

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

TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 178

New Delhi, 5 September 2002

NOTIFICATION

In exercise of the powers conferred by Section 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 of the Jawaharlal Nehru Port Trust for a general revision of its Scale of Rates as in the Order appended hereto.

(S. Sathyam)
Chairman

Tariff Authority for Major Ports
Case No.TAMP/3/2002-JNPT

The Jawaharlal Nehru Port Trust

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Applicant

ORDER

(Passed on this 27th day of August 2002)

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

2.1. The JNPT has made the following points in support of its proposal:

- (i). The SOR of the JNPT was last revised with effect from 19 March 1997 with the approval of the Ministry of Surface Transport; and hence, the revision is overdue as per the guideline issued by the TAMP with reference to periodicity.
- (ii). Revision of tariffs is also necessary for the following reasons:
 - (a). To meet the future developmental expenditure in improving the productivity and quality of service and to offset the deficit forecast for the years 2002-03 and 2003-04 in the container handling activity.
 - (b). To partially mitigate the losses of the bulk terminal which has arisen because of diminished imports due to decanalisation of dry bulk cargo like fertiliser, fertiliser raw material; and, availability of substantial stocks of food grains. (In view of reduced activity of dry bulk, it is planned to divert major resources to the container handling activity by converting these berths into container berths.)
 - (c). To recover the expenditure incurred on paving the area, where the manual bagging is done, in the last four years.
 - (d). To ensure the recommended return on capital employed.

2.2. The JNPT has given the following rationale for introducing the new rates:

- (i). M/s. Indorama Cements, Pen, have proposed to bring Cement Clinker vessels of approximately 30000 MT-40000 MT every month, which may be handled at the JNPT or the MBPT depending on the economies of handling. M/s. Indorama Cements have requested the JNPT to charge the same wharfage for the cement clinker as that of cement giving justification that cement clinker is 100% cement only. Cement clinker is, however, a raw material and, cement is manufactured by crushing of and, adding certain additives, like gypsum to it.

The PPT, MOPT, CHPT, COPT and the KPT are charging the same tariff for cement clinker and cement; whereas, the MBPT, KOPT, TPT and the NMPT are charging lesser rates for cement clinker than for cement.

- (ii). Handling charges for steel coil and other general cargo

The port has modified the grab loader required for handling steel coils and other general cargo for which presently no handling charge is prescribed.

2.3. The proposal was approved by the Board of Trustees of the JNPT in their meeting held on 27 September 2001 as stated below:

- A. To increase the existing charges in respect of-
 - (i) handling and movement of Container by 14%;
 - (ii) wharfage on liquid cargo by 30%;
 - (iii) wharfage on cement by 40%; and,

(iv) service charge for manually bagged cargo from Rs. 10/- pmt to Rs. 30/- per pmt.

B. To introduce -

(i) a wharfage rate for Class 'A' Chemicals at Rs. 70/- for imports and at Rs. 65/- for exports;

(ii) a wharfage rate for handling cement clinker at Rs. 63/- for imports and at Rs. 56/- for exports on par with the rate for cement; and,

(iii) handling charges for General Cargo with a Grab Unloader at Rs. 50/- pmt.

C. To make the revised tariffs applicable from 1 April 2002.

2.4. In this backdrop, the JNPT has requested this Authority to accord approval to the proposed revisions in tariffs.

3. While acknowledging receipt of the proposal, the JNPT was requested to submit the draft revised SOR reflecting its proposals which was subsequently forwarded by the JNPT under cover of its letter dated 11 February 2002.

4.1. In accordance with the procedure prescribed, a copy of the proposal was forwarded to various port users/representative bodies of port users and Nhava Sheva International Container Terminal Limited for comments. The comments received are summarised below:

All India Liquid Bulk Importers & Exporters Assn.(AILBIEA)

The Association does not agree with the proposal and requests to drop the same for the following reasons:

(i). Out of a total of 173.3 million tonnes of cargo traffic in the year 1999-2000 in all the major ports in the country, the liquid bulk has accounted for 129.3 million tonnes. Though the liquid bulk cargo traffic has increased from 81.3 million tonnes in 1993-94 to 129.3 million tonnes in the year 1999-2000, the same has decreased in Mumbai from 26.1 million tonnes to 14.4 million tonnes for the respective years because of high port charges in Mumbai.

(ii). The fall in the traffic at Mumbai has been accompanied by a corresponding increase at the other ports like Kandla, Vizag, Kochi & Haldia, where the charges are lower.

(iii). The JNPT has reasonably consistent income through liquid bulk operations despite limited facilities and infrastructure; and, any increase in the port dues/charges will be detrimental to the progress of the port.

J.N.P.T. Liquid Chemical Berth User's Assn. (JNPTLCBUA)

(i). The existing wharfage on liquid cargo is already higher than similar items of cargo at the MBPT. The proposed 30% increase will push up the wharfage charges at the JNPT considerably increase the landed cost of liquid cargo at the JNPT. This may result in diversion of liquid cargo traffic to the MBPT or other ports to some extent.

(ii). Large investments made by the users in piping, storage, etc. to facilitate import/export of bulk cargo through the JNPT will be underutilised resulting in loss of revenue to the users as well as the JNPT.

(iii). The present restrictions in handling liquid bulk cargo at the JNPT and the overall recession in the economy have resulted in a considerably lower throughput than anticipated. Further, steps detrimental to the growth of liquid bulk traffic will affect the overall revenue of the users and the JNPT.

The JNPT had imposed a special service charge after providing necessary facilities at the jetty, which the users are already paying.

(iv). Parity in wharfage rates of liquid cargo between the JNPT and the MBPT need be retained in the interest of industry/trade as well as the port.

Larsen and Tubro Limited (L & T)

The proposed increase of 40% in the wharfage on cement is strongly protested due to the following reasons:

- (i). The neighboring minor port (less than a nautical mile away from the JNPT) is charging wharfage @ Rs. 15/- pmt only, which makes us less competitive than our competitors.
- (ii). The recent relief extended by the Government of Maharashtra will make transportation of cement by road more economical than by sea as the proposed increase will make JNPT logistics totally unviable.

The Cement Industry is currently incurring heavy losses; and therefore, concessions in the form of volume discounts are expected rather than increase in the charges.

- (iii). Heavy investment in chartering 3 bulk cement carriers specially designed to suit the JNPT berth for direct delivery has been made without any financial assistance from the JNPT. The JNPT provides no service other than berthing the ship; and, with an assured cargo and substantial revenue to the port, the proposed increase is unwarranted.
- (iv). In the TAMP notification dated 13 June 2000, the JNPT was advised to recognise the international practice of allowing volume discounts, if cargo handled exceeds 3 lakhs MT/year.

The cement handled during the year 1999-00, 2000-01 and 2001-02 at the JNPT has been 4.63 lakh tonnes, 5.29 lakh tonnes and 5.89 lakh tonnes respectively.

- (v). Out of 11 Major ports, 7 ports levy wharfage on cement below Rs. 35/-pmt, leaving Kolkata and Paradip where little or no cement is handled.
- (vi). The last three years record since commencement of operation at the JNPT indicates that our vessels have waited for berth for 63 days and delays due to pilotage, etc. have been for 3 days as against the JNPT statistics of bulk berth occupancy of 37% by L & T vessels i.e. about 11 days a month and the L&T is the only regular customer for cement cargo at the JNPT.
- (vii). Since the proposed increase in wharfage will result in heavy financial losses, due consideration shall be given to the nature of cargo and the wharfage may be limited to Rs. 40/- pmt.

Jindal Iron & Steel Company Limited (JISCO)

- (i). The proposed increase in the tariff shall not be approved due to present worldwide recession and economy slow down.
- (ii). The container handling charges are very high and must be reduced instead of increasing. The existing wharfage on steel cargo at the JNPT are very high and need to be revised in line with the charges at the MBPT to make the exports competitive.

Reliance Industrial Infrastructure Limited (RIIL)

- (i). We endorse the comments forwarded by the JNPT Liquid Chemical Berth Users' Association about the proposed 30% increase in the wharfage of liquid cargo, which is unjust and detrimental to the growth of their business.
- (ii). The existing wharfage on Naptha is already higher than that levied at the MBPT and any further increase is totally unwarranted.
- (iii). Parity between the JNPT and the MBPT on wharfage rates on liquid cargo shall be retained in the interest of the industry /trade and the port.

Shreyas Shipping Limited (SSL)

- (i). Tariff hikes must be directly proportional to the service provided and not related to a guaranteed return of 19.5% on capital employed prescribed by the Government, which the present economic scenario does not support.
- (ii). Instead of seeking an increase in tariff in this recession period, the focus must be on enhancing revenue by improving productivity and efficiency in conjunction with the cost saving measures like redeployment of surplus staff, since much of the existing business has already been diverted to the NSICT.
- (iii). The tariff hike will not guarantee increased volumes, but will be a crucial reason for losing out business to the much cheaper ports on the west coast of India.
- (iv). To recover the losses of bulk terminal by proposing an increase in the container handling charges is not in line with the TAMP guideline of negating any cross-subsidisation.
- (v). With the aging equipments result in more down time and hence less productivity, it is not the appropriate time to increase the tariff. The tariffs must be hiked after overcoming all the deficiencies and improving upon EDI messaging to compete with other ports in the world.
- (vi). The proposed increase in tariffs will be detrimental to the JNPT's efforts to make it a hub port for transshipment and whatever transshipment attracted so far to the JNPT will again shift back to foreign ports.

The transshipment cost at the JNPT is already higher than that at other neighboring foreign transshipment ports and it will further become expensive with the inter-terminal shifting cost, if existing tariff is increased.

- (vii). The productivity levels achieved by the private yards must also be achieved by the JNPT before proposing any increase. The private yards in the JNPT used by the consortium operators add up to the total working cost due to their inefficiency and any increase in tariff will further add up to the cost, which is not justified.
- (viii). The gross crane productivity /gross berth productivity is higher at the NSICT. Vessel owners are as it is incurring more berth hire and standing cost for their vessels at the JNPT due to its inefficiency.
- (ix). Domestic container movement started by us is at a preliminary stage and will die before taking off. The terminal shall support the movement by providing lower rates than increasing them.

Shahi Shipping Limited (SSL)

- (i). In comparison with the neighboring foreign ports, the existing tariff at the JNPT and the NSICT are higher. Charges payable by a mainline vessel of 22000 GRT amount to approximately \$ 20,500 to call at the JNPT/NSICT, whereas at Colombo and Singapore, it is about \$4600 and \$7300 respectively. Similarly a feeder vessel of 12000 GRT incurs port charges of \$11300 at the JNPT/NSICT as compared to \$2800 and \$4700 at Colombo and Singapore respectively.
- (ii). The container traffic at the JNPT and the NSICT is increasing at an average rate of 30% and all the charges (including THC) shall be revised in such a way so as to attract more traffic.

Indian Chemical Manufacturers Association (ICMA)

- (i). We oppose the proposed increase in the container handling and wharfage on liquid cargo as that will directly affect the chemical and petrochemical industry, which is passing through a recessionary phase.
- (ii). There is an urgent need of improvement, rationalisation and cost cutting of port operations (which is already very high) to be at par with the other Industrialised Asian Nations to give a competitive edge to our Industry.

- (iii). The higher tariffs charged accompanied with higher traffic growth at the NSICT than at the JNPT indicates that the JNPT must stress on improving the productivity by efficient and cost effective container operations to make them more or less comparable to the NSICT. The increase of 14% in the container handling charges is very high and will result in diversion of container cargo traffic from the JNPT.
- (iv). There is no justification to propose an increase in the wharfage of liquid cargo handled at multipurpose berths, moreso, because till recently the JNPT did not have a dedicated jetty for handling of liquid cargo.
- (v). The proposal of raising service charges for manual bagging of cargo from Rs. 10 to Rs. 30/- pmt is also opposed. Bagging shall be mechanised to bring down the operational cost; and, the capital cost can be amortised.

Container Shipping Lines Association (CSLA)

- (i). The proposal does not refer to any substantive attempt to reduce the internal cost, improve productivity, etc., but based on a premise to achieve the guaranteed ROCE as per the TAMP guideline, the periodicity of last increase, and about the NSICT charging a higher tariff.
- (ii). No cost reduction measures are indicated in the proposal and the basic philosophy of pricing appears to be a cost plus exercise pressurising the users with higher tariff to make up the shortfall in the revenue of the port trust. This policy does not adequately support the overall objective to improve the competitiveness of Indian exporters through lowering of the transaction costs.
- (iii). The proposal does not appear to take into consideration the decline in the utilised capacity of the JNPT from 90% to 78% in 1999-2000 and 71% in 2000-01. The same is, however, forecasted as 82% in 2001-02 and 80% in 2002-03 and 2003-04 respectively for container handling.

Though it is impossible to keep the available capacity fully utilised at all the times, the trade shall not be expected to pay for the unutilised capacity through the guaranteed ROCE, as this regime confers no onus upon the Terminal Operator to be efficient or prevent speculative or unnecessary investment in the capacity that cannot be used. The return, therefore, must be linked to capacity utilisation, otherwise low utilisation will penalise the trade by way of increased tariff.

- (iv). The guaranteed return at any level of capital is wrong specifically when there is no statutory obligation as regards the standard of services to be rendered for that return.

The prescription of ROCE of 19.5% is fundamentally wrong in view of prevailing PLR of 11.5%. Though not comparable, the difference between the ROCE of 19.5% and Return on Net Worth in cases of Engineering, Shipping, Telecom, Transmission line, Petrochemicals etc., which ranges between 7.05 to 16.53, is very evident.

- (v). The return earned by the JNPT before any tariff increase is already greater than the prevailing rates of returns in the industry generally and, any case for tariff increase is hence invalid.

Despite cost increase, no tariff increase was given to the JNPT last time and the container business actually earned 28.46% on capital employed during 1999-2000.

- (vi). The necessity of cost control is evident from the financial statements of container operations which indicate decrease or lower increase in the TEUs handled and constant increase in the expenses per TEU.
- (vii). The income earned from the buffer yard/ CFS operations does not appear to be included and hence the income is understated to the extent.
- (viii). It is feared that the JNPT may be trying to recover the losses of bulk terminal by increasing tariff for the container terminal. Cross-subsidisation between the activities cannot be allowed as each operation has to be financially independent.

- (ix). The JNPT is yet to achieve the desired productivity levels and also whatever levels now achieved, (which are still less than the adjacent terminal) they are achieved only with the help of the private yards. It is inequitable for the Lines to pay both for running of the private yards and now, also for the increase.
- (x). The productivity and cost statistics of the JNPT vis-à-vis other terminals indicate less productivity and higher cost at the JNPT.

(a). Productivity (in moves per hour)

	JNPT	NSICT	PSA SICAL
Gross Berth Productivity	30.80	55.20	40.00
Gross Crane Productivity	16.90	24.02	24.00

(b). Cost

	JNPT	PSA SICAL	CHPT	PIPAVA
Per 20'	Rs. 3000	USD 25.34 + Rs. 656	Rs. 2208	Rs. 1680
Per 40'	Rs. 4500	USD 34.45 + Rs. 987	Rs. 3072	Rs. 2592

- (xi). The assumption of the NSICT reaching a saturation point is fallacious as the NSICT will definitely expand its capacity.
- (xii). Some of the addition to net block of assets (specifically the Administration assets and Inventory) is arbitrary. The basis of allocation of cost of land and township between different activities is to be clarified.
- (xiii). Since no depreciation has been calculated on the increase in assets in 2001-02, it is understood that the RMQC acquired will be replacements, in which case the net asset value of Rs. 7 crores has to be reduced from the capital employed, which is not appear to have been done.
- (xiv). Without any increase, the port makes a return of 15.55% in the year 2003-04, which compares well with commercial enterprises.
- (xv). The proposal takes no account of the fact that the JNPT plans to privatise the bulk terminal. If this loss is removed from the JNPT profit and loss account, the port overall will show a handsome profit even before consideration of the royalties that will be received.
- (xvi). The overall return includes a substantial return on capital in the Marine activity and substantial loss in the bulk terminal. The shortfall between the actual return before allowing any increase in tariffs and the guaranteed return appears to be the heart of justification of this proposal prima facie, there appears to be a substantial cross-subsidisation between the activities at the JNPT.
- (xvii). The marine department shows a very respectable return on capital of 75.4% in 2002-03 and 67.63% in 2003-04. If no cross-subsidisation is allowed, return on this activity shall be reduced substantially.

Bombay Custom House Agents' Association (BCHAA)

- (i). The JNPT undertakes the operations of reloading/offloading of the export /import bound containers respectively, the cost of which is largely covered in the sea freight and is recovered by the Lines from the shippers. Presently, the Lines are collecting huge amounts towards loading/offloading under the guise of Terminal Handling Charges (THC). The charges are thus recovered twice. The JNPT must investigate the charges incurred and amount received by the lines as THC before considering the increase in reference and the report be forwarded to the TAMP and other port users for reference.
- (ii). Initiation of action of the GOI to remove control on sale of POL products will result in market forces playing an active role in ensuring the sale of end product at a reduced price. Therefore, the proposed increase of 30% in wharfage on liquid cargo is not objected.
- (iii). Though the burden of cost is passed on to the importers/exporters, the benefits enjoyed by the Lines are not shared with the shippers.

- (iv). As regards the proposed increase of 40% in the wharfage charges of cement, it is informed that cement is directly loaded to trucks and tankers from the vessel and not stored on the wharf or within the port. In the light of this, the increase sought by the JNPT on cement wharfage does not appear to be justified. The wharfage must infact be reduced and made competitive.
- (v). The increase in the service charges for manual bagging from Rs. 10/- pmt to Rs. 30/- pmt is acceptable.
- (vi). In view of extra precautions to be undertaken, the wharfage proposed for class 'A' chemicals is acceptable

Indian Oil Corporation Limited (IOCL)

- (i). The proposed increase in wharfage charges on POL products is not warranted and the rate must remain as it is. The reason for increasing the wharfage on crude and POL products by about 30% is not understandable since the Oil industry (and, not the JNPT) has incurred major capital expenditure in construction of liquid cargo terminal and setting up of other ancilliary facilities including piping, capital dredging, payment of water front charges, etc., which is operational now.
- (ii). The Bharat Petroleum Corporation Limited has signed an agreement with the JNPT for payment of guaranteed minimum royalty depending on the volumes handled. Any increase in the wharfage may dissuade the potential users from using the facilities created and the Oil Industry will face a problem in meeting the targets as per the agreement.
- (iii). The wharfage proposed to be introduced on Naphtha must be at par with other POL products.

Shipping Corporation of India (SCI)

- (i). The Indian ports are very expensive as regards vessel-related costs, if compared with the neighboring ports. The increase in tariff will only make them more expensive. For a vessel of GRT 21963 the tariff charged at the JNPT/NSICT, KPT, MBPT, Singapore, Dubai and Colombo is USD 22000, 13600, 16500, 9300, 3000 and 5800 respectively.
- (ii). The JNPT has improved considerably and is today at par with the NSICT. If the NSICT can be granted 16% increase in the container handling charges, it is reasonable for the JNPT also to get its share of increase.

Federation of Indian Export Organisation (FIEO)

- (i). The hike in the tariff will be detrimental to growth of trade and industry in view of the general recessionary trend, announcement of reduction in the tax concessions in the budget, etc.; and also, because the hike primarily seems to improve the profitability levels of the port at the cost of the trade.
- (ii). There is a need to improve the productivity/efficiency at the JNPT since the NSICT is charging tariffs which is 16% more than that prevailing at the JNPT, and still attracting more business.
- (iii). In all the three alternatives for revising the costs i.e. 25%, 30% and 35% in the liquid wharfage activity, the port is generating an additional income of Rs. 3 to 4 crores per annum through liquid cargo only. In the present recessionary scenario, when the exports are facing a downward trend, a hike of 25% is very steep and needs to be scaled down substantially.
- (iv). The proposed increase in the wharfage on cement may not be implemented, as it will work against the interest of trade.
- (v). The service charges for manually bagged cargo must not be increased and be maintained at Rs. 10/- pmt as at present.

- (vi). The hike in the wharfage on import of class 'A' chemicals must not be implemented presently as, alongwith the general recession, this may further add up to the transaction costs of the exporters making them incompetent in the international market.
- (vii). Similarly, no increase in the wharfage on cement clinker, general cargo, etc. may be implemented presently.

Nhava Sheva International Container Terminal Ltd. (NSICT)

- (i). The tariffs of the JNPT was revised 4 years ago; and, it is legitimate to grant a hike in the existing tariffs. Even after this hike, the JNPT tariffs will be well below those of comparable regional and international terminals.
- (ii). After a consolidated increase of 14%, the JNPT will have an ROCE of 18.5% in the year 2002-03, which is in line with the TAMP recommendation of 19.5%.
- (iii). Without a tariff hike, there will be a deficit in the year 2002-03 and 2003-04 in the container handling, bulk and liquid handling facilities. The JNPT will need to be commercial to attract the private bidders, if it is to be corporatised soon.

Ambuja Cement

Due to delays in getting the berth and other logistics, cargo handling becomes very expensive and any further increase in the wharfage of cement will make the whole operation unviable. The wharfage on cement, therefore, shall not be increased.

Karmahom Conference

- (i). We fully support and endorse the points made by the CSLA.
- (ii). We object to the cost plus formula for assessing the tariff increase. An open letter issued by a member of the IPBCC / KARMAHOM Conference highlights the wide disparity in the operational costs at the International ports and the Indian ports, which is 10 times the Salalah port and more than 3 times the Singapore port.
- (iii). The reduction in the ocean rates from \$1200 per TEU to \$750 per TEU (inclusive of RR of \$300 per TEU) on 1 March 2002 has made rendering of shipping services very uneconomical. In the circumstance, the member lines of IPBCC/ Karmahom Conference do not support any increase in the port charges.

Mumbai and Nhava Sheva Ship Agents' Assn. (MANSA)

- (i). Consideration of an ROCE of 19.5% to arrive at the tariff is far too high. No industry expects such high returns. Since the Banks and Financial Institutions are flushed with funds, the cost of funds in India today is as low as 11.5% / 12% p.a. and will further reduce as the International rates are still lower.
- (ii). The productivity must be linked with the proposed tariffs with proper safeguards to the ports to stipulate type of vessels for which productivity norms can apply.
- (iii). Instead of prescribing a separate tariff for each operator, the regulator can prescribe a common/maximum tariff for all the operators, because in the cost plus formula, the customer pays for the inefficiencies of the operator. Also, there should be one tariff for the same product offered in the common market as is also followed in the cellular and insurance industry.

The Fertiliser Association of India (FAI)

- (i). Sizable quantity of finished fertiliser products / raw material viz. Urea, DAP, MOP, Rock phosphate, Phosphoric acid and Ammonia are imported through the JNPT. The suggested increase in tariff of wharfage on liquid cargo by 30%, service charge for manually bagged cargo from Rs.10/- pmt. to Rs.30/- pmt. and introduction of handling charges for general cargo with grab unloaders @ Rs. 50/- will add to the cost of imported fertiliser.

- (ii). The GOI is providing subsidy / concession on these fertilisers to keep their process within affordable limits. Any increase in the tariff/new levies will further increase the subsidy burden on the GOI. The proposal of the JNPT must be reviewed in this backdrop.

4.2. A copy each of the comments received from the above users and the NSICT was sent to the JNPT as feed back information.

4.3. The Bombay Chamber of Commerce and Industry, the Indian Merchant Chamber, the Western India Shippers' Association, the Indian National shipowners' Association, the Fertilisers Association, the Gajambuja Cements Limited, the Ispat Industries, the Midex Overseas Limited, the Bilt Graphics Papers limited and the Food Corporation of India have not furnished any comments.

5.1. On a preliminary scrutiny of the proposal, the JNPT was requested to furnish information/clarifications on various issues arising out of its proposal.

5.2. Some of the queries which have been raised, in addition to those arising out of this Authority's Order dated 28 March 2001 in respect of revision of container handling charges, are summarised below:

- (i). Basis of estimation of the capacity of the JNPT container terminal & Bulk Terminal capacity with and without Bulk handling plant.
- (ii). Reasons for projecting a decrease in the traffic of liquid bulk in the year 2002-03 and 2003-04 even though there has been 36.34% increase in the traffic in the year 2000-01 and 2001-02.
- (iii). Basis of allocation of expenditure to liquid bulk handling activity.
- (iv). Quantitative and income details for different items of dry bulk cargo. Reasons for reduction in the operating income for dry bulk in the year 2003-04 at the same traffic level.
- (v). To indicate the capacity of the bulk handling berths considering the capacity of the plant installed; and, whether the plant can be used for handling other cargo.

The staff strength maintained for handling bulk cargo; and, their average deployment.
- (vi). To explain the increase in the expenditure projected for the year 2001-02 and 2002-03 and 2003-04 which is more than 10% than the previous year figures in light of the statement indicating consideration of inflation as 5%.
- (vii). Reasons for the proposed substantial increase in the dredging expenses and the quay crane hire charges.
- (viii). To explain the figures of royalty receipts shown lesser than the amount arrived at the rate specified for traffic projected.
- (ix). To justify the need for acquiring the new cranes as well as hiring the additional equipment/quay cranes with reference to the traffic projections in light of the fact that utilisation of existing quayside and yard gantry cranes as well as RMGC of the port was less than 50% during the year 2000-01.
- (x). To clarify the reason for variation in the figures of interest payable as furnished now and as indicated at the time of submission of the last proposal.

To explain the adhoc payment of WB loan alongwith the accounting treatment given to the interest payments made to the WB on this account.
- (xi). To include the penalty for shortfall in throughput and Sundry receipts in the cost statement for the port as a whole; and to exclude the prior period depreciation in the statements.
- (xii). To explain the treatment given to the provision and/or payment of the wage arrears, if any. The liability on account of arrears of wages arising out of pay revision is to be excluded.

- (xiii). Basis of apportionment of different operating expenses to the activities and sub-activities together with a reconciliation statement.
- (xiv). To explain a difference of Rs. 770.96 lakhs detected in the net block figures stated for the year 2000-01 and as indicated in the Balance sheet.
- (xv). To revise the proposed Scale of Rates taking into consideration the common adoption orders notified by TAMP from time to time, various order passed in respect of the JNPT; and, to explain/modify/correct the discretionary powers given to the management, provisions inconsistent with the normally accepted provisions at all the Major Port Trust including the rationale reasons/basis for introducing/retaining certain clauses.

5.3. The JNPT has responded on the queries raised by us. The important points made by it are summarised below:

- (i). The existing capacity of the container terminal as 7 lakh TEUs is arrived at based on the traffic of 6.69 TEUs handled in the year 1989-99 (which is a peak reached so far) with the existing infrastructure of RMQC at the JNPT.

As regards the Bulk handling capacity, the berths, unloaders and conveyer system are under consideration for conversion to a container terminal, which has been approved by the Board of Trustees. The related equipment and conveyor system are under consideration for write off by the MOS. In this situation the capacity of the bulk terminal is only to utilise without the plant installed. Only cargoes like cement, liquid and other general commodities can be handled before the conversion. Presently, the yearly target is kept at 4 million tonnes only with reference to such cargo.

- (ii). The projected reduction in liquid bulk traffic in the years 2002-03 and 2003-04 is due to commissioning of the BPCL terminal and consequent shifting of liquid traffic to that terminal. The traffic of the BPCL has been included for the purpose of calculation of royalty and vessel-related charges since these vessels will be handled by the JNPT and the vessel-related charges will therefore accrue to it.
- (iii). Since liquid bulk activities comprise a very small portion of the total bulk activities, 5% of the total expenses excluding depreciation are allocated to liquid bulk activity. No separate cost breakup is available. As regards depreciation for the liquid bulk, common assets are considered at 50% of total bulk.
- (iv). The income from bagging charges has not been considered as it is not likely to be significant.
- (v). If tariff for coastal vessels is increased in accordance with the TAMP guidelines to maintain it at 70% of the foreign-going vessels tariff, the vessel-related charges will increase by another Rs.5 crores per annum approximately
- (vi). The exchange rate for the year 2001-02 was taken as Rs.47.15 in August 2001, for 2002-03 it was considered as Rs. 47.25 and kept constant for 2003-04. If another 3% depreciation is considered, the marine income for 2002-03 will increase by Rs. 4 to 5 crores per annum.
- (vii). While inflation is considered at 5%, overall expenditure also depends on the volume of traffic.
- (viii). The container traffic in the RE 2001-02 is projected higher by 16%, whereas the number of vessels are expected to increase by 20% resulting in higher consumption of power, fuel, etc. Also, there has been substantial increase in the hire cost of tractor-trailers and dredging expenses are also expected to increase.

In 2003-04, the container traffic is expected to increase by 15% and number of vessels by 8.7%. The dredging expenditure is expected to increase substantially due to dredging in the anchorage area, the BPCL Jetty and the lagoon area.

The leased RTGC is envisaged to handle additional TEUs and with the procurement of 2 RMQC, the depreciation will also increase.

- (ix). Apart from an increase in the traffic, 18% hike in the power tariff has been sought by the MSEB and hence while preparing the RE 2001-02 and BE 2002-03, 10% increase in tariff was considered.
- (x). The royalty period of 12 months is not the same as financial year, but is a July-June year. Hence for the first three months, the royalty is at a lower rate and consequently the royalty receipts are lower.
- (xi). Certain idle assets disposed off but awaiting to be written off have been excluded from the proposal.
- (xii). The pilotage fee for vessels without tug assistance is one-third of the fee for vessels requiring tug assistance; however, the minimum pilotage charges for foreign or coastal vessel are not exactly one-third, but are slightly on a higher side. Since the charges are prevailing since 1997, the Authority may not insist on reducing the minimum pilotage fee for vessels without tug assistance for foreign vessels from US\$ 200 to US\$ 100 and for coastal vessels from Rs.5000 to Rs.2400.
- (xiii). As the activities covered under the pilotage charges are very clear, the Authority may not insist upon changing it to include one shifting of vessel within docks at the request of the vessel in the definition of pilotage fee.
- (xiv). Only in respect of three items viz. Furnace oil, Carbon Black Feed Stock and Bright stock, heating arrangements in addition to pumping performance are required. Only these items are, therefore, considered for specifying the minimum discharge rate. The basis of arriving at the minimum discharge rate is the actual discharge rate of the three items for last three years.
- (xv). Higher penal berth hire rate is prescribed so that it acts as a deterrent against the idle stay of a vessel at the berth.
- (xvi). In view of the complexity of handling over-dimensional containers, the rates are double the normal container.
- (xvii). The reefer monitoring charges are levied on a unit of, 'per calendar day' and are specified considering the electricity units a container consumes in 24 hours for reefer connection. The berth hire charges cannot be compared with this charge and unit of per calendar day cannot be brought down to 8 hours or part thereof.
- (xviii). Since the port does not want to encourage the use of private equipment, the rebate rates are not required and hence they are not proposed to be increased.
- (xix). As per the policy of export promotion, the export charges are kept at the lower side and hence a flat rate is considered.

6.1. The JNPT has furnished its comments on the observations made by the users on the proposal. The important points made are summarised below:

A. On the comments of the All India Liquid Bulk Importers and Exporters

- (i). Port dues are charged for use of the sea channel. There is no proposal for increase in port dues.
- (ii). The consistent income through Liquid bulk operation indicates steady increase in traffic. For increasing the efficiency in the handling, the JNPT is spending every year for development of its infrastructure and every facility extended has a cost.

B. On the comments of the JNPT Liquid Chemical Berth Users Association / M/s. Reliance Industrial Infrastructure Limited.

- (i). The proposal for increase in the wharfage charges is well justified on the basis of the norms for return on capital employed set by the Authority.

- (ii). The overall growth of liquid bulk throughput at the JNPT indicates an increase from 5.77 lakhs MT in 1996-97 to 25 lakhs MT in 2001-02 (upto January 2002). This continuous growth is mainly due to availability of infrastructural facilities. Moreover, plenty of space in the tank farm area and faster evacuation have also added to growth of liquid cargo throughput; and, the investment made by the members of chemical association are adequately rewarded.
- (iii). It is not necessary to have parity in the wharfage rates between the JNPT and the MBPT as the facilities available and the cost of services rendered at each port are different and tariffs at each port are levied accordingly.
- (iv). The rate in an adjacent port cannot be the basis of fixing rates in the other port. Rather than investment in facilities, the cost of services that are provided and reasonable return to the port are the main factors which shall govern the revision of rates.
- (v). In view of the last revision in the SOR made in the year 1997, the proposed increase is justified; and, with the new infrastructural development in the liquid bulk front, the members of Association will be further benefited.

C. On the comments of M/s. Larsen and Toubro Limited

- (i). It is reasonable to increase the charges after almost 5 years. The increase is justified to mitigate the losses of bulk terminal and improve return on capital employed.
- (ii). There is no doubt that the L & T has handled cement to the tune of 4.63 lakh MT, 5.29 lakh MT and 5.33 lakh MT for the year 1999-00, 2000-01 and 2001-02 (upto January 2002) respectively. The L & T has been given the following benefits:
 - (a). No waiting time for the cement vessel at the JNPT saves idle cost of the vessels at the BFL.
 - (b). No waiting time for the cement cargo inside the port saves the cycle time as immediately on delivery of cement to the browser, it goes out of the gate.

This has resulted in average discharge rate of approx. 6000 MT per day as against the regular discharge rate of 4500-5000 MT per day of the L&T vessels. The better berth output rate is because of the available berth space and no hindrance at the outer gate in bulk terminal.

D. On the comments of M/s. Jindal Iron and Steel Co. Limited (JISCO)

- (i). The JISCO had earlier also represented against the existing wharfage charges on the grounds of recession, economy slow down and the comparative lower charges at the MBPT and the MOPT, which were not considered by the TAMP based on the reasons that when steel industries have the advantage in the outside market, they did not come for an increase in the charges; but in the recessionary period, they are asking for lower rate, which is not justifiable. Also, the facilities available at the MBPT and the MOPT cannot be compared with the JNPT.

E. On the comments of M/s. Shreyas Shipping Limited / M/s. Indian Chemical Manufacturers Association

- (i). The ROCE of 19.5% is reasonable as per the norms prescribed by the TAMP and the JNPT being a commercial undertaking cannot operate without a reasonable return.
- (ii). The efficiency of the port is improving continuously and the JNPT is also paying productivity linked incentive w.e.f. 1 September 2000 to the labours.
- (iii). The shipping lines may deal with the JNPT or the NSICT as per their choice.
- (iv). The facilities and procedures for container traffic at the JNPT are modern as compared to other west coast ports. Hence, the tariff at any port cannot be compared without reference to the facilities.
- (v). The submissions of proposal for revision of tariff, after a period of 5 years is justified in accordance with the prescribed TAMP norms.

- (vi). The proposal to increase the wharfage charges on liquid cargo and the service charges for manually bagged cargo is well justified on the basis of prescribed norms of the Authority.

F. On the comments of M/s. Shahi Shipping Limited

- (i). The JNPT does not have any proposal to increase the vessel-related charges, which are prevailing since 1997.
- (ii). The tariffs at Singapore and Colombo cannot be the basis for reduction in charges, but the investment in facilities/operating cost of services provided and reasonable return on investment.

G. On the comments of the Container Shipping Lines Association

- (i). As regards the ROCE of 19.5% the proposal is based on prescribed norms of the Authority. Due to depreciation of assets emerging out of capital investments in port project, the prescribed return of 19.5% is justified even if the port operates at lesser capacity.
- (ii). The crane productivity at the JNPT has improved over the years. The service level has definitely improved which has added value to the money proposition of the Lines. The port is paying productivity-linked incentive since September 2000.
- (iii). CFS operations are carried out by the CWC and they levy their own charges. The royalty income received from the CWC has been included in the proposal.
- (iv). The increasing trend of container traffic to be achieved is definitely due to the improved productivity at the JNPT. Despite being less productive than NSICT leading to higher cost, the port being a commercial undertaking has to run with reasonable return.
- (v). With continuous improvement of productivity, the port will be competitive even after the proposed increase.
- (vi). The private yards at the JNPT are operating at the request of Lines. If the port takes over the operations, it will be equally or even more productive. The port is already thinking on taking over of these private yards.
- (vii). The two numbers new RMQC to be purchased are not replacements but addition to the existing fleet of cranes. The calculations submitted by the port are correct.

H. On the comments of the Bombay Customs House Agents Association

- (i). As per the recent order issued by the TAMP on THC, the ship rate includes on-board stevedoring charges and does not include the port charges. Hence the argument of double charge is not correct.

I. On the comments of the Indian Oil Corporation Limited

- (i). It is a fact that the oil industry has made investments at the JNPT in developing storage facilities, the port has also invested in berths, liquid handling facilities and other infrastructure around the port area. The liquid traffic at the JNPT is continuously increasing due to better facilities; and, the proposed increase in wharfage after a long time is justified.
- (ii). Considering the operational risk and additional cost involved for proper handling of the Naptha/vessel, the tariff proposed on the higher side is justified.

7. The JNPT has requested this Authority to consider the proposed revision of container handling charges specified under section I & IV relating to handling and movement of Containers and Miscellaneous services rendered respectively in dollar terms by citing examples of the MBPT and the CCTL, Chennai, where dollar denominated Container handling charges are prescribed. The JNPT has assured to forward the actual dollar denominated tariff in respect of Section I and IV for notification on receipt of approval of this Authority for prescription of tariff in dollars.

8. A joint hearing in this case was held on 24 April 2002 at the JNPT premises. At the joint hearing, the following submissions were made:

Jawaharlal Nehru Port Trust (JNPT)

- (i). With the new investments proposed, the ROCE will fall to 13%. To raise it back to 19.5%, we need a 14% increase in container handling.
- (ii).
 - (a). We are a major container port. We wish to stress on this activity more.
 - (b). Bulk handling is a drag.
 - (c). We will need to earn more from container handling to cross-subsidise.
- (iii). The advantages of the incentive payments are detailed in the proposal itself. Please take that into account.
- (iv). Allocation of costs is done more to 'container handling' because that is our maximum revenue-generating centre.
- (v). The vessel-related charges are very high. There is a huge surplus in that activity. We propose to reduce the vessel-related charges soon.
- (vi). We need heavy investments in the equipment to reduce the turn-around time. On road connectivity improvement, Rs. 350/- crores; on dredging, Rs. 350/- crores. We need to have money for all this.

Mumbai and Nhava Sheva Ship Agents' Assn. (MANSA)

- (i). An ROCE of 19.5% is too high. The market position is very different. Please reduce.
- (ii). Give up the cost plus approach and emphasise performance.
- (iii). Why different rates for a port trust and an adjacent private terminal (NSICT). As in Telecom, the regulator should prescribe a common ceiling rate.
- (iv). Lot of notes is written on break bulk but, proper justification is not given.
- (v). The JNPT had made investments for the fertilisers and food grains. Today, break bulk cargo is required to bear that burden.
- (vi). Break bulk cargo is being diverted to shallow berth; how is the 'bulk handling investments' relevant?

Larsen and Tubro Limited (L & T)

- (i). The TAMP had itself advised introduction of volume discounts on cement. There is no justification for a tariff increase; 50% of the bulk cargo is cement.
- (ii). The MBPT charges Rs. 18/-; the JNPT charges Rs. 40/-; and, they want a 30% increase, which is not justified.

Container Shipping Lines Association (CSLA)

- (i). We have given detailed comments in writing. Please take those into account.
- (ii). The costs saving measures have not been detailed.
- (iii). Productivity increases have not been spelt out.
- (iv).
 - (a). The JNPT is already making enough ROCE. Further increases are not in line with the market realities.

- (b). The cost plus model must be given up.
- (v). The vessel-related charges are very high and give rise to huge surpluses. The vessel-related charges must go down.
- (vi). There is no justification at all for the dollar denomination of tariffs.

Nhava Sheva International Container Terminal Ltd (NSICT)

- (i). The Lines charge at random. There is no accountability, yet they question legitimate proposals of the ports / terminal operators.
- (ii). All costs have risen. The Lines keep asking for more and more facilities. How can we meet?
- (iii). We support the proposal and also dollar denomination.

Shipping Corporation of India Limited (SCI)

- (i). Give up the cost plus approach.
- (ii). Do not increase container charges. The NSICT will then ask for a consequential hike.

J.N.P.T. Liquid Chemical Berth User's Assn. (JNPTLCBUA)

- (i). As regards the liquid cargo at the JNPT, the MOEF environmental clearance refers to necessary diversion of cargo from the MBPT to the JNPT. Nothing shall, therefore, be done to re-divert the cargo from the JNPT the MBPT. Any increase in the JNPT tariff will, therefore, be objectionable.
- (ii). Please refer to your own Order about "no increase" in Pir Pau jetty of the MBPT.

Indian Oil Corporation Limited (IOCL)

- (i). Rates are already high do not increase further.

Federation of Indian Export Organisation (FIEO)

- (i). Overall export costs are very high – any increase of tariffs will hit exports adversely.

Indian National Shipping Association (INSA)

- (i). Please consider our written submission.
- (ii). How to develop JNPT as a transshipment port? Best way is to give attractive tariffs; not to increase tariffs that are already high.

9.1. With reference to various issues flagged by the Chairman (TAMP) in his opening remarks at the joint hearing, the JNPT had requested for time to respond through a written submission; this was considered by the Chairman (TAMP) and two weeks' time was allowed to the JNPT in this regard.

9.2. The JNPT has made a written submission responding to some of the points raised at the joint hearing. The points made by it are summarised below:

A. Allocation of costs relating to Shallow Water Berth and Port Craft Jetty

- (i). As regards inclusion of the above assets in the Marine Activity, the existing berths have been considered under container and bulk activity both in its Annual Accounts and in the proposal submitted to the TAMP. This practice has been followed since beginning.
- (ii). The reason for considering the cost of the berths under the cargo handling activity is that the berths are the basic infrastructure to support the cargo handling equipment like RMQC, Tractor Trailers, Grab/Continuous Unloaders, Oil pipeline, etc. In the absence of berths the equipment may not be able to carry out the cargo handling activities in the port. Moreover,

movements of equipment like cranes, tractor-trailers, trucks, etc. are not possible without the berths. Therefore, it is logical to consider the cost of the berths under cargo activity rather than vessel-related activities.

It is, however, equally conceded that the port earns berth hire charges from the vessels, which is mainly on account of occupying the berth. Therefore, berth hire charges relating to the respective cargo activity may be shown under the same activity; and hence, the cost statements are modified by shifting the berth hire charges recovered from Container and Bulk vessels to their respective cost statements. Correspondingly, the berth hire charges have been removed from Marine activity.

B. Allocation of Township costs

- (i). As regards the advice to consider the basis of either the number of employees or the net block or direct expenses for allocation of township cost, it is seen that the direct expenses for container activity are about 55 to 60% in 2002-03 and 2003-04. Since the port is going to be mainly a container handling port in future due to which the share of direct expenditure on container activity will definitely go up, it is reasonable that 70% of township shall be reflected under container.
- (ii). Action is being taken to transfer majority of employees from bulk to container terminal as there is very less cargo handling at the bulk berths.

C. Shifting of rental income on CFS to Container Activity

- (i). Estate function and Land management is an independent activity and is considered as a separate profit centre by itself. Accordingly, the rent received from the CFS, and corresponding capital employed is considered under the estate activity; however, the royalty received from the CWC, for movement of container is considered under container activity.

D. Impact of Exchange Variation on Vessel Related Charges

This has been incorporated in the enclosed revised cost statements.

E. Adjustment of coastal vessel tariffs for a disparity of 30% to be maintained between foreign and coastal vessels.

An additional income of Rs. 5 Crores has been considered in the cost statements of vessel-related activity.

F. Interest expenditure

It is confirmed that for the years 2001-02, 2002-03 and 2003-04, interest has been considered on actual basis. The port has started repaying the World Bank Installments due from 2001-02 onwards. As for the years before 2001-02, the Ministry has vide letter No. PAO/Control/JNPT/2001-02/350-51 dated 18/27- 12- 2001 advised to clear the outstanding amount of Rs. 435.46 crores upto 31 March 2001. It has represented to the Ministry to consider waiver of the interest upto 31 March 2002; however, pending decision of the Ministry, the Port had started paying its installments since 2001-02 onwards. Since the criterion for tariff increase is 'Return on Capital Employed', which is before interest, this will not have any impact on the proposal.

G. Reconciliation of expenditure

It is confirmed that the account code-wise expenditure shown in the proposal is reconciled with the activity-wise totals shown in the Annual Accounts. The direct operating expenditure shown under each activity also matches with that of annual accounts.

H. Productivity as a result of Incentive Scheme

Details of productivity parameters are furnished.

I. Capacity of Bulk Terminal

- (i). The original capacity of BB1 and BB2 with the handling equipments is as follows:
(Million Tonnes)

Fertilisers and Raw Materials	2.9
Food	0.6
Total	3.5

Without equipment the capacity is expected to be 1.5 million tonnes.

J. Value of equipment of Bulk Terminal proposed to be disposed off

The acquisition cost of equipment proposed for disposal, which is duly approved by the Board is Rs. 192 crores as on 31 March 2001.

K. Royalty

- (i). The TAMP, while returning the JNPT's earlier proposal for tariff revision, advised that the Royalty from the NSICT should be considered as part of container income. The Authority had indicated that the royalty relating to the difference between the JNPT capacity and the actual throughput at the JNPT should at least be taken directly to container activity and the balance distributed to all cargo related activities.
- (ii). This method has been followed and royalty received beyond the difference in capacity was allocated in the ratio of the gross income, between container and bulk. However, it is felt logical to consider royalty pertaining to difference of shortfall in capacity as part of container income. It may not be proper to consider the balance royalty in any activity, which is mainly due to administrative decision.
- (iii). The figures for 2001-02 are only provisional and are likely to change after the Accounts are finalised.
- (iv). Income tax is leviable @ 30% and 5% toward surcharge (in effect 31.5%) on the net surplus of the port trust. Therefore, while calculating the Return on Capital Employed the effect of income tax may kindly be considered and additional increase in the tariff to the extent of 6% over and above the proposed levels may be granted.
- (v). It is agreed to follow the Ministry's guidelines for an annual escalation of 5% of lease rentals instead of the present method of 10% escalation every two years.
- (vi). All corrections have been incorporated in the draft SOR taking into account all revisions approved by this Authority from time to time.

10.1. A team of JNPT officials met the Chairman (TAMP) on 2 July 2002 and requested for one more opportunity to them to express their views on the changes proposed to be effected in the cost statements. The Chairman (TAMP) accepted the request and a copy of the cost statements modified by the Authority was given to them to appreciate the approach adopted in arriving at the revised tariffs.

10.2. In response thereto, the JNPT has, requested to consider the following points in the cost statements:

- (i). Instead of considering the Royalty beyond the capacity of the Terminal as a part of income of the concerned activity, royalty may be considered to the extent of spare capacity of the port since the port has lost traffic to the competitor only to that extent. The royalty received beyond the capacity of the terminal cannot be attributed to the activities of the JNPT container terminal and hence should not be considered for calculating the profitability. The same is the case with royalty received from the BPCL by handling liquid.

Also, 100% capacity utilisation of the berth cannot be practically possible due to draught, tide and length restrictions and ageing equipments. Normally, as per international norms, achieving a berth occupancy of 75 to 80% is considered to be most reasonable.

- (ii). In the year 2002-03, the TAMP has proposed to add back Rs.10 crores to the profitability of the liquid bulk towards penalty income from MGT. The MGT dues are being disputed by the

parties; and, as on 31 March 2002 the outstanding dues are Rs.67 crores. While submitting the original proposal, the MGT income has been excluded from liquid bulk and the corresponding MGT dues from capital employed.

- (iii). As regards the assets of the Bulk Terminal proposed to be excluded from the ROCE, while it has been submitted that the assets have been approved for disposal; but, the disposal is yet to commence. It is likely to take some time. In the cost statements, the handling income, which will arise due to some of the assets proposed to be disposed of is considered. The reduction of return due to the assets proposed to be disposed of, therefore, should not be done.
- (iv). While the vessel-related activity will become profitable within the next 2 years, the port will have to spend about Rs.700 crores for widening and deepening of the channel. This will place a considerable financial burden on the port and increase the capital base of marine related activity, while corresponding increase in income may not accrue.
- (v). The ports are now subject to Income Tax with effect from the financial year 2002-03, which will place a considerable additional burden; and, the likely impact annually will be Rs.40 crores approximately. The same may please be considered while evaluating the proposal.

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

- (i). The Scale of Rates of the JNPT was last revised in March 1997. The JNPT approached this Authority in February 2000 for approval of its proposal for revision of container handling charges. By its Order dated 20 March 2001, this Authority rejected the proposal of the JNPT for an increase in its container handling charges, inter-alia, because the container handling activity was a revenue surplus activity and the overall port position was also showing only a marginal deficit. As the overall deficit arose due to the huge deficit borne under bulk cargo handling activities, the Port was advised to review the position in its totality and come up with a comprehensive proposal for re-fixation of bulk cargo handling charges and rationalisation of tariffs for other activities.

The Port has now proposed revision of (a) all container handling charges, (b) and wharfage on liquid bulk cargo; and (c) the service charges for manually bagged cargo. In addition they have also proposed introduction of new items of tariff, namely, (i) wharfage for 'A' class chemicals, cement clinker and (ii) grab unloader handling charges for steel coils and general cargo. The Port has furnished the requisite cost statements for various activities and for the port as a whole. The JNPT deserves to be complimented for furnishing a detailed cost analysis and, unlike the earlier occasion, promptly responding to all additional requirements.

- (ii). Some of the users have suggested that some of the rates at the JNPT must be maintained at the same level as that of the MBPT. Such a comparison in isolated cases is meaningless. Further, this Authority has clarified in many of its earlier Orders that the concept, principles, norms and approaches relating to tariff setting shall be the same across all the major ports; but, the tariffs need not (and, cannot) be. In the light of this position, the suggestion of the MANSa to have the same rates for corresponding services at all the Terminals may not be practically implementable in the near future since adoption of such an approach calls for rationalisation of various other associated aspects. In the same analogy, increase in tariffs allowed at one Terminal cannot be a ground for effecting a similar increase at a neighbouring Terminal.
- (iii). There has been a general complaint from the users side that costs at Indian ports are higher when compared to other international ports in the neighbourhood. It has to be recognised that the total cost of rendering port services is influenced to a greater degree by the capital structure and financing model of the service provider. In the public trust model adopted in our country to manage the major ports, the major port trusts are expected to be self-reliant and are required to meet not only their operating costs but also the capital cost from their own revenues. Given this situation, it will not be in the larger interest of the port sector, if the tariff setting process does not recognise reasonable costs. In this backdrop only, a cost-plus model is being pursued with an elaborate analysis of reasonableness of various cost elements and emphasis on performance standards. The cost-plus approach has been adopted in the case of all the major port trusts and private terminals; and, it will, therefore,

apply in the case of the JNPT also till any alternative approach is evolved commonly for all the Port Trusts/Private Terminals.

- (iv). The CSLA has rightly stressed the need to link productivity with tariffs. The stated position of this Authority is to use the tariff leverage to improve operational efficiency. Container handling is the main stay of the JNPT. It is noteworthy that this Authority has already constituted a Working Group to formulate an Efficiency Linked Tariff (ELT) scheme for container operations. Significantly, this Working Group includes representatives of both the JNPT and the CSLA. When the ELT Scheme is introduced for all major ports commonly, it will automatically cover the container tariffs levied at the JNPT.

The productivity figures furnished by the JNPT encouragingly indicate improvements in performance. Nevertheless, the argument of the JNPT that it pays productivity incentives to its employees cannot be taken as an indicator of productivity without going into the normative output levels and the datum for the incentive scheme.

- (v). A scrutiny of the revised cost statements submitted reveals that the Port has excluded a major item of F&M income, namely, penalty for shortfall in minimum guaranteed traffic (MGT). If there is no penalty due to fulfilment of guaranteed throughput, there must be commensurate wharfage income. The port has argued that the MGT dues are disputed by the concerned parties and it only adds to 'receivable'. It is noteworthy that allotment of port lands are conditional upon the MGT stipulation; and, lease agreement/letter of allotment stipulates so. For whatever reasons, if the port is unable to realise this income, burdening the tariffs in lieu thereof will not be very appropriate.

For the year 2003-04, the port has not projected any income from penalty for short-fall in minimum guarantee through-put. If, there is no penalty-income, then, the wharfage income should have been more. It is observed that the traffic and wharfage from liquid bulk is projected lower than that in the year 2002-03. It appears from the note on account for the year 2000-01 that obligation of minimum guarantee throughput of certain parties has been rescheduled subject to submission of a Bank Guarantee by the tank farm operators. We have not made any change on this account in the cost statements. If it is found later that the actual position was different and the omission of this income from the projections has given undue advantage to the port, a suitable adjustment will be made at the time of next review/ revision.

- (vi). While assessing the income from vessel-related activities, the Port had not considered additional income expected to be received during 2002-03 and 2003-04 from dollar denominated tariff items on account of exchange rate fluctuations. The Port has furnished this information later based on the proportion of vessel-related income from foreign-going vessels. In the light of the present trend of exchange rate fluctuation, it is considered reasonable to compute the increased income at 2% and 4% (instead of at 3% & 6% adopted in earlier cases) of the vessel-related income from foreign-going vessels and dwell time charges on containers for the years 2002-03 and 2003-04, respectively.

- (vii). As per a policy decision of the Government, coastal vessel tariffs are prescribed at 70% of the foreign-going vessel tariffs. Further, coastal vessel rates are prescribed in rupee terms whereas foreign-going vessel rates are denominated in US dollar terms. This Authority has already decided in cases relating to other major ports that the disparity (which may have widened due to depreciation of the Indian rupee vis-à-vis the US dollar since the last revision) has to be restored to the level of 30% at the time of tariff revision. Even if there is no revision of rates for foreign-going vessels, the rates for coastal vessels need to be re-stated to restore the disparity to the accepted level. This means an additional income to the port even without revision of the existing vessel-related charges on foreign-going vessels. The JNPT had not considered this additional income in the cost statement. On being pointed out, the JNPT furnished the basis for estimation of additional income. Accordingly, this has been incorporated in the cost statements. This restatement of tariff may result in a steep increase in the tariffs for coastal-vessels. It has to be recognised that coastal vessels have enjoyed a concession in excess of the quantum envisaged in the Government policy on the subject. Besides, only 4% of the total vessel-related income is from coastal vessels.

- (viii). (a). The JNPT is receiving royalty from the NSICT on the basis of containers handled by the latter in terms of the Concession Agreement. While forwarding the proposal, the JNPT had allocated the royalty income directly to the container activity to the extent

of the capacity of its Container Terminal to handle containers and, the balance was spread over to the container activity and the bulk activity. This was as suggested by this Authority while returning the proposal of the JNPT on the last occasion.

The Port has argued that the entire capacity cannot be practically achievable and hence 75% to 80% berth occupancy can be reasonably considered to allocate the income from royalty. It is noteworthy that the capacity estimation itself recognises only normative factors for different input components which are generally not the peak figures achieved/achievable. That being so, allowing a further reduction in the capacity assessed so on practical considerations will amount to giving a double discount and is not justified. If there are any de-rating factors since the assessment of the indicated capacity, the JNPT should have furnished the reworked figure with justification therefor.

- (b). The Port has, subsequently, proposed that while it is logical to consider royalty pertaining to the shortfall in throughput as compared to the capacity of the JNPT terminal as part of the container activity income, it shall not be appropriate to consider the balance royalty in any activity. It is mainly due to the administrative decision and, therefore, it needs to be excluded from the individual cost statements.

Royalty is a definite recurring income to the Port. One of the objectives of privatisation is to reduce the cost to port users. It is, therefore, logical to apply the residual royalty payment also to reduce the cost burden. It is noteworthy that the CHPT has recently proposed to apply the entire royalty receivable from the CCTL to cross-subsidise all other commodities, in spite of the fact that this Authority has advised it to maintain an escrow arrangement to meet future developmental needs. At the TPT also, the royalty income it generates from the PSA SICAL is taken for tariff determination.

The berth hire charges accruing to the JNPT on the vessels coming to the NSICT berth are also akin to royalty income and, therefore, need to be allocated on the same basis as royalty. Nevertheless, this modification has not been made and such receipts have been taken under the Marine activity only.

- (ix). The Port has stated that based on the WPI for the last five years, inflation is considered at 5%. However, expenditure projected for 2001-02 and 2002-03 is observed to be more than 10% of the earlier years figures while that for 2003-04 is higher about 18%. On being asked to clarify the reasons, the Port has stated that, in the RE 2001-02, container traffic was projected higher by 16% and the number of vessels by 20% leading to consumption of higher power, fuel, etc. There is also substantial increase in the hire costs of tractor-trailers for container handling and, an 18% hike in the power tariff by the MSEB. In 2003-04, the container traffic is projected to increase by 15% and number of vessels by 8.7%. Dredging expenses are also expected to increase substantially from Rs.12.3 crores to Rs.26 crores due to dredging in the anchorage area, the BPCL jetty and the lagoon area. Leasing of new RTGCs and procurement of two new RMQCs also contribute to the higher increase in the operating costs. There is, however, no bifurcation available to indicate the quantum of increase on account of additional traffic and whether increase on account of inflation is restricted to 5%, as claimed. The estimates of expenditure as furnished by the Port have been accepted on this score without any change. If it is found that this approach has given the Port any undue benefit, necessary adjustment will be made at the time of next review/revision.
- (x). The Port has allocated expenditure on railways (mainly depreciation of the permanent way constructed by the Port and the ROCE relating thereto) fully to the container activity instead of to the bulk and the container activities equally as was done on the last occasion. The Port has clarified that it was initially envisaged that the railway would be used to transport high bulk of fertiliser/raw material, etc. With the virtual drying up of the dry bulk traffic, the railway permanent way is now exclusively used to transport containers to and from ICDCs. In view of this, the entire cost of railway is allocated to container activity on this occasion.

The port has clarified that the port railway has been transferred to the Indian Railways at a nominal cost. The operations are carried out by the Indian Railways and railway freight/haulage charges for traffic to and from the port are collected by them. It appears

reasonable that the Indian Railways will, therefore, pay to the JNPT out of this earning, towards the depreciation and return on the cost of railway permanent way constructed by the JNPT and, handed over to the Indian Railways. Inclusion of this cost in the container handling activity seems to be an additional burden on the users. It may also possible that Railways have not reckoned with this expenditure while fixing their tariffs. As this expenditure is on infrastructure essential for connectivity of the port to the national network, it is allowed as an item of cost under the container activity on this occasion. This JNPT is, however, advised to sort out the matter with the Indian Railways before the next review/revision.

- (xi). The expenditure on township is allocated by the Port as 70% to the container activity when the expenditure on salaries and wages of the container activity is about 33% of the total and, expenses on general administration has been allocated to all the four main activities, mainly, Bulk cargo, Containers, Marine and Estate. The Port was suggested to allocate the township expenses on some rational basis, such as, number of employees or net block or direct expenses. The Port has clarified that the direct expenses of the container activity are about 55-60% for the years 2002-03 and 2003-04. In future the Port is going to be mainly a container handling port, since the bulk terminal is proposed to convert into a container terminal. It is, therefore, reasonable that 70% of the township expenses are allocated to container activity. In this backdrop, no change is being made in regard to the allocation of township expenses.
- (xii). The Port has clarified that traffic projections in the proposal are lower than the projections given in Tenth Five Year Plan. This is because the figures projected at the time of the formulation of the Tenth Five Year Plan were broad estimates while projections furnished in this proposal are recent estimates based on actual performance and adopted for preparing the Budget Estimates for 2002-03. In the absence of any other reliable data to go by, these projections are accepted. If later it is observed that there is wide variation between the actual traffic and projections for those years, the benefit derived by the Port due to underestimation will be adjusted at the time of the next review/revision.
- (xiii). The Port has apportioned the capital cost of port craft jetty and shallow water berth to the container handling activity and the bulk handling activity. The maintenance expenses and capital cost of berths, being vessel-related, normally have to be allocated to the marine activity. The port has clarified that even the main berths of the bulk terminal and the container terminal have been considered under the bulk handling activity and the container handling activity respectively in accordance with the practice followed by the port since the beginning. The reason for considering the cost of the berth under cargo handling activity is that the berths are basic infrastructure for supporting cargo handling equipment, pipe-lines, etc; and, movement of mobile handling equipment, like crane, tractor trailers, is not possible without the berths. To be consistent with the allocation of this expenditure followed by the Port, it has proposed to transfer the berth hire charges relating to the respective cargo handling activity.

It is to be noted that the vertical wall of a berth is used for berthing vessels and, therefore, the assets and the expenditure thereon has to be recognised under the vessel-related activity. No change in the statement furnished by the port is made at this stage in respect of expenses on the main container terminal berths and the bulk terminal berths. The cost of shallow water berth is also allowed to remain as proposed by the port. The berth hire income is retained under the Marine activity as originally shown by the port. The port is, however, advised to follow the correct procedure of allocating the capital and maintenance costs of berths to the vessel-related activity and not to the cargo-related activity in future. The expenses on the wharf and horizontal surface, which is used for cargo operations, can be allocated to container/bulk handling activities.

The capital cost of port craft jetty which is used for tying up of the craft belonging to the port is, however, transferred to the Marine activity because it is used purely for marine activities.

- (xiv). In the case of Major Port Trusts, the Return on Capital Employed (ROCE) allowed consists of interest on capital (at the rate at which the Government lends to the Ports) and a 3% contribution each to the two mandatory reserves to be maintained. The lending rate of Government Loans to the Ports has now been reduced from 13½% to 12½% for the year 2002-03. The ROCE is, therefore, to be taken at 18.5% instead of 19.5% claimed by the port. The ROCE of 18.5% allowed is only a maximum permissible limit; and, it is not compulsory for a Port Trust to always seek a return at this ceiling level. Recently, for stated reasons, tariff

revisions at some other major ports have been settled by allowing returns on capital employed as chosen by them at a level well below the maximum permissible limit.

In the last proposal it was indicated that the port was not paying interest on the World Bank loans. The interest actually paid in the year 2000-01 was less than what was payable and the port had made a proposal to the Government for financial restructuring. In this tariff exercise, the port has considered the total interest payable including that on World Bank loans in the projections for the years 2002-03 and 2003-04. In reply, they have clarified that the Government has not taken yet any final decision regarding financial restructuring/ corporatising of the port and have insisted that the port should start paying the actual interest payable including that on World Bank loan. Accordingly, the port has started paying the actual interest from the year 2001-02 and has requested the Ministry to waive the interest on World Bank loans up to 31.03.2002. In the case of Major Ports return on total capital employed is allowed. The quantum of interest payable, therefore, does not have any impact on the tariff proposal so long as it is deducted from net surplus before interest. Since this Authority has not yet taken a general decision to change the model being followed for allowing return on capital employed in the case of major port trusts, no change on this account is made in the case of JNPT at this stage.

- (xv). The capital employed is projected by the JNPT to increase by about Rs.106 crores in 2002-03 and by Rs.84 crores in 2003-04, the bulk of the assets to be added for the container handling activity. The capacity of the container terminal is reported to go up from 7 lakh TEUs to 8.25 lakh TEUs in 2002-03 and 9.50 lakh TEUs in 2003-04. In reply to a query regarding the need for acquiring/ hiring new cranes, the Port has stated that the existing equipment is over 12 years old and with a view to improve productivity and boost customer satisfaction it is proposed to acquire/ hire additional new cranes even though the present throughput and that projected for 2002-03 and 2003-04 are much less than the enhanced capacity.
- (xvi). It is relevant here to mention that the net block of assets which qualifies for 'return' can contain only such assets which are completed and commissioned. Likewise, assets which have been damaged beyond repair / disposed of / decommissioned and awaiting disposal are also to be excluded from the net block for the purpose of tariff computation irrespective of the fact whether or not such adjustments have been effected in the Books of Accounts. Some of the assets relating to the bulk terminal (amounting to Rs.5789.86 lakhs) are not in use and proposed to be disposed of. The Port has argued against exclusion of these assets for the purpose of this exercise on the ground that they are only approved for disposal but disposal will take some time. This argument cannot be accepted as there is no justification in allowing a tariff increase by perpetuating a cost element, and that too a 'return', on a facility which has already been decided to be discontinued. The meagre income from these facilities considered in the cost statements will neither alter this position nor significantly change the final cost position emerging in this case. Accordingly, these assets have been removed from the 'net block'. With the exclusion of these assets from the net block, the corresponding depreciation figure has also been modified.
- (xvii). The maximum permissible ROCE to be considered for tariff exercise is a function of utilisation of capital assets. In many cases, this Authority has reduced the ROCE with reference to the capacity utilisation.

Since royalty income is allocated to the container activity to the extent of shortfall in actual traffic as compared to the capacity of the JNPT container terminal, no further moderation of the ROCE is found to be necessary. Similarly, royalty income from the BPCL has been considered under the (liquid) bulk handling activity. No adjustments in the ROCE in respect of the bulk activity have been made on account of under-utilisation of the berths.

- (xviii). (a). The Port has considered Rs.77.50 crores (made up of Rs.14.50 crores towards Stores inventory and Rs.63 crores toward Sundry debtors) as working capital for computation of the ROCE. The stores inventory shown in the Balance Sheet and that considered for the tariff exercise by the Port represents average consumption of over two years. This Authority has decided, in the case of some other major ports, that while six months average consumption of stores could be considered reasonable for tariff fixation, inventory equal to one year's average consumption can be admitted either in view of long navigational river or remote locality. To start with, in the case of the JNPT also, an inventory equal to one-year average consumption can be allowed

for computation of the ROCE. In view of this, about Rs.6 crores only can be considered as a reasonable limit of stores inventory. Incidentally, spares worth Rs.8 crores are awaiting disposal along with the assets relating to bulk terminal.

- (b). The amount of Rs.63.00 crores towards sundry debtors considered as part of capital employed for computation of the ROCE includes an amount of Rs.4.95 crores due to upward revision of tank farms rents which was set aside by this Authority in the related case. The Port has argued that this amount has to be included since it has taken up with the Government to alter the impugned Order of this Authority. It will be bordering on absurdity if a return is allowed on the amount set aside just because the Port is not in agreement with the decision of this Authority. Significantly, no higher judicial forum has set aside the impugned Order. This amount has to be retrenched from the sundry debtors figure considered by the port.
- (c). Even the remaining balance of sundry debtors is on the higher side, considering that the bulk of the vessel-related charges and cargo-related charges are paid in advance or at the time of clearance of cargo. Normally, at the most, two months estate rentals can be considered as a reasonable figure to be allowed towards sundry debtors. Two months dwell time charges on containers, on the same analogy, can also be allowed under the container activity, by taking a liberal view, even though such charges are debited to the deposit accounts maintained by the Lines / Agents.

The port has not claimed anything towards Cash Balance requirements for working capital. Thus, for computation of the ROCE, the working capital (Inventory & Debtors) has been reduced by Rs.6216.85 lakhs for 2002-03 and Rs.6144.53 lakhs for 2003-04.

- (xix). Users have been objecting to the higher rate of the ROCE allowed to the Major Port Trusts in view of the present low interest rate regime where loans from the Commercial Banks and Financial Institutions are available at much lower rates. Private Terminal Operators have also been representing about the differential treatment given to them vis-à-vis the Major Port Trusts, while allowing the ROCE. In the case of the 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 Trust) and a 3% contribution to each of the two mandatory reserves to be maintained. It currently adds up to 18.5% for the year 2002-03. A review of this model has already been initiated. If the review results in modification of the existing approach adopted, corresponding changes can be effected in the matter; 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 JNPT cannot be made.
- (xx). The Port has pointed out that the Major Ports have so far been exempted from payment of the Corporate Tax as they were falling under the category of local authorities in terms of the General Clauses Act. The Port has pointed out that the Income Tax Act has been amended by this year's Finance Act to specifically mention the Local authorities, which are exempted from payment of the Corporate Tax. Major Port Trusts have not been specifically mentioned in that list and accordingly they have now become liable to pay the Corporate Tax @30% plus a Surcharge @ 5% thereon. The port has, therefore, requested that while calculating the ROCE, the effect of Income Tax must also be considered and additional increase in tariff to the extent of 6%, over and above the 14% proposed initially be sanctioned.

It is already settled by this Authority in other cases relating to Private Terminals that the effect of taxation cannot 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 'owned' 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 Terminals and, a post-tax return in the case of Port Trusts. In view of the cushion already available and an ROCE of 18.5% already allowed, which can be seen as liberal in the current borrowing-rate situation, there is no case for enhancing the level of return with reference to the newly imposed tax liability on the Major Ports.

Earlier, the Major Port Trusts were retaining 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 Trusts). The incidence of this burden cannot justifiably be shifted to port-users.

- (xxi). In the light of the discussion above, the cost statements have been modified. The modified cost statements for the Port as a whole and for the different activities are attached as [Annex-I \(a\) to \(e\)](#). The summarised position of the result disclosed by the cost statements is as follows:

Sl. No.	Activity	2002-03		2003-04	
		(Rs. In Lakhs)	(In percentage)	(Rs. In Lakhs)	(In percentage)
1.	Port as a whole	(+) 2186.34	(+) 5.25%	(+) 2711.60	(+) 5.89%
2.	Container	(-) 1590.14	(-) 8.01%	(-) 172.62	(-) 0.76%
3a.	Liquid Bulk Cargo	(+) 809.35	(+) 59.00%	(-) 291.31	(-) 26.06%
3b.	Dry Bulk Cargo	(-) 5384.87	(-) 425.74%	(-) 4985.49	(-) 398.04%
4.	Marine	(+) 6664.94	(+) 45.44%	(+) 6454.19	(+) 40.09%
5.	Estate	(+) 1437.94	(+) 32.12 %	(+) 1513.46	(+) 31.63%

It will be seen that the Port as a whole shows a surplus for the years 2002-03 and 2003-04, which are the relevant years for this tariff revision exercise. The Marine and Estate activities also show substantial surpluses, which go to cross-subsidise the huge deficit in the Bulk handling activity. The Container handling activity shows a small deficit for the two years. This deficit also will not exist if the wrong allocation of cost of berths under this activity and corresponding berth hire income considered under the Marine activity is rectified.

The stated position of this Authority (and, indeed of the Government) is against cross-subsidisation. At the same time, this Authority also recognises the fact that complete elimination of cross-subsidisation at one go may not be possible. This Authority has not yet taken a final view on complete elimination of cross-subsidisation between various activities/sub-activities. Since the port as a whole is in surplus and cross-subsidisation across the activities is allowed to continue, there is no case for revision of tariffs relating to the Container and the Liquid bulk handling activities as proposed by the JNPT.

- (xxii). The dry bulk handling activity is in huge deficit. The need to cross-subsidise this activity, in fact, reduces the overall profitability of the Port. The JNPT has indicated that its bulk terminal will be converted into a container terminal shortly. Since this activity will be discontinued in the near future, there is no justification to increase tariffs of other activities only primarily to wipe out the deficit in the Bulk handling activity.

In view of this position, it will be necessary to review the general tariff validity cycle of two years adopted. The next revision / review of the JNPT tariffs will, therefore, take place after two years or when dry bulk handling operations are discontinued, whichever is earlier.

- (xxiii). The Marine activity shows a surplus of a very high order. Since the Port as a whole also depicts a surplus position, there is scope for reduction of the vessel-related charges. Since the JNPT has made a categorical statement at the joint hearing about its intention to propose separately reduction in vessel-related charges, this Authority does not like to effect *suo motu* reductions in vessel-related charges. It is reasonable to allow six months time for the JNPT to come up with a suitable proposal of reducing VRCs. If it does not happen within the stipulated time limit, this Authority will be constrained to proceed *suo motu* to alter the charges based on the information available. Users may also send their proposals, if any, in this regard.

- (xxiv). The existing Scale of Rates provides that, in addition to wharfage charges, a management service charge of Rs.2 per metric tonne will be paid on all the imports & exports of the Liquid cargo. This was introduced to cover the service fee payable to the IOTL for providing services at liquid cargo berths. In the projections for the years 2002-03 and 2003-04 no expenditure has been projected on this account. In view of this, the relevant tariff provision for recovery of management service charge on liquid cargo is being deleted.

The SOR also provides that in addition to wharfage and management service charge, a special service charge of Rs.15 per metric tonne is payable on the imports of Naphtha and chemicals of 'A' class. This charge, as approved by this Authority, is payable only when the adjacent berth is kept vacant whenever a vessel is discharging Naphtha or 'A' class chemicals at BB3 or BB4 berth. The relevant conditionality is amended to bring out the exact provisions in accordance with the Order already passed. The special service charges will not be payable if this condition is not fulfilled or when there are no adjacent berths to be kept vacant.

- (xxv). By an Order passed by this Authority on 5th November 2001, a Volume Discount Scheme introduced by the JNPT in the case of fertiliser and fertiliser raw materials was ratified and approved to continue a period of six months, as proposed by the Port. The validity thereof has expired on 26 April 2002. The port has not stated whether the volume discounts are required to be continued. While proposing the volume discounts earlier, the JNPT has indicated that the scheme has produced the desired results. That being so, the scheme is allowed to continue pending the port undertaking a review in this regard.
- (xxvi). The Port has proposed an increase in the additional service charge payable by all bulk cargo manually bagged from Rs.10 per metric tonne to Rs.30 per metric tonne. The users have objected to this charge being increased as no service is being rendered by the port since manpower and material required for bagging are brought by the users themselves. The port has clarified that the area used for these operations has been paved by it over the last 4 years and to cover the cost thereof it has proposed to increase the charges. The Port has not furnished any analysis to justify the proposed increase vis-à-vis the expenditure incurred on paving. Since the port as a whole is showing a surplus, there is no justification for increasing this charge.
- (xxvii). The port has proposed to introduce a new charge of Rs.50 per metric tonne for handling Steel coils and other cargo with the help of a Grab unloader. In reply to a query, the JNPT has stated that it has spent Rs.45.50 lakhs (initially stated as Rs.48.50 crores) on modifications of the Grab to enable handling of the Steel coils and general cargo. The existing charge for handling finished fertilisers through the mechanical system (comprising (a) Grab and Continuous Unloader, (b) Integrated Conveyer System; and (c) Other sophisticated handling equipment) is Rs.185 per metric tonne. Although the port has not furnished detailed costing based on the cost of the Grab Unloader including cost of modifications carried out for handling steel coils, the proposed charge of Rs.50 per M.T. when a Grab Unloader is used is found to be reasonable. No user has expressed any specific objection to the proposed rate. This Authority, therefore, approves the rate proposed for incorporation in the Scale of Rates.
- (xxviii). The JNPT Liquid Chemical Berth Users' Association has argued that while environmental clearance to the JNP Project refers to the necessity of diversion of liquid bulk cargo from the MBPT to the JNPT; and, therefore, nothing shall be done which will result in the re-diversion of the liquid/bulk cargo from the JNPT to the MBPT. Any increase in JNPT tariff, therefore, will be objectionable. While accepting the necessity to shift the liquid cargo traffic to the JNPT, it cannot follow that the JNPT must render service even if it is losing. It is for the Government to consider whether direct concessions are to be extended to keep the traffic at the JNPT for safeguarding the environment of Mumbai. Incidentally, no increase is allowed on the liquid cargo handling, in view of the revenue surplus position obtaining in this case.
- (xxix). The port has proposed to introduce a wharfage rate of Rs.70 per metric tonne for imports and Rs.65 per metric tonne for exports of 'A' class chemicals including Naphtha. The proposed rates are lower than the rate of wharfage for 'B' & 'C' class chemicals existing in the Scale of Rates. When requested to clarify the reasons for prescribing lower rates for 'A' class chemicals, the port has stated that Naphtha is lighter than most of the chemicals and, therefore, its discharge rate is always more. The parcel size and quantities handled are also higher. Besides, Naphtha is a POL product and the rate has to be comparable with the rate of other POL products. In view of this, the rates proposed for class 'A' chemicals including Naphtha are approved for incorporation in the Scale of Rates.
- (xxx). In reply to a query about reduction in the liquid bulk traffic projected for years 2002-03 and 2003-04, the port has explained that it is due to commissioning of the BPCL terminal and the consequent shifting of liquid bulk traffic to that terminal. The Port has added that since the vessels will continue to be handled by it, vessel-related charges will accrue to the port. The

traffic at the BPCL berth has, however, been taken into account by them for the purpose of assessing royalty and computation of vessel-related income. From the computation of royalty income it appears that the royalty is at a certain percentage of wharfage in the case of traffic of PSUs and a different percentage for traffic of others. Apparently, the BPCL is giving service to other users. The tariffs notified for the JNPT are applicable only when the JNPT provides the services. It is not clear under what authority the BPCL recovers, if it does, the cargo-related charges from the other users at present. The JNPT as a licensor must ensure that the BPCL levies only the tariffs approved for them on the traffic handled at their terminal. Till such time, in order that there is no vacuum, the wharfage rates prescribed in the Scale of Rates of the JNPT will be applicable to the traffic handled at the BPCL terminals.

- (xxxi). The port has also proposed introduction of a new item – Cement Clinker in the wharfage schedule and has proposed Rs.63 per metric tonne for imports and Rs.56 per metric tonne for exports. These rates are the same as the revised wharfage rates proposed for Cement. Since increase in the wharfage rate for Cement is not warranted in view of the overall surplus position of the port, the wharfage rate for cement clinker can be fixed at the existing level of wharfage rate for cement.
- (xxxii). M/s. Larsen & Tubro Ltd. (L&T) have represented against the proposed 40% increase in wharfage on cement. They have added that they have made heavy investments in chartering three bulk cement carriers specially designed to suite the direct delivery at the JNPT berth. The JNPT provides no other service than to berth the ship and has an assured cargo bringing in substantial revenue to the port the proposed increase is not warranted. They have also requested that a volume discount scheme be introduced for cement cargo. The port has, however, not supported the request for introducing a volume discount for cement cargo. They have added that cement vessels are not required to wait for a berth and the vehicles carrying cement moves out of the outer gate of the bulk terminal without any hindrance. This saves considerable cost to the users. Ports have always endeavour to reduce the pre-berthing delays and ensure faster turnaround of the vessels.

This Authority has been in favour of introducing volume discount schemes, wherever possible. In an earlier Order relating to a representation filed by the L & T, this Authority had observed that if the L & T chose to continue with the operation, if the JNPT desired to encourage this cargo traffic and if substantial traffic could be built up, then, there could be an opportunity for the L&T to think in terms of requesting for some 'volume discounts'. The L&T has made the request now and has shown that its volumes have been more than 5 lakh tonnes for the past 2 years.

It may be a better idea for the JNPT to attract cement traffic at its bulk terminal before its decommissioning and thereby reduce to whatever extent possible its deficit. It is noteworthy that cement is one of the major dry bulk traffic handled at the Port. The port has confirmed that cement traffic brought by the L&T increased from 4.63 lakh tonnes in 1999-2000 to 5.33 lakh tonnes in the 2001-2002 (up to January 2002). Based on these throughput figures, it seems reasonable to prescribe a lower rate of wharfage of Rs.38.25 per metric tonne (as against the base rate of Rs.42.50 per metric tonne) for volume of cement in excess of 5.0 lakh tonnes handled in a year. A suitable provision is accordingly incorporated in the Scale of Rates.

- (xxxiii). The wharfage schedule in the SOR provides separate wharfage rates for import and export of the same commodity with lower rates for export. The SOR also provides concessional wharfage on motor vehicles loaded/unloaded through coastal vessels. Giving incentives/subsidy for promoting exports has to be the responsibility of the Government and a Port Trust need not shoulder this burden. Export Cargo already enjoys extra free days and a single dwell time rate and not ascending rates thereafter as compared to import cargo. In this backdrop, in the case of another port where similar provisions existed and the wharfage rates for export were lower by 50%, it was decided that either lower or higher of the existing rates be prescribed as 'a rate of wharfage' for the commodity depending upon whether it is predominantly export or import item; a midway rate for such cargo which are significant in both imports and exports. The wharfage schedule in the JNPT Scale of rates is also modified on the same lines.

The additional financial incentives by way of lower wharfage rates are not in line with the stand originally communicated, on behalf of all the Major Ports by the Indian Ports

Association (IPA) that a Port Trust shall not be required to give concessions in cargo-related charges to coastal traffic for the purpose of easing congestion in rail/road traffic. This Authority has consistently taken the stand that concessions to coastal traffic will be allowed only in the vessel-related charges and not in the cargo-related charges. If an exception is made in the case of one commodity at one port this Authority will not be in a position to resist/reject similar requests from other ports. In this backdrop, the concession proposed to motor vehicles carried in coastal vessels needs to be deleted.

- (xxxiv). The existing tariff provides that dwell time charges on motor vehicles or other equipment are recoverable irrespective of storage in leased area or anywhere inside the port. In reply to a query the port has stated that certain area inside the port has been leased out for storing the vehicle to facilitate smooth operations; even though the port gets lease rental for this area, dwell time charges are recoverable with a view to discourage occupation of the space inside the port area for longer period. Charging of lease rentals and in addition dwell time charges for storage of motor vehicles, even in the leased area, amounts to double recovery and hence cannot be allowed. The provision in the Scale of Rates is suitably modified to eliminate incidence of this double recovery. If proper justification emerges, the JNPT can, however, propose a revision of the lease rentals.
- (xxxv). Warehouse rental charges on the un-cleared cargo sold under the relevant provisions of the MPT Act., (as prescribed in section 5 of the container-related tariff) payable from 21st day till 35th day after the date of confirmation of the sale of un-cleared cargo is Rs.100 per M.T. per day. This appears to be low as compared to the rate for the preceding slab, which is Rs.90 per metric tonne per day. When requested to clarify, the port has stated that since this tariff item is in vogue from March 1997 the port does not want to modify the same. In fact, for many of the change/rationalisation proposed by this Authority this is a stock response received. Since a practice exists for a long time cannot be a sole ground for not effecting any rational change, with a view to discourage prolonged storage, the rate is increased to Rs.120 per metric tonne per day from the 21st day onwards. The nomenclature of this charge is also changed to Dwell time charges.
- (xxxvi). The Scale of Rates provides that JNPT will not be held responsible for any delay in completion of vessel discharge operation due to unforeseen breakdowns of the mechanical handling part of the Bulk Terminal or any other force major clauses beyond the control of the port. This provision is inconsistent with the requirement of introducing accountability. In such an event, no berth hire charges will be recoverable for the period of the delay. The port has stated that since the vessel is occupying the berth, the berth hire charges are payable. In cases of plant breakdowns, idle stay at berth does not help a vessel. The provision is, therefore, modified to provide that, for the duration of stoppage of the plant on account of breakdown or other reasons, no berth hire charges will be recoverable.
- (xxxvii). The port has subsequently proposed dollar denomination of various container handling charges under Section I & IV citing the MBPT and the CCTL tariffs as precedent. The Port initially did not send any break up of the cost and tariffs in this regard. On being pointed out, it has subsequently given break-ups only of tariffs. The composite box rates prescribed for handling of containers consists of certain elements like wharfage on containerised cargo, transportation and contribution towards railway infrastructure which are cargo-related. This Authority has already decided that there is no justification for dollar denomination of cargo-related charges. The JNPT's request for dollar denomination of all container-related tariff cannot, therefore, straightaway be accepted. The port must furnish further details, segregating the cargo-related elements in the composite rate, in support of their proposal for a dollar denomination.

It is noteworthy that a similar proposal earlier submitted by the NSICT was not approved by this Authority for stated reasons. A subsequent application filed by the NSICT was also returned for want of requisite information. In that case, the NSICT was advised, inter alia, to work out the rates for different service components based on costs. A similar position emerges in this case also. No meaningful analysis can be made based only on the unbundled tariffs shown by the JNPT in the absence of supporting cost details for each of the components.

Notwithstanding this position, as has been allowed in some other terminals including the NSICT, the Shut Out Charges, the Reefer Monitor Charges, the charges for hatch cover handling and shifting of containers on-board are, however, denominated in dollar terms.

- (xxxviii). The port has prescribed the charges for electricity consumption and monitoring of reefer containers on per calendar day basis. The Port has not agreed to the suggestion to change the unit to 8 hourly since per day unit exists since March 1997. Unit of charging has already been changed to eight hourly unit in the case of reefer container monitoring charges levied at many other major ports/private terminals. In this backdrop, in the case of the JNPT also the unit of charging can be changed to eight hourly by adjusting the existing rates accordingly.
- (xxxix). While the port has proposed a 14% increase in the container-handling charges, they have not revised proportionately the rates of rebate to be allowed if the user does not use the port equipment for container handling. In reply to a query, the port has stated that since the port does not want to encourage use of private equipments there is no need to increase the rebate rates in line with the revision of basic charges. Going by the principle that the user will not be required to pay for services not rendered/facilities not availed, the rate of rebate has to commensurate with the basic rates. Since, the port's proposal to revise the basic container handling charges is not accepted the rates of rebate are retained as they are.
- (XL). The JNPT tariff provides that the pilotage fees include services of pilot & tugs for inward and outward movements and shifting at the instance of port. Pilotage consists of inward and outward movements and one shifting at the request of users within the same dock system and it includes services of pilot, tugs and mooring launches as may be required for the job. This commonly accepted definition is incorporated in the Scale of Rates. Further, as has been done in the case of the VPT, the KPT and the NMPT, shifting on "Port's convenience" is also defined in the SOR.

The rate of pilotage fees for vessels requiring no tug assistance is one-third of the rate prescribed for vessels which require tug assistance. The minimum pilotage fees payable in the former case has, however, been prescribed as US\$200 and not US\$100 which is one-third of the minimum prescribed for the movement of the vessels with tug assistance. The port has stated that this is prevailing since 1997, and this Authority may not insist on reducing the minimum pilotage fees payable by vessels in the case of movement without tug assistance. The argument is not acceptable and the minimum charges are proportionately reduced to US\$100 in the case of foreign-going vessels.

- (XLi). As per this Authority's Order dated 14 February 2001, the JNPT is required to submit a proposal for prospective inclusion of the performance norms of vessels in its Scale of Rates after taking into account performances achieved by the vessels carrying different categories of liquid cargo. The JNPT has proposed performance norms only for three items namely, (i) Furnace Oil, (ii) Carbon black feed stock; and (iii) Bright stock. On the basis of discharge rates for the past 3 years and in consultation with the users, the average minimum discharge rate has been prescribed for these three items. The discharge of these three items requires heating arrangements in addition to pumping performance. These three items have, therefore, been considered for specifying the minimum discharge rate first. In the case of other liquid bulk items, the Port has stated that discussions are being held with the users to arrive at performance criteria and the same will be proposed after due approval of the JNPT Board separately.
- (XLii). Note 3(j) below the Berth hire schedule provides discretion to the port to waive the penal berth hire charges and instead charge only the normal berth hire. Since such unguided discretionary powers have not been considered by this Authority to be desirable, the provision requires to be modified by explicitly specifying the circumstances under which the waiver is to be allowed. The port has replied that the provisions 'if berth is not immediately required and if the port declares so' are explicit provisions when penal berth hire charges can be waived. This cryptic statement cannot be considered as an explicit provision. The JNPT is advised to examine this matter separately and come up with a suitable proposal in consultation with its users.
- (XLiii). Note 6 of Schedule I, Section 1(a) relating to berth hire charges empowered the Chairman (JNPT) to fix tariffs for services not covered under the schedule. This note has already been deleted by this Authority order dated 14 February 2001.

Note 7 of the same Schedule says that if any question arises relating to interpretation of the rules, the Chairman's decision thereon shall be final and binding. This is also not consistent with the tariff setting arrangement envisaged in the MPT Act and hence deleted. (The port has agreed to this deletion.)

- (XLiv). Vessels calling at the JNPT have to pass through the main channel, which is in the Mumbai Port limits and common to both Mumbai and J.N. Ports, for a certain distance and, therefore, have to pay 50% of the MBPT port dues. This recovery of 50% of the MBPT port dues was considered sufficient to cover the JNPT share of the cost of maintaining common main channel and carrying other conservancy and navigation related functions by the MBPT. This was in accordance with the agreement signed between MBPT and JNPT at the time of commissioning of the latter. While approving the proposal of the MBPT for revision of port dues this authority found it necessary to review this arrangement also. The MBPT has now intimated that it will submit a proposal soon to prescribe a separate rate for use of the common access channel. Until a revised provision is approved, the existing provision is retained in the JNPT Scale of Rates.
- (XLv). As per the Notes (iv) and (v) of the Estate rental charges included in the schedule 8 of SOR, the rates are to be increased by 10% every 2 years in accordance with the terms and conditions and that increase is due from 1 April 1998. Since this provision is a deviation from the general guideline of providing 5% annual increase, prescribed by the Government (and this Authority has adopted these guidelines till finalisation of its own guidelines) the port was asked to review the Schedule and amend the same in accordance with the Government guidelines. The JNPT has, subsequently forwarded a revised schedule based on the Government guideline specifying 5% annual escalation, which is incorporated in the Scale of Rates accordingly.
- (XLvi). A similar note below Section 2 provides the rate of Water charges prescribed in that Section shall be increased by 10% w.e.f. 1 April 1998 and every 2 years thereafter. The port was requested to prescribe the rates based on the latest charges of the MIDC/CIDCO for supply of water. The port has replied that they will separately propose revision of water charges on the basis of CIDCO/MIDC water charges.
- (XLvii). There are certain provisions in the Scale of Rates defining differently commonly understood terms for which definitions are available in the respective statutes. These are deleted from the Scale of Rates. The port users can refer to the definitions in the respective Statutes whenever the need arises.
- (XLviii). The revised Scale of Rates has been prepared by including various tariff Orders earlier passed by this Authority-both relating to the JNPT and for common adoption-at appropriate places.

12. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the revised Scale of Rates of the JNPT attached as [Annex-II](#).

13.1. The revised rates and conditionalities relating to vessel-related charges will become effective after expiry of 30 days from the date of their notification in the Gazette of India.

13.2. The revised rates and conditionalities relating to all other charges will become effective after expiry of 15 days from the date of their notification in the Gazette of India.

(S. Sathyam)
Chairman

