporate the following corrections in its proposal:

In pursuance of Amendment made to the first schedule of the Indian Ports Act 1908 by Act 15 of 1997-part 1- Major ports.

- (i). Instead of the proposed chargeability of port dues on 'vessels from 200 to 3000 GRT', the description of the vessels is amended as vessels upto 3000 GRT.

To amplify the provision for collection of berth hire charges when the vessel stays beyond the allowed time.

- (ii). A reduction in deballasting time from 5 hours to 3 hours has been proposed. *The provision says – 'The deballasting time allowed at Berth no.9 shall be 3 hours and beyond that the penal berth hire charges shall be levied five times the normal berth hire.* The following is added below the provision:

*'the incidence being reduced to per hour or part thereof i.e. without any supplementary charge or rebate 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 vessels' stay at the berth'.*

7. On a preliminary scrutiny of the proposal, the MOPT was requested to furnish the additional information/clarification on various issues, arising out of the proposal as well as this Authority's Orders dated 2 June 2000 and 9 August 2001 relating to cargo-related charges and vessel-related charges respectively. Some of the important queries raised are summarised below:

- (i). To confirm the traffic forecasts in accordance with the Five Year Plan projections.
- (ii). To indicate the capacity created vis-à-vis the investments made/to be made and the increase in traffic on account of additional investments alongwith the capacity of the port as a whole and capacity utilisation.
- (iii). To include the additional income from the vessel-related charges denominated in dollars due to exchange rate variations.
- (iv). To maintain a disparity of 30% between the tariffs for foreign-going and coastal vessels as per a policy of the Government which necessitates accounting for the additional income due to this adjustment in the cost statement for vessel-related charges.
- (v). To explain the increase in the Management and General Administration overheads (M&GAOH) of about 54% during the period 1999-2000 to 2003-04 in comparison with other operating costs including depreciation which have shown an increase of 35% only and also to indicate the mid-term corrective measures of cost control and cost reduction undertaken and its effect, if any.
- (vi). To justify the increase in the operating cost and M & GAOH in the year 2003-04 by 10% of the estimates of 2002-03 in light of the current inflation rate of about 2% to 5%.
- (vii). To justify the inclusion of the contribution to the Pension Fund in the cost statements in addition to the provision for the actual pension / gratuity / commutation of pension / encashment of leave / special compensation payable under the VRS in the FME explaining the basis of its computation.
- (viii). To furnish a list of the capital assets including the Capital work in progress activity wise / sub-activity wise indicating the basis of its allocation as submitted at the time of revision of the vessel-related charges in August 2001.
- (ix). To furnish a detailed computation of the Working Capital included in the Capital Employed
- (x). To indicate the optimum capacity of the new general cargo berths and the railway facilities and the capacity utilisation expected to achieve.
- (xi). To explain the arrangement adopted in respect of maintaining separate accounts of the ELT scheme and to furnish details of income and expenditure.
- (xii). Method adopted to adjust the revenue implication on account of deletion of provision to levy lump sum berth hire on certain categories of vessels.
- (xiii). Performance criteria for issue of notice by the TM/DC to vacate the berth and for allotment of the barge unloader time to the exporter.
- (xiv). Rationale/basis for proposing bunkering charges, particularly for supply of oil/water through tanker where apparently no service is rendered.
- (xv). Basis of determining quantum of rebate with reference to different slabs of plot turnover.
- (xvi). To justify the proposed rates (and furnish detailed calculations) for cargo handling labour charges commoditywise with reference to the cost of handling and productivity levels, which also require a review with reference to an average of last three years.
- (xvii). (a). The current status about the construction of 4-lane road from Verna to Mormugao in lieu of the State government's assurance to waive lease rentals on 128 acres of lands.

- (b). The total investment proposed to be made by the MOPT in the road project; and, the investments already made and expected to be made during 2002-03 and 2003-04.
- (c). To indicate about collection of toll charges for use of this road, if any, and if so, the share of the MOPT out of the total toll realisable.

8. The MOPT has responded on the queries raised by us. Besides furnishing the requisite details, the important points made by it are summarised below:

- (i). The traffic figures adopted in the cost statements (Format III) are as per the approved Budget Estimates and X Five Year Plan projections; however, as against the projections of 204 lakh tonnes in the year 2001-02, the actual traffic achieved during the year was 229.27 lakh tonnes. The cost statement has been suitably modified incorporating the actual figures for the year 2001-02 (Provisional).

During the relevant years i.e. 2002-03 and 2003-04, the Port has earmarked an outlay of Rs.30.86 crores and Rs.107.94 crores respectively towards the developmental schemes, which broadly includes replacement of the existing facilities, creation of additional facilities for passenger traffic and ensuring the Environment Management system. Many of the above schemes like construction of mooring dolphins will create an additional capacity of 2 million tonnes for general cargo. Other schemes like construction of a Multipurpose General Cargo Berth at the Vasco Bay is slated to commence only during the year 2003-04. It will be a major project involving construction of 3 berths at the Vasco bay and is expected to complete during 2007 only.

Taking into account all these factors, the traffic for the year 2003-04 has been projected at 22.15 million tonnes, which is as per the X Plan documents.

- (ii). The additional income from the vessel-related charges denominated in US\$ due to the exchange rate variation computed @ 3% for each year is incorporated. The exchange rate variation is, however, a purely a financial item and is likely to fluctuate upward or downward, and it need not have any bearing on revision of the tariff structure. Also there is no mechanism in our tariff structure to adjust the \$ rates when the Rupee appreciates vis-à-vis US\$. The MOPT is of the view that exchange rate fluctuations should not be taken into account for rate revision.
- (iii). As regards maintaining a disparity of 30% between the rates of foreign-going and coastal vessels, if the VRC in respect of the coastal vessels levied in rupees are increased every time to keep pace with the exchange parity between the rupee and the US\$, the meager coastal traffic will not be in a position to absorb. The recent increase of 15% approved by the TAMP in September, 2001 has resulted in 80% increase in the tariff for coastal vessels, which was resisted by the coastal trade. Therefore, in this exercise, 50% has been increased in both the Indian rupee rates and the US Dollar denominated rates.
- (iv). The increase of 54% in the Management & General Administration Overheads is over a period of 4 years (from 1999-2000 to 2003-04) and covers items of expenses like Salaries and Wages of non operating departments, Engineering workshop overheads, medical expenses, cost of power and water meant for general amenities, store keeping, labour welfare expenses and other residual administration and general overheads, which are fixed in nature and a sizeable percentage of such expenditure is non controllable. Every effort has been made to control the operating expenditure, which is evidenced by the reduction of expenditure from Rs.141.63 crores in 2000-01 to Rs.133.09 crores in 2001-02 and it is going to be maintained at the level of Rs.134.53 crores in 2002-03.

The general inflation rate is around 6.5 % p.a.; however, for the year 2002-03 the increase proposed is only 1.08%. During the year 2001-02, the efforts were made to control the discretionary costs under telephones, entertainment fees, conferences and seminars, sports council, advertising and publicity, cultural expenses, donations, sports academy expenses, etc.

- (v). The operating cost and management & general overheads in the year 2003-04 are increased by 10% as per the TAMP guidelines. Also, as per the CPI number, industrial

dearness allowance percentage for the quarter 1.4.2001 to 30.6.2001 was 28.4% and for the quarter 1.4.2002 to 30.6.2002 it is at 34.9% i.e. an increase of 6.5% during the year. The index percentage increase from 1.1.1997 to 30.6.2002 is 34.9% i.e. overall increase of 7% over a period of 5 years.

- (vi). The expenditure on dredging is apportioned between the Port services and Berth Hire in the ratio/basis of the quantum of silt dredged at the respective areas and stands incorporated in the cost statements accordingly.
- (vii). The figures for the relevant years in respect of FME minus FMI do not contain any item relating to previous years like arrears of pension, salaries, etc. and the required rate of return has been worked out based on the current and future years' requirements.
- (viii). As regards the Pension Fund, the Central Government has advised all the ports that they must plan their finances in such a way that Pension Fund shall be created to take care of the payment of terminal benefits and the monthly pension. The Pension fund must be created in such a way that the automatic operation of Pension Fund will immunise the port from the pressure on account of the Pension bill. With this object in view, the Consultants M/s. Pricewaterhouse Coopers Ltd. was requested to undertake the actuarial valuation of the Pension Fund requirements of the Port, and the accumulated liability as on 31 March 2001 has been arrived as Rs.264.64 crores. They have suggested to built up the pension fund over a period of 10 years i.e. upto 2010 by allocating every year a fixed amount towards the Pension Fund. Even though the figures indicated by the Consultants is more, a token provision of Rs.15 crores for the year 2002-03 and Rs.25 crores for the year 2003-04 has been made. As this is a statutory payment, this fund needs to be created and until such time the fund gets self sufficient, the regular Pension payments have to be made from the General Revenue only.
- (ix). Regarding the observation that some works appears in both the years, it is stated that during the year 2002-03, two Barge unloaders are included in the list of net block, which represents their completion during the year 2002-03. During the year 2003-04, it is expected that 2 more barge unloaders will be commissioned. As final accounts for the year 2001-02 are being finalised, the list of net block for 2001-02 contains only such schemes, which have been completed and taken to the Assets account from the work-in-progress. Suitable adjustments have been made in the list for the years 2002-03 and 2003-04 and the assets have been identified against the relevant sub-activity/activity.

Additions to the figures of net block are in the nature of replacement/improvisation to the MOHP and additions to other plants/equipment with a view to maintain the existing capacity intact and provide improvement in the services rendered by replacing the inefficient/obsolete/worn-out infrastructure from time to time. As far as the MOHP is concerned, with revamping of Receiving/Shipping systems, the average unloading/loading rate has gone up appreciably resulting in more than 100% utilisation of Berth no.9.

The cost of non-existing assets is excluded from the net block figures now furnished and the necessary entries have been made in the year 2001-02.

- (x). The details of working capital for the period 1999-2004 are furnished on the same lines as advised by the TAMP. The outstanding sundry debtors of Rs.4.83 crores which was disallowed by the TAMP during the last revision, will be realised during the year 2002-03 as per the orders of the Law Secretary, Govt. of India. In the same way, the difference in the stock value of Rs.706.37 lakhs in 1999-2000, which was disallowed by the TAMP has been reduced to Rs.285.43 lakhs in 2000-01. Further reconciliation is in progress and the difference will be fully reconciled.
- (xi). The actual transfer of statutory reserves for the year 1999-00 and 2000-01 has been Rs. 10.32 crores and Rs. 11.60 crores respectively which is equal to the 6% of the Capital employed taken for tariff revision i.e. Rs. 171.69 lacs and Rs. 193.41 lacs for the respective years.

During the year 2001-02 the Port has earned a net surplus of Rs.6.5 crores (provisional), which may not be sufficient for appropriation to the two statutory reserves.

- (xii). The cost statements for water supply to shipping have been prepared duly bifurcating the cost of water supply between shipping and internal consumption. The M&G costs are bifurcated based on the quantity of water supply to shipping and internal consumption as per the TAMP order dated 9 August 2001. The water charges recoverable from the Port colony occupants towards the internal consumption are set off against the M&G expenditure.

The water supply to shipping is a separate service and a sub-activity and, the cost statements prepared for the same reflects the cost incurred for providing such service, which is matched with the income.

- (xiii). The projections given at the time of revision of vessel related charges were RE for the year 2000-01, BE for the year 2001-02 and projected figures for 2002-03. But when the general revision proposals were made, the actual figures for the year 2000-01 were available and the Board had also approved the RE for the year 2001-02 and BE 2002-03. Necessarily, only those figures have to be adopted.

The projections of Income and Expenditure in the Budget Estimate are made on realistic basis. These are prepared on the trend of actuals and in close liaison with the user interests duly approved by the Board.

- (xiv). There is no variation in the total of the net block for the years 1999-2000 and 2000-01. The difference between the net block for General cargo ores, and Berthing, Mooring and Cranage for the above two years is due to the transfer of Rs.3921.37 lakhs being the net block value of Berth No.10 and 11 from Berthing, Mooring and Cranage to General Cargo and ores. The net block of Berths 8 and 9 is related to the Cargo services viz. POL and MOHP respectively. As the horizontal surface of berths is meant for use of cargo, the capital value of Berth no.10 and 11 has been transferred to cargo handling and storage activity. There is no advantage accruing to the port on account of this transfer because the present exercise is a general revision covering vessel related charges and cargo related charges.

- (xv). The cost statements include the ELT income and the discernible expenditure thereon as part of the operating income and expenditure; however, for the purposes of clarity, a proforma account on receipts and identifiable expenditure incurred under the ELT Scheme to improve the MOHP productivity is provided.

- (xvi). The MOPT is in favour of charging the Port Dues on vessels for each entry.

- (xvii). Special rate, which was previously called Compensatory Tonnage Tax is being collected on barges bringing iron ore for shipment from the vessel owners for the sake of convenience of assessment and collection.

- (xviii). The spectrum of cancellation charges is widened with a view to recover the costs involved in the services rendered. Similarly, the double banking charges of transhippers at west of break waters are fixed twice the applicable shifting charges which is based on the cost of services for double banking.

- (xix). (a). As regards the Berth hire and Anchorage charges on iron ore vessels at Berth No.9, the port levies a lumpsum charge of US \$ 4550.23 for foreign-going vessels and Rs.149702.50 for coastal vessels of size 50,000 – 1,00,000 DWT in addition to the Berth hire charges. The TAMP has in its Order dated 29 August, 2001 relating to the vessel-related charges, indicated that the lumpsum charge should be absorbed by working out a revised GRT based berth hire charges, which is proposed in this revision. While doing so, it was observed that there are certain classes of vessels for which even though the GRT is the same their DWT differ i.e. one may be in the range 50,000 – 1,00,000 DWT and the other may be either below or above. Therefore, in order to have a clear distinction, the vessels under 50,000 – 1,00,000 DWT range are shown separately. In the same way, in case of vessels of size 1,60,000 DWT and above, the concession @ 25% in the berth hire charges needs to be absorbed in the GRT based rate.

- (b). As regards the performance criteria for issue of notice by the TM/DC to vacate the berth and for allotment of the barge unloader time to the exporter, the time allowed for a vessel after completion of cargo is 3 hours. If the vessel is not ready to vacate the berth, berth hire at 5 times the normal rate is proposed to levy to discourage over-stay and encourage the vessels to vacate the berth quickly. In the same way, a grace time of 15 minutes is given for the barge to vacate the unloading jetty attached to the MOHP. If the barge exceeds that time limit, then a berth hire charge at Rs.227.70 per hour is proposed to be levied. As the above levies are in the form of encouraging quick turn around of the vessel/barge, it is not possible to list out the circumstances in which these charges are not leviable.
- (c). For availing bunkering facility, the vessels/barges have to come alongside the berth. As such the charges are leviable for this purpose, and are in the form of entry fee to be levied on tankers for supply of oil and water, which is proposed to be collected from the service provider.
- (xx). The existing tug hire rate for 30 T. Bollard Pull is proposed to increase by 50%. The new tugs of above 30 T. Bollard Pull power, which will be commissioned soon, a new rate has been proposed based on the capital cost and the cost of operations.
- (xxi). As regards the special rate, which was otherwise called Compensation Tonnage Tax in the earlier SOR, has now been collected from the vessel owners/Agents as per the TAMP Order dated 9 August 2001 instead of the Cargo interests earlier for use of port facilities by the barges. There are representations from the Shipping Agents against the collection of this special rate from the vessel interest as this is primarily meant for collection from the cargo interests. This has been kept separately without merging with the vessel-related charges for issuance of the TAMP Orders accordingly.
- (xxii). The transhipper - special charges were enhanced by the Board for primary loading and untopping to Rs.5.40 per tonne and Rs.2.70 per tonne respectively. The transhipper owners- M/s. V.M. Salgaocar & Brothers Ltd. and M/s. V.S. Dempo & Co. had challenged the enhancement in the transhipper charges by the Board before the High Court, which had taken a view that the increase in special charges should have been proportionate to the enhancement in loading capacity and accordingly worked out the figures by applying an increase of 30% and 20%.

The Port Trust challenged the High Court order before the Supreme Court, who has vide its order dated 11.9.1996, held that it being a matter covered by the statutory provision as also the contract, should have goaded the High Court to not cause any interference thereto and its urge to bring forth legitimacy to the special charges, from under the other provisions of the Act, was an exercise which, in our view, was erroneous. Section 46 was the solitary provision, which was attracted in the case. When the special charges as asked by the Board, were found to be exorbitant or unconscionable, there was no cause for the High Court to have issued writ in favour of the respondents.”

In the said Civil Appeals, the petitioners and the respondents have filed a Deed of Settlement/Consent Terms and the said Appeals were disposed of by the Supreme Court, since both the parties agreed that the said rates will remain in force until they are revised by the Board in exercise of its statutory powers as per Para 1(iv) of the Deed of Settlement. Therefore, the proposed revision is not violative of the Supreme Court judgement.

- (xxiii). The port is having a limited warehousing facility with a capacity to store 35.644 tonnes of cargo. In order to encourage general cargo traffic it is proposed to increase the warehousing charges by only 25% instead of a deficit of 419% appearing in the warehousing charges. The rates of other warehouses in the port vicinity will be collected and submitted.
- (xxiv). The commodity-wise cost of cargo handling labour charges is not maintained/ available separately. As such, a statement indicating the productivity of the commodity-wise tonnage per hook, handled for the 3 years is furnished.

- (xxv). The port has reviewed the under-utilisation of the Reach Stacker hired from private party for use of container operators at the MOPT. Reach Stacker is made available to the container operators at lower rates of hire charges to encourage higher utilisation. It has been made mandatory for the container operators to use the Port Reach Stacker only. Even though the Port is incurring loss under this activity, only 25% increase is proposed.
- (xxvi). The ownership of the subject area of 128 acres of land at Headland has been transferred to the MOPT against payment of Rs. 3.41 crores towards stamp duty, registration charges, etc. being 10% of the value of the land taken at Rs.650/- per M<sup>2</sup>.

The total investment proposed in the road project is Rs.20 crores. The investment already made is Rs. 16.68 crores and the expected investment during 2002-03 and 2003-04 are Rs.1.66 crores and Rs.1.34 crores respectively.

The project of construction of four lane road has been taken over by the National Highways Authority of India (NHAI) from April, 2001 for further funding and speedy implementation of the project as part of the policy decisions taken by the Government of India to give connectivity to all the Major Ports in India and the whole financial control of the project is also being looked after by them. The NHAI has also formed a Company called Mormugao Port Road Company Limited and has been registered at New Delhi. The modalities for setting up a toll plaza, etc. are being worked out by the NHAI.

- (xxvii). The proposal for the review of the level of plot turnover under the Surcharge Rebate Scheme on Iron Ore and Pellets exported through the MOHP, placed before the Board of Trustees in its meeting held on 28 December 2001 was deferred by the Board for re-submission with full details relating to the earlier background of the case alongwith the basis in fixing the initial level of turnover of plot capacity. The points made in this regard are summarised below:
- (a). The handling charges leviable at the MOHP were initially fixed at Rs.27.56 per tonne of ore/pellets handled at a breakeven throughput of 8 million tonnes from the plant which in turn was based on the throughput of shipping system and other complimentary facilities, with an expected average size of shipment of 45000 tonnes per vessel and the various costs relevant to the handling operations.
- (b). The revision in February 1983 required an addition of Rs.0.66 per tonne by way of increased costs on depreciation, interest and return. It was also proposed to levy surcharge of Rs.8.80 per tonne on all iron ore/pellets handled at Berth No.9 towards plot rental charges. On a considered view that the rental charges would ultimately get absorbed in the handling rate once the optimum level of throughput of 8 million tonnes (or 8 times the normal capacity of each individual exporter's plot) was reached, simultaneously a scheme of rebates was proposed which could be availed of by each and every exporter holding a plot for a period of one year on the following pattern:

| Level of turnover achieved for the year | Rate of rebate allowed on aggregate tonnage handled for the year. |
|---|---|
| 6.25 times of the nominal plot capacity | 1.00  |
| 6.50 - do -                             | 2.00  |
| 6.75 - do -                             | 3.00  |
| 7.00 - do -                             | 4.00  |
| 7.25 - do -                             | 5.20  |
| 7.50 - do -                             | 6.40  |
| 7.75 - do -                             | 7.60  |
| 8.00 - do -                             | 8.80  |

- (c). The Mormugao Port (Shipment of Ore and Pellets from MOHP Berth No.9 and Related matters) Regulations 1979 provide for allotment of iron ore/pellets storage plot at Berth No.9 for fixing a minimum annual turnover in terms of such plot for

each and every exporter of iron ore/pellets in accordance with its total export capacity.

- (d). The scheme of incentive /rebate based on the plot utilisation and turnover was reviewed in July 1986 (by way of raising the basic rate as well as the eligibility level in respect of the rate) as indicated below along with the handling charges to be levied. The scheme resulted in the MOHP enabling to cross 7 million tonnes mark in the year 1985-86 and, the efforts were directed towards raising the level of throughput further to 8 million tonnes.

| On achieving a level of turnover    | Rate of rebate allowed<br>Rs. per tonne |
|-------------------------------------|---|
| 7.25 times of nominal plot capacity | 1.00                                    |
| 7.50 times of nominal plot capacity | 2.00                                    |
| 7.75 times of nominal plot capacity | 3.20                                    |
| 8.00 times of nominal plot capacity | 4.50                                    |

- (e). The scheme was meant for improving the capacity utilisation of the plant to achieve the optimum turnover; and, the performance of the plant could exceed the installed handling capacity of 8 million tonnes per annum due to reasons like (a) installation of a continuous barge unloader, (b) augmentation work in the Receiving System/revamping of the barge unloaders, and (c) entering into a Power Purchase Agreement with M/s. RSPCL for uninterrupted dedicated supply of power. A suitable incentive scheme for the workers of the MOHP has also been introduced.
- (f). There is, therefore, a need for review of the Surcharge Rebate Scheme not only to realise the additional costs involved but also to maintain the efficiency of the plant and turnover of the plot capacity by plot allottees. The performance of the plot allottees can be improved to sub-serve the optimum utilisation of the plot by revising the level of plot turnover at 9.5 times the nominal plot capacity, which the plant can achieve having handled 10.67 million tonnes during the year 2000-01.

9. The MOPT has furnished its comments on the submissions of the port users, which are summarised below:

On the comments of the GMOEA

- (i). The representatives of the GMOEA viz. M/s. Billimoria & Co. have personally ascertained the veracity of the figures adopted in the exercise as decided at the Board meeting held on 27 February 2002 to give a detailed insight into the working and formulation of the proposal and were satisfied that the proposal is based on the audited figures. The remark that the port willfully attempts to inflate the proposal is highly objectionable. The port is adopting a transparent system and only published figures are adopted in the exercise.
- (ii). The TAMP is the authority to fix port tariff. The MOPT has furnished the relevant information in the format prescribed by the TAMP and is under obligation to follow the directives of the Authority.
- (iii). The annual contribution towards the pension fund is desired to be built against the past accumulated liability of Rs. 264.64 crores as on 31 March 2001, determined by the consultants M/s. Price Water House Coopers Limited and Crisil Advisory Services in their report on corporatisation of the port trust. The Government has also issued directives to build the funds for immunising the pension liability. The contributions for the years 2002-03 and 2003-04 are proposed at Rs. 15.20 crores and Rs. 25.20 crores respectively as suggested by the consultants and directed by the Government. Out of this amount, Rs. 20 Lacs is towards the insurance fund for each of the two years. These amounts are apportioned to various sub-activities on the basis of salaries & wages.
- (iv). The estimates of the present value of the liability to be paid on account of the retirement benefits has been done on an actuarial valuation by the consultants. The estimation of such liability on the basis of actuarial valuation has been made mandatory in 1995 by Accounting Standard 15 (AS 15) on accounting for retirement benefits in the financial statement of the employees issued by the Institute of Chartered Accountants of India. The actuarial

valuation as on 31 March 2001 fixed at Rs. 264.64 crores is arrived as per the details given below:

| Retirement benefit | Accumulated Liabilities as per Actuarial Valuation as on 31.3. 2001 (Rs. crores) | Fund Balance (as on 31.3 2000) (Rs. crores) |
|--------------------|--|---|
| Pension            | 184.51   | 4.83  |
| Gratuity           | 34.62  |   |
| Leave Encashment   | 21.54  | Nil   |
| Medical Benefits   | 23.97  | Nil   |
| Total              | 264.64   | 4.83  |

- (v). As per the accounting procedure in vogue, all the employees' post retirement benefits which comprise of retirement gratuity, encashment of earned leave, commuted pension, pension payments, ex-gratia under voluntary retirement scheme, post retirement medical benefits etc. are debited under the F & M expenditure.
- (vi). The procedure of providing for gratuity against the annual salary on year to year basis is the Government directive.
- (vii). The competency of a port in respect of its fund management, cannot be questioned by a representationist.
- (viii). The MOHP figures furnished are as per the published Accounts, the BE and the directives issued by the TAMP from time to time. There is no underestimation of income in the MOHP segment.
- (ix). Income towards wharfage on ore loaded in stream/overside and special charges on transhipper for primary loading/uptopping of the vessels are included under the MOHP activity as per the TAMP directives. These charges are towards cargo handled in stream and as such cannot be included in determining the MOHP handling rate.
- (x). The traffic is based on the trend of actuals with anticipated changes as approved by the Board of Trustees/Ministry of Shipping. The MOHP (installed in 1978 and commercially operative since October 1979) is fully depreciated and as such to upkeep the capacity intact, replacement of spares/equipment for loading and unloading system is required. As such the capital expenditure projected during the year 2001-02 to 2003-04 is in the order of Rs. 52.53 crores.
- (xi). The cargo brought in by barges on the port navigational area and the infrastructure for loading by the transhippers causes spillage which needs to be cleared for its upkeep. The expenditure incurred on the maintenance dredging is Rs. 12 crores per annum.
- (xii). The ELT income under the supplementary berth hire and anchorage as also the rebate are accounted under the sub-activity Berthing & Mooring. A performa account of the Income & Expenditure is prepared and separately submitted to the TAMP.
- (xiii). Every effort has been made to control the operating costs, which is evidenced by the fact that the operating expenditure which was Rs. 141.63 crores in the year 2001 has gone down to Rs. 133.26 crores (provisional) in the year 2001-02 and it is proposed to restrict to Rs. 134.53 crores in the year 2002-03. The increase proposed @ 10% for the year 2003-04 is as per the normal practice followed by the TAMP in the rate revision exercise.
- (xiv). Detailed working on the Capital employed for the relevant years has been sent to the TAMP. As regards the social assets, the TAMP has vide para 13(xiii) of the Order dated 2 June 2000, observed that since the port trusts were public bodies, the burden of providing certain facilities like schools, roads, etc. inevitably would fall on the port trusts. It may not be appropriate to penalise a port trust by not allowing any return on its investment in creation of such assets.

The MOHP is fully depreciated and working above its rated capacity. The insurance spares need to be maintained for its upkeep and efficient working.

- (xv). The concession of 25% allowed on the vessels of 1,60,000 DWT and above has been suitably incorporated in the basic rate itself.
- (xvi). As regards the impact of adjustments, no comments are offered as the figures given by the GMOEA are not based on the published figures of the port trust.
- (xvii). As regards the surcharge on the plot turnover, a detailed reply has been sent to the TAMP.
- (xvii). The contention that the MOPT figures cannot be believed is highly objectionable.
- (xix). The contention that the ROCE exceeds 29% and that revision if any shall be downward is without any substance and not based on material facts.
- (xx). In the service industry like port, the percentage of overheads is bound to be high since raw materials do not form part of the total cost of service as in a manufacturing industry. These charges have to be considered in absolute terms and not as a percentage of the total cost. The operating expenditure, which includes Administration general expenses has been appreciably controlled and reduced during the previous year and the trend is likely to continue in the current year also.

On the additional comments of the GMOEA

The MOPT has forwarded a copy of the legal opinion sought by it from Shri. S. V. Kamat on the issue of Transhipper Accord Levy. The relevant points made are summarised below:

- (i). Dealing with the plea of the Transhipper Owners that since the Scheme of 1965 does not continue, the Agreements between the Transhipper Owners and erstwhile Mormugao Dock Labour Board do not remain in force and consequently, no amount is payable by the Transhipper Owners to the Board from 1 April 1998, the Hon'ble District Court, in its judgment and Order dated 7 July 2001 at para 77-1 of the judgment has held that in view of the provision of section 4 of 1997 Act, the contentions of the transhipper owners deserve to be rejected.
- (ii). Aggrieved by the aforesaid judgement and Decree dated 7 July 2001, M/s. V. M. Salgaonker & Bro. Pvt. Ltd. filed first civil appeal no. 152 before the Hon'ble High Court at Panaji, for setting aside the said decree. Similarly, M/s. Chowgule & Co. Pvt. Ltd., filed first appeal no. 154/2001 for the same purpose.

Applications for the stay of the execution of the decrees, in so far as they relate to the recovery of the amount by the Board, were also filed in both the aforesaid appeals.

Separate Writ Petitions were also filed by the aforesaid two Transhipper Owners, challenging the imposition of the Transhipper levy from 1 April 1998 on the various grounds, including those urged in the GMOEA letter dated 3 May 2002.

- (iii). The said petitions though admitted; the interim prayers for restraining the Board from imposing the Transhipper levy, were rejected.
- (iv). The stay applications in the aforesaid first civil appeal came up for hearing before the Hon'ble High Court on 20 March 2002 and the same were disposed of in terms of the following order-

"On the Applicants depositing in the Court 50% of the decretal amount within eight weeks from today and on furnishing Bank Guarantee to this court for the balance of the decretal amount calculated as on the date of deposit, also to be furnished within eight weeks, stay in terms of Prayer (a) of Misc. Civil Application, on the amount being deposited in the Court. Office to take steps to invest the same in a nationalised bank or the state bank."

- (v). The Board has also filed an appeal against the judgment and the decree dated 7 July 2001 passed in the civil suit no. 10/1985 insofar as it relates to refusal of various counter-claims of the Board.

- (vi). The Board has also filed cross-objections in the first civil appeal no. 152/2001. In the said appeal and cross-objections by the Board, the Board has, inter alia, prayed that the findings of the Ld. District Judge, at para no. 79 of the said judgement that "the suit agreements have also come to an end" be reserved.
- (vii). As on date, therefore, there is no order by any Court restraining the Board from imposing the Transhipper levy or revising the same. Mere pendency of the civil appeals and writ petitions before the High Court does not constitute a ban on imposition of or revision of the Transhipper levy, more so, when the interim prayers of the petitioners in the aforesaid petitions for restraining the Board from imposing the Transhipper levy, were rejected.
- (viii). The MOPT is therefore, fully justified in revising the Transhipper levy and other levies; and, the objections raised by the GMOEA vide its letter dated 3 May 2002 are untenable at law.

On the comments of the ESSAR

- (i). The operation at berth no. 7 with use of the Essar cranes is completely different from the operations of the transhippers. The transhipper tonnage as well as the quantity of cargo loaded by the transhippers is very high as compared to the quantity handled at Berth no. 7. Even as per the prescribed formula, 1500 tonnes per shift per crane is never achieved; and, therefore, separate rates are required for loading/unloading of cargo by using shore cranes at berth no. 7.
- (ii). The rates for loading/unloading on per tonne basis was arrived with the mutual consent on an agreement signed by the MOPT, the MDLB and the Essar. The formula established under the agreement is given below:
  - (a). The total wages of winch-cum-crane operators plus the levies applicable thereon for grab operations;
  - (b). Levies applicable in respect of one gang of workers for grab operations;
  - (c). The above is divided by 1500 tonnes per crane per shift.
- (iii). Though the rate as per above formula agreed and acted upon comes to Rs. 19.54 per tonne, in the revised proposal a compensatory levy has been worked out to Rs. 13.74 per tonnes in respect of the Essar crane operations. The concession has been given since in the case of other grab vessels, the notional levy for gang for grab operation is reduced and fixed at 230% and the same notional levy is to be made applicable by working out the cost as per the formula. Therefore, the request for levy of a rate of Rs. 4.50 per tonne is not acceptable.

On the comments of the MSAA

- (i). The argument that the effect of depreciation in rupee terms as compared to the dollar will work to the advantage of the port as far as the vessel-related charges are concerned cannot be accepted. The fluctuation in exchange parity cannot be constructed as an additional income to the port, since this forms part of the business income as a whole. Further, it will be doubtful if the trade can accept the reverse position i.e. the rupee appreciation against the dollar. As advised by the TAMP, income in respect of foreign-going vessels has been increased by 3% and 6% for the years 2002-03 and 2003-04 respectively.
- (ii). The opinion of the MSAA insofar as it states that cross-subsidisation shall not be resorted to appears to be misleading. If these were to be accepted in a scenario where many of the sub-activities of operations do not match with the cost incurred thereon, it will be detrimental to a sizeable section of the trade interest, and will gradually affect the prospects of continual increase in the general cargo traffic. The principle of cross-subsidisation has been followed long since and is also approved by the Tariff Authority.
- (iii). The cost statements duly bifurcating the cost of services of water supply to shipping and for other general purposes has been prepared taking into account all the factors. The overheads of maintaining water supply installations, infrastructure additions thereto, and, the cost of water *per se* from the State Government leaves no choice, but to enhance the cost of services as envisaged in the statement.

- (iv). The additions to the infrastructure at the port are made taking into account adequacy or otherwise of the cargo handling requirements. The new facilities now under process are not only intended to improve the existing iron ore handling rate (such as replacement of barge unloaders), but also to provide facilities for additional cargo generations (such as provision of three nos. mooring dolphins at East of Breakwaters).
- (v). As regards the condition of freight market, the figures furnished, though are not disputed, the trade has not been transparent enough to furnish their cost/earning details as they have been demanding of the port.
- (vi). The port does endorse the views of the MSAA to regard the Compensation Tonnage Tax (special charge) as a cargo-related charge.
- (vii). The port is in agreement with the views of the MSAA that the coastal rates may be delinked from the dollar related tariff, since the coastal traffic is carried only on Indian rupee terms.
- (viii). There appears to be no justification for any change in the proposed reduction of time for deballasting, as the deballasting is carried out simultaneously while loading is in progress. Also there is no need for allowing any separate deballasting time if the total time at berth is more than 18 hours. It is also seen that the deballasting timings (14-15 hours) are adversely affecting the productivity at the berth and consequently the Efficiency Linked Tariff Scheme. No such deballasting time is permitted in Australian and Brazilian ports, where the loading rates are twice the rates existing here.
- (ix). There appears no reason for any change in the proposed levies in respect of the pilotage on transhippers if the following experience of the port on this account is of any guide. For instance, for double banking operations of the transhippers (other than T.V. ORRISA), it takes approximately 3 hours for each operation and a minimum use of one tug and one pilot launch in addition to the services of a pilot. The total cost of these services works out to approximately twice the shifting charges now levied. The rates for hiring of tug for operations other than the shipping are subsidised rates. In the case of T.V. ORRISA for double banking operations, it takes more than three hours and two tugs are utilised, besides the use of pilot launch and pilot.
- (x). The hike in the berth hire rate correction in terms of US\$ is due to absorption of lumpsum charges for the class of vessels of size 50,000 DWT to 1,00,000 DWT in the rate itself. As such there is no need for any decrease in the rate proposed.

On the comments of the MSA:

- (i). The matter regarding discussion on proposed fixation of rates before sending it to the TAMP was raised in the Board of Trustees meeting and was replied by the statutory authority of Cargo Handling Labour Department (CHLD) that it is not required to be discussed in the advisory committee. However, on the request of the President, MSA, two meetings were held; one with the officer of the CHLD and the other with the officer of the finance department. The suggestion received from the MSA requires thorough study before replying to the TAMP.
- (ii). As per the TAMP order the railway charges, etc. and also the cargo handling worker charges approved by the Authority were also ordered to be co-terminus with the validity of the general revision of cargo-related charges approved in June 2000, so that a coordinated view will be possible in future at least of all the cargo-related tariff at the MOPT. In view of the above, the 19% increase is required to be reviewed.
- (iii). The projected income and expenses of the CHLD for the year 2002-03 is based on the Budget Estimates, which was discussed and approved by the Board of Trustees consisting of representative of the Stevedore Association also. The variations are residual administration, ex-gratia, other miscellaneous expenses and transfer to pension fund. In respect of the transfer to pension fund, the apportioned value of Rs.15 crores is proposed to be transferred from the General Reserve to the Pension fund.
- (iv). (a). As regards the suggestion of no recruitment of cargo handling workers, the assessment of requirement of the cargo handling workers on an average

employment basis is not the correct criteria for fixing the strength of the workers but by the total number of berths of general, cargo work at sheds, stuffing/de-stuffing work, loading/un-loading of trucks, collecting cargo and cleaning wagons, work at the R&D yards, besides miscellaneous works as per the manning scale for cleaning hatches, cleaning decks, breaking hard cargoes, hooking/un-hooking etc.

The suggestion for permitting employment of outside labour will create problems, therefore no private labour shall be allowed in the port to carry out the operation of Dock work, which is presently being carried out by the CHLD workers.

- (b). The manning scale of the CHLD submitted to the National Industrial Tribunal is a bare minimum compared to the other cargo handling department and the DLB's of other ports. The case is still going-on with the National Tribunal. The Board of Trustees have already finalised the strength of 400 cargo handling workers and 200 winch-cum-crane operators in their meeting held on 28 February 2001. If the sanctioned strength of the labour is not maintained, it will have effects on the pending cases of the transhipper levy in the High Court and other Courts.
- (c). The workers who have retired during the years 2001 and 2002 were CPF members and have opted for pension and post retirement benefits. There are 635 pensioners, 111 family pensioners and 33 ex-gratia beneficiaries in the CHLD. The liability is on the increase and no estimation and provision on the basis of actuarial valuation exist.
- (d). Manning scales of cargo handling workers is bare minimum and, the datum has also reviewed from time to time. It is not required to be put up always for discussion in the advisory committee as, the unions await for such a discussion only to demand higher incentives.
- (e). The proposed increase of 19% is based on the workings given in the cost statement for CHLD of the proposal.
- (f). Majority of the workers/employees are opting for pension in place of the CPF. Moreover, the requirement to built up an enhanced gratuity fund will also result in an increase in the present per tonne cost.
- (g). The minor ports surrounding the Mormugao port are not comparable on any aspect and also there is no infrastructure available at the minor ports, which is permanently maintained by this port. Those who are interested to carry out that business at the private ports are doing so without any hesitation and threat to this port.
- (v). The MOPT proposal for rationalisation of the levy of the erstwhile MDLB into per tonne commodity wise rates, approved by the TAMP vide Order dated 28 June 2001 was discussed in detail with the MSA and the proposal was agreed to by all concerned. The rates worked out by the MSA after reviewing the old slabs into viable units on the basis of wage scales for the new recruits (i.e. as on January 2002) cannot be justified as the MOPT has to bear the liability on account of old workers who were CPF members and have now become entitled for increased pension, post retirement benefits like medical facilities, etc.

10.1. A joint hearing in this case was held on 28 May 2002 at the MOPT premises. At the joint hearing, the following submissions were made:

**Mormugao Port Trust (MOPT)**

- (i). The proposal is detailed, supported by elaborate data. The Board of Trustees have discussed, asked for further information and after the second round of discussion it was approved. There was sufficient consultation.
- (ii). Our estimates are based on actual trends. They are not engineered to suit our purpose.
- (iii). (a). In the last 4 years, not even one employee has been added.

- (b). Pension fund is a statutory fund. How can we avoid it? We have taken care to be guided by actuarial advice.
- (c). We have taken legal advice. The 'transhipper' item is not at all hit by the case pending in the High Court.
- (d). We have taken specific measures for cost reduction. We will give details.
- (e). It will be unrealistic and unimaginative to exclude social costs. We are not irresponsible in this regard.
- (f). Wage revision / VRS / Pension were not taken into account at the last revision.
- (g). Necessary adjustments regarding exchange rate fluctuation have been made.
- (h). We are modernising the MOHP. There will be heavy investments and expenditure is therefore, bound to increase substantially.
- (i). For inflation, the GOI goes by the WPI; we have gone by the CPI, which works out to 6.5%.
- (j). As regards the highway expenditure of Rs. 3.41 crores, there is no need of a 'toll'. This expenditure has not been taken into account.
- (k). As for the capacity utilisation, the excess performance is attributable to elasticities available. The fixed capacity is 19.98 MT. The MOS is currently reviewing the capacity earlier fixed.

**Goa Mineral Ore Exporters Association (GMOEA)**

- (i). Return on Capital is exaggerated.
- (ii). Estimates are widely variant.
- (iii).
  - (a). With the increasing costs of the MOPT, the Indian iron ore export is becoming less and less competitive internationally.
  - (b). International standard is 1,00,000 MT loading per day; the MOPT does only around 50,000 M.T.
  - (c). The social costs are very high.
  - (d). As regards the inflation, the TAMP has given no 'directive' about 10% per annum. When the country follows the WPI, how can the MOPT go by the CPI? The CPI is not relevant.
  - (e). The capital expenditure must result in reduction of cost and increase of traffic. Otherwise, it must be deemed to be 'social expenditure'.
  - (f). The projections give undue benefits. Either absorb in future tariff revisions or ignore capital employed now; decide on existing actuals; and, review 4 years later.
  - (g). 12.5% government lending rate is high. Please go by market realities.
  - (h). The "3% + 3%" is an appropriation and not a "charge to" profits. The MOPT can have an earmarked funding arrangement. There cannot be another 'return' on investments from that 'fund'.
  - (i). Please see the Auditor's Report on Capital employed.
  - (j). Are 'transhipper vessels' eligible for the concessions u/s 50A and 50B? The TAMP must clarify.

- (k). The logic of changing the norm from 8 MT to 9.5 MT in respect of the plot turnover must be explained.
- (l). We feel, the tariff for iron ore needs to be reduced, not increased.
- (iv). There was no consultation with the trade. The port went straight to the Board of Trustees. The Board wanted time to be given to the trade to comment. That was done. But, all the comments/objections were ignored. The proposal has remained the same.

**Mormugao Stevedores' Association (MSA)**

- (i). When the TAMP last revised the tariff, it gave a 2 year cycle. The MOPT wants to revise within 9 months. Why?
- (ii). Please see Annex III to our letter dated 25 April 2002. Items 5(d) and 7 (relating to Residual Administration and certain items of FME respectively) are objectionable. It cannot be a legitimate claim.
- (iii). Let the CHLD not recruit any more labour and add to commitments.

**Goa Chamber of Commerce and Industry (GCCCI)**

- (i). In a cost based approach, costs must be clearly defined and, reasonable limits should be indicated.
- (ii). We have some doubts about some items in the 'net block'.
- (iii). We should give more attention to 'cost management'. Let there be some expert guidance.
- (iv). Since the last revision, there has been no particular change in the investment position.
- (v). The issue of reviewing the ROCE may be listed for the second workshop to be organised by the TAMP. Let us not wait till then, we can start action to change starting with this case.

**Mormugao Ships Agents Association (MSAA)**

- (i). We fully support the GMOEA.
- (ii). There is no justification for increasing the VRCs.
- (iii). Debballasting time at berth-9 shall not be reduced. The charge proposed is too harsh.
- (iv). A new slab of 'greater than 25,000 MT' has been added. There is no justification. It will only add to our burden.
- (v). The CTT, now called special rate must be collected from the cargo interests.

**Shipping Corporation of India limited (SCI)**

- (i). We endorse the views of the MSAA.
- (ii). There is no justification for any increase.

**Jindal Vijayanagar Steel Limited (JVSL)**

- (i). We are the biggest user of the port in general cargo. Even so, there has been no consultation with us, may be because there is no mechanism for such consultation. The MOPT must introduce it.
- (ii). Traffic has increased. Operating income of the port has increased. This will reduce the cost of handling. This must be taken into account.

- (iii). Cost of power and Cost of spares are not relevant to berths 10 & 11. There are no port equipment. Allocation of costs to general cargo in berths 10 & 11 must be changed.
- (iv). (a). Our discharge rate is double that of the norm adopted by the port.
- (b). Our traffic volume has also substantially increased.
- (c). Give a 'volume discount' to us on both counts. (definitely on wharfage).

**Container Shipping Lines Association (CSLA)**

- (i). The tariff increase will divert the traffic to nearby ports.
- (ii). If berth hire is going to be only GRT-based, why should the unit rate also go up.

**The MMTC Limited:**

- (i). Please determine the current capacity levels of barge unloading. For any new investment, if it does not result in betterment of this capacity, it shall not qualify for a return.
- (ii). Do a similar exercise for all investments, especially in the MOHP.
- (iii). As regards the plot turnover, the same is not within the TAMP purview to go into this at all.

10.2. At the joint hearing, the following written submission were furnished:

**Mormugao Port Trust (MOPT)**

- (i). Consolidated volume of replies to queries raised by us.
- (ii). Copy of the Bombay High Court Order and the legal advice of their advocate on the matter of Transhipment accord levy being sub-judice.

**Goa Mineral Ore Exporters Association (GMOEA)**

- (i). Copies of agreements between the various Transhipper owners and the erstwhile Mormugao Dock Labour Board (MDLB).
- (ii). Copy of judgment and decree dated 7 July 2001 of the District Court of South Goa about agreements entered between the Transhippers and the MDLB coming to an end.
- (iii). Copy of the judgment dated 12 October 1984 of the High Court of judicature at Bombay, Panaji Branch.
- (iv). Copy of the judgment of the Supreme Court in Sociedade de Formento Industrial Pvt. Ltd. & Ors - Vs. - MDLB and another reported in 1995.
- (v). Copy of extracts from the Affidavits filed.
- (vi). Hard copy of the slide presentation of its arguments at the joint hearing.

**Mormugao Stevedores' Association (MSA)**

- (i). Copy of their letter dated 25 April 2002 containing comments on the MOPT proposal.
  - (ii). In the written submissions, in addition to reiterating the points made in the comments offered by them, they have submitted the proposal for rates of levy for the MDLB wherein the revised rates include the element of notional gang levy also.
- 11.1. (i). In accordance with the decision taken at the joint hearing, the MOPT was given ten days time to file written submission on the following points:

- (a). Adoption of only GRT basis (and not DWT basis) for all matters relating to the VRCs.
- (b). An updated list of (completed and commissioned) assets in the net block.
- (ii). The MOPT was further requested to forward an updated list of assets (as stated at (i) (b)) in the net block to the GMOEA as agreed.

11.2. The GMOEA was requested to forward their specific observations within a week's time from the date of receipt of the information from the MOPT.

12.1. The MOPT has responded to the issues raised by this Authority at the joint hearing. The important points / submissions made by the MOPT are given below:

- (i). The schedule of Berth hire and anchorage charges have been re-classified, by eliminating the dual criteria of GRT as well as DWT; and, all the vessels are now classified under the GRT slab only.
- (ii). The levies proposed as bunkering charges is dropped; and, charges for entry of oil/water tanker are proposed to be levied as 'entry fee' as proposed for entry of trucks.
- (iii). The 'special rate' on Iron ore shipped is merged with the wharfage on ore handled, which shall be borne by the cargo interests.
- (iv). Pilotage fee in respect of double banking of transhipper-west of break water is revised from '2 times the shifting charges applicable' earlier to '1½ times the shifting charges applicable'.
- (v). A statement showing net receipts and incremental expenditure incurred on improving the productivity (relating to ELT scheme) is submitted in supercession of the earlier ELT statement.
- (vi). A list of assets completed/commissioned alongwith the completion date/proposed completion date is furnished.
- (vii). The proposed capital expenditure is mainly in form of replacement, modernisation and improvement of the existing facilities, which may not bring in additional traffic or increase the capacity of the port. The MOHP is fully depreciated and replacement of unloading and shipping system is required. The incidence of capital expenditure will result in diminishing repair & maintenance as indicated.
- (viii). The traffic is projected on a realistic basis with due consideration of the overall economic scenario and hence is justified and may be adopted. The traffic projections were shared with the Trustees representing trade interest; and, for the year 2003-04, the same was finalised by the working group constituted by the MOS for finalisation of 10<sup>th</sup> plan projections.

While approving the BE, the Trustees have even expressed apprehensions and suggested to bring down the turnover at Berth no. – 9, which was projected at a higher level as indicated in the proceedings of the 19<sup>th</sup> special meeting of the Board of trustees held on 31 October 2001.

- (ix). Commissioning of Berth no. 5A and 6A on BOOT terms will result in diversion of coal traffic from berth no. 10 & 11 to 5A and 6A and hence reduce the operating income of the port sizably.
- (x). The maintenance of disparity of 30% between the foreign-going and coastal vessel rates, though resisted, the effect of the disparity is considered in the revised cost statements submitted.
- (xi). As per Finance Act 2002, the port trust is required to pay Income Tax @ 35% plus 5% surcharge on the net surplus, which roughly comes to Rs. 8.56 crores for the year 2002-03. It is requested to consider the same also while deciding on the percentage increase in tariff as it was not included in the cost statements earlier.

- (xii). As regards pension liability, the MOPT has reiterated the points made earlier and submitted extracts from the consultants report.
- (xiii). The income projections are revised by considering an increase of 3% and 6% in the US\$ denominated tariff for the years 2002-03 and 2003-04 respectively.
- (xiv). The operating ratio was as high as 87% in the year 2000-01, in 2001-02 this was brought down to 71%; and, by the year 2002-03, it is proposed to bring it further down to 70%.

The revised composite cost statement of iron ore handling activity is furnished as a replacement to the earlier statement.

- (xv). Berthwise capacity utilisation for the years 1999-2000, 2000-01 and 2001-02 has been submitted.

12.2. The MOPT has endorsed a copy of its letter dated 10 June 2002 written to the GMOEA forwarding a list of completed and commissioned assets for their perusal and comments.

13. Some of the port users have furnished their further additional comments on the proposal of the MOPT, which are summarised below:

#### **Mormugao Stevedores' Association (MSA)**

The MSA has furnished the additional points relating to pension liability of the CHLD workers for consideration. The points made by the MSA are summarised below:

- (i). There was no pension liability to be met from the funds of the MOPT to the CHLD as almost all the workers were under the contributory provided fund and on their retirement, they switched over to the pension fund. Hence, the Board contribution was transferred to the Pension fund which itself takes care of the commutation values of the pension liability and the monthly pension liability to the extent of 4 years from their retirement. On an average, a sum of Rs.3.75 lakhs to Rs. 4 lakhs per worker is available towards Board's contribution to provident fund for transfer to the pension fund, out of which on an average a sum of Rs. 1.75 lakhs will be payable towards liability for commutation value of pension and the balance can be set aside to meet pension liability for the remaining 4 years.
- (ii). As per the merger agreement, a separate cost centre must be provided to monitor the income and expenditure of the CHLD. In view of a better general traffic during the last 4 years and also in future years to come, the CHLD will definitely earn a surplus on an average of Rs. 5 to 6 crores per annum which will give the scope for further reduction of the CHLD charges instead of revising upward.

#### **Jindal Vijaynagar Steel Limited (JVSL)**

The JVSL has forwarded its comments on the issues that emerged during the joint hearing for consideration. The points made by the JVSL are summarised below:

- (i). For formulating the rate revision proposal, a projection of 20.4 million tonnes, 21.20 million tonnes and 22.15 million tonnes of total traffic has been considered by the port for the years 2001-02, 2002-03 and 2003-04 respectively. Since the port has actually achieved, a total traffic of 22.93 million tonnes in the year 2001-02 itself and even if a modest growth of 7% is considered the traffic during 2002-03 and 2003-04 is likely to be 24.54 million tonnes and 26.25 million tonnes respectively. Consequently the operating income and the net surplus figures will undergo significant variation, which can have impact on rate revision.
- (ii). As regards increase in the operating costs mainly on account of increase in the costs relating to electric power, spares and dredging, the following may be considered:
  - (a). Power  
Bulk of electric power is utilised only at berth no.-9 complex. No equipment of the MOPT, either electric power driven or otherwise, is available at Berth nos.10 and 11 for general cargo loading or discharge. In such circumstances there does not

appear to have any justification for allocation of increased power costs to general cargo for determining wharfage rates.

(b). Spares

Since no MOPT equipment is used, same reasons as in case of power, are applicable to spares also.

(c). Dredging

Our inability to bring Panamax vessels and make full use of the dredged depth at Berth no.11 as explained in our representation and again reiterated in detail during joint hearing may be taken into consideration.

- (iii). We have increased our volume of cargo by 44% in 2001-02 over preceding year and are making all efforts for increasing the handling efficiency in the port, which is evident from our performance of high rates of discharge of vessels as compared to port norms. Similarly, our rate of cargo evacuation is also very high as our dispatch is 100% by rail so that The TAMP may consider giving incentive for efficiency and introduce rebate in wharfage both for higher volumes and higher discharge rates.

**The MMTC Limited (MMTC)**

The MMTC has furnished its comments on the proposal of plot turnover. The comments of the MMTC are summarised below:

- (i). We fully endorsed the views that the submissions of the MOPT for revision of tariffs are much on the higher side and not substantiated by records.
- (ii). The MOPT has proposed an increase in the plot turnover from 8 times to 9.5 times as an eligibility criteria to claim a rebate of Rs. 4.50/- PMT collected in advance and refundable after the benchmark of plot turnover of 8 times (presently) is attained.

The amount of Rs.4.50/- PMT collected by the MOPT is not revenue earnings exercise but only a deposit to induce and promote exporters to utilise the plot to its optimum capacity. In case of inability of an exporter to do so, he is penalised by non-refund of the amount so collected. This is an administrative matter and the modalities of operating this plot turnover benchmark is governed by the MOPT administrative decisions evolved in joint discussion with the users over a period of time. It does not fall within the purview of tariff regulation.

- (iii). One of the complexities in implementation of this mechanism is that on the basis of the present benchmark of 8 times, each exporter is allotted slots, which is 6.5 times of their plot area allocation. If any consideration is to be given to increase the benchmark from 8 times to 9 times, then the slot allotment has also to increase from 6.5 times to 8 times accordingly.
- (iv). The performance of the barge unloaders is one of the important considerations. In the event of the port unable to enhance its barge unloading performance from the present (for eg. past average for two years calculated per fair weather day basis), then the increase in the plot turnover benchmark to 9.5 times is not substantiated.
- (v). In case so directed by the TAMP, the present rebate system may be converted in form of ECT after thorough study and discussion between the MOPT and the users.
- (vi). The present system has performed well and the exporters have always kept their promise of enhancing the plot turnover and revenue attaining berth occupancy of over 70%.

14. The GMOEA has responded with their observations on the list of completed and commissioned assets forwarded by the MOPT to them. The GMOEA has made the following points:

- (i). The list of assets was called for to clear the doubts raised in their written submissions as well as in the joint hearing with reference to the Capital employed, which was projected to rise inexplicably from Rs. 19341 lakhs in the year 2000-01 to Rs. 36716 lakhs in the year 2003-04.

- (ii). From the given data, the following observations have been made:
- (a). Detail of assets as on 31 March 2002 have not been provided.
  - (b). The assets have not been classified so as to enable us to appreciate the business segments (i.e. MOHP, POL, P&D etc.) in which they are deployed. The segregation is necessary as proposed revisions differ for various business segments.
  - (c). The depreciation/written down values of additions at the end of each year is unavailable. This is necessary, as written down values are used for computation of the Capital Employed.
  - (d). A number of assets are proposed to be replaced and some modified – 2001-02 – Rs.47.97 lakhs; 2002-03 – Rs.2307.75 lakhs and 2003-04 Rs. 2500 lakhs. The corresponding adjustments in respect of the decommissioned assets appear to have been missed.
- (iii). In view of the reasons stated above it is not possible to relate the figures provided now, with the growth in the capital as projected in the figures provided along with the tariff revision proposal.
- (iv). An attempt was made to reconcile the figures on overall basis, but there remains a gap, unexplained.

|   | 2000-01  | 2001-02  | 2002-03   | 2003-04  |
|---|----------|----------|-----------|----------|
| Capital Employed per proposal                   | 19314.18 | 21012.00 | 25785.95  | 35716.00 |
| Growth  |          | 1670.82  | 4773.95   | 9930.05  |
| Additions to fixed assets per figures furnished |          | 1072.86  | 8419.32   | 8500.00  |
| Unexplained gap                                 |          | 597.96   | (3645.37) | 1430.05  |

- (v). Besides all these investments lead to no further volumetric growth in cargo and do not seem to have the potency to reduce costs either. On the contrary, operating costs and overheads costs are mounting at an annual rate of 10%. This indicates that these investments are unproductive and only has the effect of increasing the depreciation and the capital costs.
- (vi). A prima-facie look at the figures furnished reveals that a sum in excess of Rs.3440 lakhs is proposed to be spent on housing, beautification, schools, hospitals and other social objectives. For 2001-02 alone, where assets have already been acquired, assets that can be considered “social” in nature appear to add up to 20% of the total additions in that year. It is presumptuous for any port to seek return of 19.5% from its users on the social assets and that too of this magnitude. As has been rightly pointed out by the TAMP at the joint hearing, return on road could be earned by fixation of a toll on users of the road and not from say, iron ore exporters who ship their cargo using inland waterways. The same logic will apply to MOPT’s hospital (where patients can be asked to pay for the use of medical facilities) and school (where fees can be collected from pupils).
- (vii). The figures of proposed capital expenditure for the year 2003-04 reflect ad-hocism in estimation of capital costs of assets sought to be added/replaced.
- (viii). Some of the additions are in the nature of replacement. Users through tariffs, have already contributed to a reserve for “Replacement, Rehabilitation and Modernisation of Capital Assets”. No credit has been allowed to them for the contributions already made by them (3% of capital employed). It would only be fair to the port users if the amount lying in this reserve were to be reduced from the Net Block of fixed assets in deriving the amount of Capital Employed.

- (ix). It is requested to -
- (a) have all the figures subjected to due diligence reviews of independent audit firms and have such reviewed figures along with the reviewer's report circulated amongst users for their comments so that users can draw comfort as to the reliability of the figures in the current tariff revision exercise;
  - (b) disallow return on -
    - investments whose effectiveness is not factored in the projections through economic levels of cargo growth or cost reduction, as such investments are inherently unviable and do not deserve such high returns;
    - projected expenditure on operating capital assets until the same are deployed and their capacity are utilised fully and,
    - social assets as these are only tenuously related to productivity; and,
  - (c) reduce the balance in Reserve for "Replacement, Rehabilitation and Modernisation of Capital Assets" from the Net Block in deriving the amount of Capital Employed on which return is to be allowed, as this balance represents the amount already funded by the port users for acquisition of capital assets.

15. The MOPT has responded to the comments made by the MSA. The points made by it are summarised below:

- (i). The MSA have been furnished with all the relevant information requested by them from time to time and the port is ready to furnish any further information if required. As such it is not correct to say that only inadequate and incomplete information was made available to them.
- (ii). It is a fact that TAMP's order dated 28.6.2001 was mere rationalisation of levies into per tonne commodity-wise rates, which came into effect from July 200. The TAMP has in its order dated 28.6.2001 on rationalisation of levies of the erstwhile MDLB into per tonne commodity-wise rate has prescribed the validity of the approved cargo handling workers' charges to be co-terminus with the validity of the revised cargo-related charges, so that a co-ordinated view will be possible in future at least of all the cargo-related tariffs at the MOPT. Hence, the revision is undertaken together with general revision of Scale of Rates of the MOPT.
- (iii). The employees of the erstwhile MDLB of old category whose wage rates are considered in the rate revision exercise, though have retired in the recent past, have opted for pension and post-retirement benefit liabilities and, the MOPT has to take care of this increased liability.

Further, MOPT is obliged to maintain the strength of workers based on a bare minimum as required under the manning scale prescribed for the Port. The MSA expects the Port to supply sufficient labour as requisitioned by them which, in the absence of maintaining the minimum sanctioned strength of the workers prescribed by the Board based on the manning scale, shall not be possible.

- (iv). It is true that there is a steady and steep increase in the volume of general cargo traffic handling by the CHLD workers vis-a-vis an increase in the wages of the workers as reflected in the Revenue Account. The revision sought is after duly considering the net of all income and expenditure.
- (v). The projected expenditure for the year 2002-03 for residual administrative expenses is towards the share of Management and General Administration expenses apportioned to the Cargo Handling Labour activity, as per the established practice. For computing the cost of any service, not only the direct expenses but also the general administration overheads are taken into consideration. The cost of administrative staff indicated in the para pertains to the cost of administrative staff attached to the CHLD and the residual administrative expenses comprise of the apportioned MGA of the Port.

- (vi). A provision of Rs. 380.00 lakhs and Rs.120.00 lakhs towards Pension and Gratuity payment is based on the actual liability anticipated during the year. As on date, 746 ex-employees are on pensioners' list, 33 ex-gratia beneficiaries and 59 employees are due for retirement during the year and entitled for gratuity during the year 2002-03.
- (vii). The MSA's argument that to minimise the expenditure no recruitment shall be made in the category of the workers, cannot be agreed to. It is necessary to maintain the labour strength prescribed under the manning scales of the Port for its operations. For two General Cargo Berths and work in the mid-stream, due assessment is made of the required labour and sanctioned strength is to be maintained, failing which the Port will not be in a position to deploy labour and lose its income heavily. The stevedores will try to engage private labour and deny due revenue to the Port.

The Port does not agree for giving short-bookings or allowing stevedores to use private workers, which will adversely affect the various writ petitions pending before the Mumbai High Court, (Goa Bench), filed by the Workers' Union and the Transhipper Owners.

- (viii). The present rate revision exercise is based on the guidelines & formats as prescribed by the TAMP. We do not agree to accept any new slabs for every 100 tonne output. The present slab for every 250 tonne seems to be working well. While all efforts have been made to keep the expenditure at the minimum level possible, the subject rate exercise conducted as per the guidelines prescribed by the TAMP, has resulted in a demand for 19% increase, and hence proposed.
- (ix). The P.F. contribution transferred to the Pension Fund upon switching over by the CPF members/workers of the CHLD to pension scheme is on an average Rs.2.55 lakhs per worker of which, the commutation of pension is on an average Rs.1.85 lakhs per worker. Hence, the balance forms a meagre contribution towards the pension liability. As a matter of fact, the average pension payable after commutation is around Rs.3800/- per month, which is subject to increase with the periodic increase in dearness relief. As such, the balance left over is not substantial contribution towards the pension liability of the retired workers.

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

- (i). While deciding the last revision of the cargo-related charges at the MOPT in June 2000, the port was advised to formulate a comprehensive proposal for review/revision of its Scale of Rates. Since the port did not follow the advice rendered and submitted piece-meal revision proposals relating to the vessel-related charges, the railway charges, etc. at different points of time thereafter, this Authority prescribed the validity of the revised charges in such cases to be co-terminus with the validity of the cargo-related charges so that a coordinated view of all the tariffs at the MOPT would be available for a review. Accordingly, the vessel-related and cargo-related charges are now due for a general review/revision. In this backdrop, the port has formulated this comprehensive proposal.

Some of the users have termed this revision, within one year of the revision of the vessel-related charges in August 2001, as pre-mature. Firstly, it has already been decided to have a review of all the tariffs after June 2002 and accordingly validity of different tariffs have been prescribed in the respective Orders. Secondly, a general review/revision of a port's Scale of Rates need not be taken to mean as an exercise necessarily for an upward adjustment of the tariffs. It provides an opportunity for a port trust as well as its users to assess the overall financial and cost position and readjust the tariff position including removal of irrelevancies in the tariff structure.

- (ii). This Authority strongly believes in regulating the port tariffs in such a way as the market forces would have in a competitive environment. Towards this end, each of the tariff proposals is subjected to an elaborate consultative process, where the users can express their views on any of the relevant issues. Nevertheless, expression of such views need not necessarily be conveyed in vehement language. Even the most bitter fact can be conveyed mildly without hurting anyone's feelings. In order to maintain the dignity of the consultation process, it will be elegant for the users to maintain some restraint in their choice of language, particularly so while passing comments on a Public Body like a Port Trust. We

are constrained to make this observation in view of the language bordering around hostility used in some places in their comments by some of the port users.

- (iii). The port railway charges were last revised in June 2001 by this Authority. Regulation of port railway charges was taken up by this Authority based on an advice rendered by the (then) Ministry of Surface Transport even though this Authority felt that it was not competent to do so. The Ministry of Shipping (MOS) has now revised its earlier stand and advised that the competent authority to decide the port railway charges is the Ministry of Railways/Railway Board. The MOPT has reportedly forwarded a proposal for an increase in its railway charges to the Railway Board. Without going into the details of the 'port railway' proposal, only the additional revenue generation estimated by the MOPT is taken into account while determining the financial position of the port as a whole in this analysis.
- (iv). Users have complained about lack of consultation prior to formulating the proposals. They have also pointed out that the comments made by the Board of Trustees have not been considered. The MPT Act, as amended in 1997 does not require tariff proposals to be approved by the Board of Trustees of a Major Port Trust. This Authority has, however, been encouraging proposals to be sent through the Board of Trustees either with their approval or at least with their comments. Even though this Authority provides an opportunity of hearing to all concerned, it will be useful for the port trusts to consult their users at the proposal-formulation stage itself so that the market response can also be built into the proposed tariffs. In any case, it may not be practically possible for this Authority to hold consultations on every detail. It also avoids any time delay at the approval stage, if many of the issues/objections resolved later can be sorted out at the initial stage itself.
- (v). The traffic estimates considered by the MOPT for this exercise are 20.40 MT for 2001-02, 21.20 MT for 2002-03 and 22.15 MT for 2003-04. On being pointed out, the MOPT has subsequently revised the traffic figures for 2001-02 to 22.93 MT. In the absence of any other reliable data, the projections furnished by the port have been considered without any modifications. Nevertheless, it is difficult to accept that the traffic (estimates) for the years 2002-03 and 2003-04 will actually be less than even the actuals of 2001-02. The indications available show that the MOS has fixed the traffic target of 22.93 MT for the year 2002-03 and the traffic handled at the MOPT during April-July 2002 shows a growth of about 8% over the traffic handled during the corresponding period in 2001 (source: Indian Ports Association).

The MOPT has argued that its income will reduce considerably on commissioning of the berths 5A and 6A on BOOT terms by March 2003 because of shift of coal traffic to the new berths. The port has, however, not clarified the terms of the BOOT concession, which may provide for an income to the port in the form of royalty; and, also the steps envisaged to reduce the expenditure and use the idle capacity arising out of the possible shift of coal traffic to the proposed private terminal.

- (vi). The port had not considered in the income projections, the additional income from the dollar denominated vessel-related tariff items arising out of exchange rate variations for 2002-03 & 2003-04. The port later furnished the information on the basis of 3% & 6% variation which were the escalating factors considered by this Authority while deciding the last VRC revision at the MOPT. On the basis of the latest trend of the variations in the exchange rates, this has been moderated to 2% & 4% respectively and incorporated accordingly in the cost statements.
- (vii). As per the policy of the Government, a disparity of 30% is to be maintained between the tariffs for foreign-going and coastal vessels. This necessitates an adjustment of the coastal vessel rates even if there is no revision of the rates for the foreign-going vessels. This Authority has been making such adjustments at the time of general review/revision of the tariffs at other ports and considering the estimated additional income on account of such adjustment of tariffs. The port has estimated the additional income on this account only for 2003-04 on the same basis as for foreign-going vessels and not on the basis of actual restoration of the disparity ratio to the required level with reference to the present exchange rate. The estimate appears to be on the lower side; but, has not been amended by us.

The MOPT has expressed its reservation to the approach of restoring the disparity of 30% between the rates of foreign-going and coastal vessels at the time of each review/revision of

tariffs on the ground that the coastal traffic may not be in a position to absorb the resultant hike in tariffs. It is to be recognised that the level of concession to be allowed to the coastal vessels has already been settled by a Government policy, which has been adopted by this Authority in prescribing such rates at the major ports. This as an issue is commonly applicable to all the major ports; and, any deviation from the approach adopted so far only in the case of one of the major ports may give rise to (avoidable) complications at the other ports. It is also relevant here to recall an objection raised on behalf of some of the foreign-going vessels in a proceeding relating to some of the other major ports about requiring them to cross-subsidise the coastal vessels. In the face of such an objection, the question of allowing any concession beyond the accepted level to the coastal vessels does not arise. It is, therefore, reasonable to continue with the approach adopted in this regard so far and fix the rates (in Rupee terms) for coastal vessels at 70% of the (revised) rates for foreign-going vessels. If the MOPT desires to offer further concessions over and above the notified rates to the coastal vessels on commercial considerations, it can come up with a suitable proposal for allowing discount in the coastal-vessel-rates. Needless to mention that the revenue loss on account of such discounts is to be borne by the port out of the return on capital employed allowed to it through tariffs.

- (viii). The port has projected the costs for 2003-04 at 10% higher than the figures for 2002-03. This appears on the higher side as compared to the prevailing rate of inflation, which is around 2%. Users have also termed this escalation in costs as very high. The port has cited 10% escalation in costs as allowed on the last occasion as the basis. It has also added that as per the CPI number, industrial dearness allowance of the port employees, which was 28.4% for the quarter April-June 2001 has gone up to 34.9% for the quarter April-June 2002, i.e. an increase of 6.5%. Also, the index percentage has gone up by 34.9% from 1 January 1997 to 30 June 2002, i.e. an increase of 7% per annum over a period of 5 years. The CPI is relevant only for industrial dearness allowance payable to the port employees and that too on their basic pay element (and, not on the whole of the employee cost). This Authority had allowed escalation in the costs at 10% when the inflation rate was around 6-8% considering all the factors including certain costs like fuel, power and water, which do not necessarily increase in line with the WPI. As has been correctly brought out by the GMOEA, the escalation factor adopted by this Authority so far has to be seen in the context of prevailing inflation rate; it cannot be a static figure forever. Now that the inflation rate has been around 2% for quite a considerable time, it is suffice to allow annual escalation in costs at 6%.
- (ix). From the details of the activity-wise allocation furnished by the port, it is observed that the Net Block and the depreciation of Berths Nos. 10 & 11 have been transferred from the Port & Dock Activity to the Cargo Handling activity on this occasion. The port has stated that as the horizontal surface of berths is meant for use of cargo services, the capital cost of these berths has been transferred to the cargo activity; the capital cost of berths No.8 & 9 are also related to cargo services viz., POL & MOHP. While it is true that the horizontal surface is used for cargo services, the vertical wall of a berth is used for berthing the vessels and hence the capital cost (and the depreciation, repairs & maintenance) thereof must reasonably remain under the vessel-related activity- Berthing & Mooring. The berth hire income has, however, been shown correctly under this activity.
- (x). The Management and General Administration overheads show a hike of 54% during the period from 1999-2000 to 2003-04 while other operating costs including depreciation show an increase of 35%. At the time of revision of the vessel-related charges in August 2001, the port was advised to have a re-look at such proposed expenditure and take mid-term corrective measures of cost control and cost reduction. In reply to a query in this regard the port has stated that the expenditure involved on non-operative departments and on power and water meant for general amenities are fixed in nature and not controllable; and, that it has made efforts to control the discretionary costs during 2001-02. It is observed from the details furnished that the Engineering & Workshop overheads and residual administration overheads show substantial increase of 40% and 43%, respectively for the period from 1999-2000 to 2002-03. The port's reply, therefore, does not meet the point fully. It may not be necessary for the Regulator to underline the importance of cost reduction. The Port Trust in its own interest is expected to initiate such measures and show palpable results. If such results are not forthcoming, the high overhead costs have to be moderated to a reasonable extent in a tariff revision exercise.

- (xi). One of the major cost elements is the proposed transfer of Rs.15 crores in 2002-03 and Rs.25 crores in 2003-04 to a Pension Fund. The port has sought to explain that this transfer will be in addition to the actual expenditure on retirement benefits. The port has stated that the Government has directed all the ports to create Pension Funds to take care of payment of terminal benefits and monthly pensions so that the burden of the pension payments does not fall directly on the current revenue. The port has also indicated that a Consultant appointed by them has assessed the accumulated liability as on 31 March 2001 at Rs.264.64 crores. This liability includes liability on account of the existing employees as well as the pensioners including family pensioners as on that day.

The GMOEA has objected to the proposed transfer of funds to the Pension Fund since the MOPT has not given details of actuarial valuation of the liability, the liability relating to earlier accounting period and, the funded amount of the shortfalls sought to be met. It has also pointed that recovery towards this liability through the tariff must be restricted to current costs only and has suggested that the port shall meet the contingency arising in respect of the unaccounted liabilities out of its accumulated reserves.

While this Authority definitely likes to endorse the approach of creating a separate Pension Fund, as it has maintained so far in relation to other major port trusts that a one time arrear liability cannot be perpetuated in the tariff by admitting it as a cost element. In the case of the MOPT, the actual pension payments for the years 2002-03 and 2003-04 are included in the FME. The additional amount sought to be transferred to the Pension Fund is on account of current liability towards the existing employees and arrears relating to the previous years. As has correctly been pointed out by the GMOEA, if contribution to build up the funds to the extent proposed are considered in addition to the actual payment of these accounts, it will amount to a double burden on tariff. The port must clearly assess the exact liability and also indicate the extent to which it can bear such liability out of the accumulated general reserves already available with it. If the Provident Fund includes MOPT's contributions under the Contributory Provident Fund scheme, the accumulated balances, if any, with interest thereon can be transferred to the Pension Fund if the employees are now eligible for pensionary benefits. Interest on investments of funds, which is generally not considered for the tariff exercise, can also be another source of transfer to the Pension Fund. This issue needs to be examined in detail by the MOPT. In the meanwhile, it is reasonable to consider current year's pensionary liability of all the employees, in addition to the actual payment of the terminal benefits and the monthly pensions for the purpose of tariff determination, till the Pension Fund is adequately built up. This liability towards the serving employees for the current year can be considered roughly at 7% of the salaries and wage cost of the respective cadres.

If the MOPT finds that the accumulated liability on account of the terminal benefits cannot be adequately met out of its accumulated reserves and other sources of funds as indicated above, it can come up with a suitable proposal for recovery of a special charge from the users to meet the liability. The idea is not to include the corresponding cost in the base rate itself but to have a specific levy for a pre-determined period of time. It is noteworthy that this Authority has already ordered such arrangements at the KOPT (to meet the liabilities on account of arrears of salary, wages and pensions), the TPT (to meet the expenditure in connection with capital dredging) and the MBPT (to meet the liabilities of arrears of salaries and wages on account of the staff deputed to different Stevedores).

- (xii). The port proposes to add substantially to the net block during 2002-03 and 2003-04. As has been pointed out by the GMOEA, this capital investment does not seem to result in corresponding additions to the capacity of the port and hence reduction in the overall operating cost or improvement in performance. The port has, however, stated that the proposed capital expenditure is mainly in the form of replacement and modernisation. The expenditure on repairs and maintenance of the MOHP is claimed to reduce from Rs.17.45 crores in 2000-01 to Rs.11.68 crores in 2003-04. Despite this claim, if depreciation on the additional assets and return on the estimated net block are considered, there will be a net increase in the cost.

The net block forming part of the capital employed is projected to increase to the extent of Rs.84 crores in 2002-03 and Rs.85 crores in 2003-04, as against the net addition of Rs.26 crores and Rs.11 crores in the year 2000-01 and 2001-02 respectively. Even if it is conceded that the past trend of capital expenditure need not necessarily indicate a linear

extension of it to the future, it will definitely be a pointer to the project-executing-capacity of an organisation unless there is any ongoing major project involving a huge outlay. The list of assets likely to be completed and commissioned in 2002-03 by the port indicates that a number of assets are expected to be completed in the last quarter of 2002-03. The list for 2003-04 contains six major items, including the project of construction of a 4-lane road, and does not indicate any probable date of completion. In this backdrop, it is reasonable to limit the estimate of additions to the net block to a figure of Rs.40 crores for each of the years under consideration.

- (xiii). The Working Capital considered as part of capital employed is shown to go up from Rs.19 crores in 1999-2000 to Rs.48 crores by 2003-04. These estimates appear to be very much on the higher side particularly in view of the fact that, as brought out by the users, most of the charges are payable to the Port in advance. The high working capital is primarily on account of a very high balance of stock in hand even though it is shown to reduce from Rs.30.22 crores as on 31 March 2000 to Rs.22 crores as on 31 March 2002. The figure still appears high as compared to the average annual consumption of stores of Rs.11 crores. Even though holding of inventory of one year's consumption seems high, such a limit was accepted in the case of the MOPT on the last occasion of revision of the vessel-related charges considering the ageing MOHP and the need to maintain 'insurance spares' therefor. The inventory in excess of the average annual consumption is excluded from the computation of the working capital, as was done on the previous occasion.

Another item contributing to the high working capital is Sundry debtors. The balance of Rs.14.85 crores as on 31 March 2000 (which includes a sum of Rs.4.83 crores under litigation for a long time and is expected to be realised during 2002-03) is shown to increase to Rs.20.87 crores in 2001-02 and Rs.24.50 crores in 2003-04. As most of the vessel-related charges and the cargo-related charge are recovered in advance/at the time of delivery/loading, it is reasonable to restrict the Sundry debtors to two months estate rentals. If Sundry debtors accumulate due to disputes of claims made by the port, the port must take necessary speedy steps to resolve such disputes and action to recover its dues. For whatever reasons, if the port is unable to realise this income, it is not reasonable or justifiable to burden the tariffs in lieu thereof.

The working capital computed subject to the modifications mentioned above works out to a negative figure, as was the case even on the last occasion. For the purpose of this analysis, the working capital is, however, considered as Nil.

- (xiv). The MOPT has claimed a Return on Capital Employed (ROCE) at 19.5%. In the case of major port trusts, the ROCE allowed consists of interest on capital (equivalent to the lending rate at which the Government loans are available to the port trusts) and 3% contribution to each of the two mandatory reserves to be maintained. Since the rate at which the Government lends to the major ports is currently 12.5%, the maximum admissible ROCE adds up to 18.5% only.

Users have been objecting to the higher rate of return on capital employed allowed to the Major Port Trusts in view of the present low interest rate regime where loans at much lower rates are available from the commercial banks and the financial institutions. Private Terminal Operators have also been representing against the differential treatment given to them vis-à-vis the Major Port Trusts in this regard. A review of this model has already been initiated and this Authority has decided to commission a Study in this regard by a reputed financial advisory organisation. When this point came up for discussion at the joint hearing, the GMOEA has requested that this case may be deferred till such a review is concluded, which does not appear reasonable. If the review results in modifications of the existing approach adopted, corresponding changes can be effected in the model prospectively; but, such a basic change will have to be introduced commonly at all the major ports. Till such time, the existing method of allowing return on capital employed will have to continue; and, a deviation only in respect of the MOPT cannot be made. Further, a tariff revision proposal cannot be deferred indefinitely waiting for the introduction of a revised model.

The GMOEA has been repeatedly raising the issue of allowing 'return' on social/unproductive assets. The credit for bringing this issue sharply into focus undoubtedly goes to the GMOEA. This issue is also proposed to be studied by the Consultant as a part of the review of the existing method of allowing the ROCE.

- (xv). The port has pointed out that this year's Financial Act has introduced a clarification to require the Major Port Trusts also to pay income tax at the rate of 35% plus surcharge at 5%. The MOPT has, therefore, requested that effect of taxation may be considered while deciding the tariff revision as it was not included in the cost statement furnished by it earlier.

It has already been settled by this Authority in other cases relating to the Private Terminals that the effect of taxation will not be included in tariff computation and, only a pre-tax return will be allowed. In view of the ROCE approach adopted in the case of the Major Ports of not distinguishing between return on own and borrowed funds, there is already a cushion available to the Ports. Without being accused of being discriminatory, this Authority cannot allow a pre-tax return in the case of Private Terminal and a post-tax return in the case of Port Trust. In view of the cushion already available and the ROCE of 18.5% being allowed, which can be seen as liberal in the current interest rate situation there does not appear any case for enhancing the level of return with reference to the newly imposed tax liability on Major Ports.

Earlier, the Major Port Trusts were retaining the entire surpluses generated in their reserves without the need to share them with the Government. Taxation may be the route now taken by the Owner (i.e. the Government) to claim a share of the surplus generated by the managing agency (i.e. Port Trust). The incidence of this burden cannot, therefore, justifiably be shifted to port-users.

- (xvi). Users have repeatedly questioned the quality of the estimates furnished by the MOPT on every occasion. A comparison of the cost statements furnished by the MOPT at the time of the last revision of the vessel-related charges and now, indicates variations between them particularly for the year 2002-03 with reference to the estimates of traffic and capital employed. Except for stating that the earlier estimates were based on projections and the one furnished now are based on the budget estimates, the port has not offered any other plausible clarification for the variations. Since the tariff increase in the VRC effected last time was moderated for the year 2002-03 in view of the reduction in the tariff validity cycle ordered, there is no need to review the VRC increase already effected. Nevertheless, the waywardness of the projections furnished by the MOPT for tariff revision exercises will have to borne in mind, while deciding the revisions proposed now in tariffs.

- (xvii). In the light of the analysis given above, the cost statements for the port as a whole and for different main activities have been modified. The modified cost statements are attached as **Annex-I (a-f)**. The summarised position of the results disclosed by these statements is as follows:-

| Activity        | Surplus(+) /<br>Deficit(-) 2002-03 | Surplus(+) / Deficit(-)<br>2003-04 | Surplus(+) /<br>Deficit (-) as<br>percentage<br>2002-03 | Surplus(+) /<br>Deficit(-)as<br>percentage<br>2003-04 |
|-----------------|------------------------------------|------------------------------------|---|---|
|                 | Rs. Lahks                          | Rs. Lahks                          |   |   |
| Port as a whole | (-) 1236.37                        | (-) 1911.98                        | (-) 6.73 %  | (-) 9.77 %  |
| Cargo Handling  | (-) 35.50                          | (-) 630.49                         | (-) 0.38 %  | (-) 6.35 %  |
| Vessel- related | (-) 1284.65                        | (-) 1569.84                        | (-) 25.65 %   | (-) 30.36 %   |
| Railway         | (-) 191.24                         | (+) 145.36                         | (-) 18.82 %   | (+) 9.48 %  |
| Estates         | (+) 162.69                         | (+) 126.82                         | (+) 14.87 %   | (+) 11.59 %   |
| C.H.L.D.        | (+) 112.32                         | (+) 16.17                          | (+) 6.28 %  | (+) 0.88 %  |

Among the main activities, there is a large revenue deficit in the vessel-related activities and only a marginal revenue deficit in the cargo-related activities. The deficit in the cargo-related activities is also on account of transfer of the net block relating to berth Nos. 10 and 11 and depreciation thereon from the vessel-related activities to the cargo-related activities on this occasion. If this position is set right, the cargo-related activities will result in a surplus which will be available to partly cross-subsidise the deficit in the vessel-related activities.

The port as a whole shows a marginal deficit. The issue for consideration is whether a suitable tariff increase in different activities showing deficit is to be allowed in view of this overall deficit position. In this context, it must be borne in mind that the overall deficit

position must be qualified in the backdrop of the observations made earlier in this analysis about the traffic forecast, quality of estimates and overhead expenses.

The traffic estimates for the years 2002-03 and 2003-04 furnished by the MOPT do not appear reasonable; particularly, the traffic projected for the year 2002-03 is lower by more than 8% of the actual traffic for 2001-02 and by about 10% with respect to the projection of 233.35 lakh tonnes made for the same year at the time of the last revision of the vessel-related charges. This reduction in traffic estimates is contradicted by the actual position obtained so far for the year 2002-03 when the port is reportedly showing a growth of 8.82% in the traffic. If additional income on account of a correct estimation of traffic is considered along with the allowances for the waywardness in the estimates and the special efforts emphasised on reduction of management and general administration overheads, the deficit position for the port as a whole will get wiped out. That being so, the marginal deficit in the port as a whole can be left uncovered, without any corresponding increase in tariffs to bridge the revenue gap.

For the reasons given above and considering the approach adopted by this Authority so far of recognising the cross-subsidisation at the existing level between different activities, there is no case for revising the tariffs for individual activities as proposed by the MOPT. Nevertheless, some of the individual tariff items are considered for revision/rationalisation as explained in the succeeding part of this analysis.

- (xviii). The existing storage charges for sheds, warehouses and wharves appear to be very much on the lower side since the service warehousing is heavily deficit to the extent of about 340%. Apprehending a shift of general cargo traffic if a cost-based rate is proposed, the port has opted to limit the tariff increase only to 25%. Even though the overall position of the port may not require any revision of tariff, it is to be recognised that tariffs levied must be rapidly brought nearer to the cost of providing the service/facility in order at least to reduce the burden of cross-subsidisation by some other activities. Towards this end, it is reasonable to approve the proposed increase in tariffs in the activity of warehousing. The MOPT is advised to further review the tariffs leviable under this activity by considering the prevailing rates at other warehouses in the vicinity of the port.
- (xix). Like Warehousing, the activity of supply of water to shipping is also in a heavy deficit in the region of 390%. The port has considered the advice rendered by this Authority in its order relating to the last revision of the vessel-related charges about bifurcating the cost of water supply between the shipping and the internal consumption. It is found reasonable to allow an upward increase of 50%, as proposed by the MOPT, in the tariffs relating to supply of water to vessels as well as to approve the cancellation and detention charges, as proposed by the Port.
- (xx). Under the existing Scale of Rates, no port dues are payable on iron ore barges operating at the port. In the last order dated 9 August 2001, the port was advised to suggest a suitable rate of port dues on iron ore barges. The port has now stated that special rate (previously called Compensation Tonnage Tax) was introduced with the objective of charging the barge owners bringing iron ore for shipment. The arrangement of collecting this charge from the vessel owners is for the sake of convenience of assessment and collection.

In reply to another query on the justification for continuing this as a separate tariff item and suggestion to merge it in the berth hire charges, the port has stated that this charge was earlier collected from the cargo interests for use of the port facilities by the iron ore barges. During the last revision of the vessel-related charges the burden got shifted to the vessel owners/agents. Users have represented against this burden being shifted to them. The port has now, therefore, proposed to merge it with the wharfage payable on iron ore. Recognising that barges are the conveyance used by the exporters to bring ore from mines to the Port, this proposal is approved.

- (xxi). The Scale of Rates provides differential wharfage (handling charge) rates for different seasons on iron ore pellets handled at MOHP berth No.9. The port has clarified that handling of pellets involves change/shifting over from iron ore (fines) handling to pellets and vice versa and, each time the conveyor system is required to be cleaned. To compensate for the loss due to stoppages and consequential reduction of traffic during the fair season, a higher rate for handling iron ore pellets was prescribed in 1993. The enhanced rate is to

recover the loss of revenue due to an estimated shortfall of 5 lakh tonnes of iron ore fines during the fair season.

Even if a differential rate of the iron ore pellets for different seasons is acceptable, the reasons for having differential rates for coastal and export traffic of the same commodity handled during the same season are not discernable. The existing rate (Rs.118.45) for handling export shipment of iron ore pellets in fair season is lower than the rate (Rs.125.35) for coastal traffic handled during the same season. It is reasonable to do away with this differentiation by prescribing a uniform average rate of Rs.121.90 for handling iron ore pellets during the fair season.

- (xxii). The port levies a surcharge of Rs.4.50 per tonne on the iron ore handled at the MOHP which is subsequently refunded depending on the annual turnover of the plot capacity. The entire surcharge is refunded fully when the level of annual turnover achieved by an exporter is 8 items of the normal plot capacity. Now the port has proposed to revise the rebate scheme by making an upward adjustment in the level of turnover of the plot capacity. The GMOEA has objected to this proposal by arguing that the port has been achieving the required throughput from the MOHP even without this penal provision.

The MOPT has explained that the existing plot turnover was fixed when the handling capacity of the MOHP was 8 MT, which has now gone upto 9.5 MT due to the improvement made in the receiving system and on installation of the continuous barge unloader. It has further furnished details to show that the actual average turnaround has improved from 8.82 in 1996-97 to 10.5 in 2000-01. Since the rebate scheme is envisaged to ensure full utilisation of the installed capacity of the MOHP and the statistics furnished indicate an improvement over the period of time, the proposal of the port trust in this regard is approved.

The MMTC has questioned the competence of this Authority to go into this matter. This may be due to an incorrect appreciation of the tariff setting arrangement envisaged in the MPT Act. This Authority is mandated not only to regulate the port tariffs but also to prescribe conditionalities governing application of such tariffs. The rebate scheme is to be seen as a conditionality attached to the levy of the surcharge. Since both the tariff and conditionality are to be prescribed by this Authority, the objection raised by the MMTC does not hold force.

- (xxiii). M/s Jindal Vijaynagar Steel Ltd. has argued that the increase in costs of power supply and spares for the MOHP cited as justification for the revision of tariff are not relevant for the general cargo handled at berths Nos 10 & 11. The discharge rate of their cargo is double the norms prescribed by the port and the volumes offered are also higher. It has, therefore, suggested a volume discount scheme to be introduced for its cargo. This Authority generally encourages volume discount schemes. The port is advised to consider the suggestion of the JVSL and come up with a suitable proposal in this regard in consultation with the JVSL.

- (xxiv). The estate activity (including residential quarters) shows only a marginal surplus. Though estate rental is not tariff, the jurisdiction to regulate the lease charges has been entrusted to this Authority with a view to ensure that the ports exploit the estates in their possession to the fullest extent and thereby reduce the burden on tariffs. In this backdrop, it is necessary to revise the estate rentals in line with the guidelines issued by the Government in this regard which have been adopted by this Authority till its own guidelines are formulated. The MOPT is advised to come up with a proposal to revise the estate rentals following the existing guidelines.

The port has proposed different rates for way leave charges in different areas. This Authority has already decided that the way leave charges must be levied on a prorata basis applicable for different lands when a corridor passes through different zones. The port is advised to forward a proposal to this Authority on these lines.

- (xxv). Section C; Part III of the existing Scale of Rates specifies Sundry charges for hire of different machinery equipment, launches, barge as well as charges for supply of electricity and entry fee for trucks. These are all not major tariff items and relate to the facility provided intermittently. Since the revenue implication of allowing a hike in these charges is

not of a significant order, this Authority is inclined to approve an upward revision of 25% proposed by the port in these tariff items.

One of the items covered in this Section relates to hire charges on reach-stacker. In the earlier revision of tariffs, this Authority made a specific observation about under-utilisation of the reach- stacker and also the practice of allowing a private reach-stacker to work within the port premises when the port's own reach-stacker was under-utilised. The port has now proposed to introduce a conditionality that use of the port's reach-stacker is mandatory. When a port has invested in a facility, it is expected to be utilised first when requirement arises. Viewed in this perspective, the proposed conditionality deserves approval. Nevertheless, a need to bring in private equipment may arise when the port's equipment cannot be spared for reasons like maintenance, overhaul and repairs in addition to non-availability because of being hired by another party. That being so, the conditionality relating to mandatory use of the port's reach-stacker is subjected to the availability of the equipment to the hirer for operation.

- (xxvi). The levy for supply of cargo handling worker was rationalised in June 2001 by introducing a per-tonne commoditywise rates at various levels of output. This rationalisation envisaged a change over from the conventional levy system to a per-tonne rate system with productivity linkages. The port has now proposed such a per-tonne rate for some new cargo. On being asked to justify the rates proposed with reference to cost of handling, the port has bluntly mentioned that commoditywise cargo handling is not maintained/available separately with it.

At the time of prescribing the existing per-tonne rate, the port had furnished commoditywise costing by considering the labour cost at different levels of output and also average output. The reasons why such an exercise cannot be repeated in the case of the new entries sought to be included in the Scale of Rates remain unexplained. In the absence of such costing and operational details, it is not possible for this Authority to accord approval to the proposal of the MOPT in this regard. If the MOPT comes up with a suitable proposal with supporting cost and operational data, it will be considered afresh. Till such time the existing rates and levies will continue unaltered.

- (xxvii). Even after the merger, the MOPT continues with a charge earlier levied by the erstwhile MBLB on transhippers. The charge styled 'transhipper accord levy' has been challenged at different judicial forums including the Supreme Court of India. The GMOEIA has objected to any alterations in the existing levy on the ground that some of its members had filed writ petitions before the Bombay High Court challenging an order of the District Court upholding this levy by the MOPT. As has correctly been brought out by the MOPT, the High Court has not stayed the operation of the order of the District Court. There is no interim order passed restraining the MOPT from revising the levy. That being so, there is no legal bar for this Authority to take up this tariff item for revision. Nevertheless, it has so happened in this case that the proposed increase in this levy is not approved by this Authority in view of the surplus position obtaining in the cargo handling labour supply activity.

- (xxviii). The MOPT Scale of Rates clearly defines the term 'port convenience' in which case shifting charges are not leviable. One of the clauses provides a discretion to the Chairman (MOPT) to decide any other shifting not specifically included in the definition as for port convenience and order non-levy of shipping charges. Such a discretionary provision is generally discouraged by this Authority. When pointed out the port has also agreed to delete this provision. Accordingly, the clause is deleted.

- (xxix). The existing Scale of Rates contains a provision stipulating that cancellation charges will not be payable 'for movements cancelled under exceptional circumstances for reasons that cannot be attributable to a vessel; and, if any doubt arises about the payment of cancellation charges under this clause, the matter will be referred to the Chairman (MOPT) whose decision shall be final'. Generally, this Authority prefers to prescribe conditionalities in a definite manner without providing any discretionary powers to the regulated entities. The port has, however, requested for continuance of this clause on the ground that it has existed for a long time. One of the guidelines adopted at the Chennai Workshop on Tariff Regulations (February 1998) is about not making the users pay for the delays caused by the port. Even if this conditionality is to continue in the Scale of Rates to deal with exceptional circumstances, it has to be modified to specify that the cancellation charges will not become payable only when the cancellation is for the reasons attributable to the port. The provision

is amended accordingly by deleting the discretionary power available to the Chairman (MOPT).

- (xxx). The Port has widened the spectrum of cancellation charges relating to pilotage. Availability of pilots and floating crafts is one of the major problems confronting almost all the Major Port Trusts in the country. In such a circumstance, the available resources are expected to be put to optimum usage. One of the steps in this direction can be to discourage a vessel from requisitioning pilotage service only for it to be cancelled subsequently. This will not only put the vessel movement planning in a disarray but also involves cost to the port in movement of pilots and/or tugs before the cancellation is intimated. In this backdrop, the cancellation and detention charges proposed by the MOPT are found to be reasonable and are deservedly approved.
- (xxxi). The port has proposed to elaborate the schedule of shifting charges by adding one more slab of '25000 GRT and above'. It has also proposed to add the words 'into/from WISL area' after the words 'inward and outward movements' in the heading appearing in the Section relating to special charges for Western India Shipyard Dry Dock. This modification has been claimed to have been proposed for the sake of clarity and to do away with unnecessary interpretations. Both these amendments are approved.
- (xxxii). The port has initially proposed a charge at double the rates of shifting for double banking of transhippers west of the break-water. Subsequently, the port has proposed to modify this charge to one and a half times the shifting charges applicable. The MSAA and the GCCI have objected to this proposal but no acceptable argument has been put forth by them. The port has, however, explained that the double banking operation warrants more efforts than shifting and hence higher cost. It has also pointed out that the double cost of rendering this service works out approximately twice the shifting charges. Viewed from the cost angle, the proposal of the MOPT appears to have merit and is approved.
- (xxxiii). The existing Scale of Rates provides for levy of a lump sum berth hire charge per 8 hours on launches, fishing trollers, research and survey vessels etc. The port has now proposed to include mini bulk carriers of size upto 1800 GRT in this group, which is approved.
- (xxxiv). The issues of levying a lump sum charge along with berth hire on iron ore carriers of size 50000 to 1 lakh DWT; and, extending a rebate of 25% on berth hire and anchorage charges on vessels of size 1,60,000 DWT and above were singled out for specific mention by this Authority in its last Order relating to revision of vessel-related charges.

The Port has now proposed the berth hire charges on iron ore vessels of size 50,000 and 1 lakh DWT by merging the lump sum charge earlier levied. The port has initially proposed to maintain a dual criteria of GRT and DWT for classification of vessels for levy of berth hire charges in certain cases. Subsequently, on being pointed out, the port has eliminated the classification based on DWT by suitably adjusting the GRT slabs. Rationalisation of different slabs for levy of berth hire charges and merger of the existing lump sum charges with the GRT based berth hire charges are approved.

This Authority had allowed a rebate of 25% on berth hire charges and anchorage charges on vessels of size 1,60,000 DWT and above till this general review of the Scale of Rates of the MOPT. The MOPT as well as the GMOEA have agreed to continue with the reduced rate for such large size iron ore vessels. Instead of allowing separate rebate over the notified rates, MOPT has proposed to reduce the unit berth hire rate and anchorage charges for such large size vessels. The proposal of the MOPT in this regard is also approved.

- (xxxv). The port has proposed to reduce the penal berth hire charges from 10 times to 5 times the normal berth hire for overstay of a vessel beyond the stipulated grace period. It is noteworthy that in its last Order relating to revision of the vessel-related charges, this Authority has observed the quantum of existing penalty to be very high. In deference to this observation, the port has now proposed to reduce the quantum of penal berth hire, which is approved.

The proposed provision, however, stipulates that the penal berth hire charges are payable if a vessel is not ready to vacate the berth within 3 hours after completion of cargo operations or after the expiry of the notice given by the Traffic Manager/Deputy Conservator of the port.

While the time limits of 3 hours in case of vessels and 15 minutes in case of barges are clear enough, the other provisions are vague and do not indicate the criteria/performance norms to be followed by the officials of the port before issuing a notice to vacate a berth and, for deciding the time allotted to the exporters for use of the barge unloading jetties. Since this provision is an existing arrangement, and one about which there has been no dissenting comment, this Authority allows it to continue. The MOPT is, however, advised to address this issue specifically at the time of its next general revision of tariffs.

- (xxxvi). The port has now proposed to introduce a new conditionality to limit the time allowed at the MOHP for deballasting of the vessels. It has now proposed that if the deballasting time taken is beyond 3 hours, penal berth hire charges will be levied. The MSA and the GCCI have objected to the reduction in the deballasting time allowed from 5 hours to 3 hours. The port has, however, explained that in other international iron ore loading ports, no such extra time for deballasting is allowed; and, such operations are expected to take place simultaneously with loading of cargo. It is relevant here to recall that an efficiency linked berth hire scheme is in operation at the MOPT. If a vessel stays at the berth beyond the cut off limit prescribed under the scheme, the MOPT is liable to allow rebate on berth hire charges. In such a scenario, the anxiety of the port to limit idling of vessels at the berth is quite understandable. The users have not come up with any details to show that an additional deballasting time of 3 hours is not only practically feasible but also will jeopardise the safety of vessels. Further, the port has also reasonably proposed to limit the incidence of penal berth hire to an hourly basis on the basic rate of berth hire. That being so, the proposal of the MOPT in this regard is approved.
- (xxxvii). The port has now proposed hire charges for tugs in two categories – 1 to 30T BP and above 30T BP. The port was advised to furnish working of the proposed hire charges of tugs having capacity beyond 30T BP and justify the proposed rates with reference to the cost of rendering the service. Even though the port has indicated in its reply that a working sheet showing the hire charges of tugs was sent, no such details have been received by us. That being so, and in line with the general decision proposed of not revising the general tariffs, the existing charges for use of tugs are allowed to continue till such time the port comes up with a separate proposal for modification of tug hire charges with reference to cost details.
- (xxxviii). The port had initially proposed levy of bunkering charges. On reconsideration, the port has withdrawn this proposal and instead proposed to charge only on entry of oil and water tankers at the existing entry fees prescribed for trucks and other vehicles entering the harbour area. This is acceptable.
- (xxxix). The existing Scale of Rates provides for levy of a separate charge of \$36.15 per foreign-going vessel and Rs.1189.42 per coastal vessel towards buoys and lighthouse. The port has clarified that this levy is to cover the cost of maintenance of navigational buoys and port's lighthouse and a separate levy in this regard exists for a life time. Since port dues, inter-alia, cover the expenditure on conservancy and provision of safe navigational facilities and, the incidence of this levy is not much, this tariff item is deleted.
- (XL). The Scale of Rates of the MOPT provides for levy of port dues once in 30 days in respect of the same vessel. But in many other major port trusts, the frequency of levying port dues is prescribed on each occasion of entry of a vessel into the port limits. On being pointed out, the port has agreed to change the provision to make port dues payable for each entry; but, the port has not carried out any exercise to adjust the rates of port dues accordingly. It is not reasonable to retain the existing rates and change the frequency of levying such tariff, even though the occasions of a same vessel visiting the port more than once within 30 days may be limited. The MOPT is advised to examine this issue at the time of formulating its proposal for the next general revision of its tariffs.
- (XLi). In the existing schedule of the port dues, the first slab is for vessels of 300-3000 GRT. The port had earlier proposed to modify this slab to 200-3000 GRT as provided under the Indian Ports Act. It appears sufficient to have this slab for vessels 'upto 3000 GRT'. Such vessels which are exempted from the payment of port dues under the provision of India Ports Act will automatically get exempted as the port is expected to abide by the provisions of the Indian Ports Act in this regard. The port has subsequently modified its proposal accordingly.

(XLii). The users have been objecting to the inclusion of the cost of a 4-lane road from Verna to Mormugao in the capital employed for a computation of the 'return'. The MOPT has on the last occasion indicated that it had embarked on this project in lieu of the State Governments' assurance to waive lease rentals on 128 acres of lands. The port has now clarified that ownership of the land in reference has since been transferred to it against payment of Rs.3.41 crores towards the stamp duty, registration charges, etc. The port has also explained that a separate company is being formed to manage the 4-lane road and the NHAI is looking into the modalities of setting up of such company, collection of toll, etc. Since the port has invested a considerable amount of funds in the road project, it is expected that it will be one of the shareholders in the proposed company. Since its investment may adequately get serviced from the returns receivable from the proposed company, it does not appear necessary for the port to include the investment in this project in its figure of 'capital employed' for the purpose of this tariff exercise. Since the issues relating to setting up of a new company, collection of toll, etc. are not yet conclusively settled, this aspect will be considered in detail at the time of the next tariff revision.

(XLiii). Subject to the analysis made above, the existing Scale of Rates of the MOPT is revised. While revising the Scale of Rates, the tariff orders passed by this Authority for common adoption by all the Major Ports as well as the Orders passed with specific reference to the MOPT have to be incorporated at appropriate places. Likewise, formulations already approved by this Authority in respect of other Major Port's Scale of Rates are also followed, wherever required.

17.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority rejects the proposal of the MOPT for a general hike in the tariffs except those selected items specifically approved in the analysis given above. The revised Scale of Rates of the MOPT is attached as **Annex – II**.

17.2. The revised provisions relating to the vessel-related charges will come into effect after expiry of 30 days from the date of their notification in the Gazette of India. The revised provisions in respect of the other charges will come into effect after expiry of 15 days from the date of their notification in the Gazette of India.

**( S. Sathyam )**  
Chairman