

No. 172

New Delhi, the 26 June, 2001

Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes off the proposal of Mumbai Port Trust (MBPT) for fixing of rates for different port related services grouped in the package called the Terminal Handling Charges at the Port of Mumbai as in the Order appended hereto.

(S. Sathyam)

Chairman

Case No.TAMP/47/2000-MBPT

Mumbai Port Trust

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Applicant

O R D E R

(Passed on this 12th day of June 2001)

This case relates to the proposal submitted by Mumbai Port Trust (MBPT) for fixation of rates for different port-related services grouped in the package called the Terminal Handling Charges (THC). The MBPT has requested this Authority to approve the rates of stevedoring and transportation included in the THC and notify them u/s 48 of the Major Port Trust Act, 1963.

2.1. The MBPT has stated that the THC is presently fixed by the Karmahom Conference without consultation with the Port authorities. The THC fixed by the Karmahom Conference is very high; and, they have further revised the THC from January 2000. Various representations have also been received by the Port stating that the THC at the Mumbai Port is very high. The MBPT has also added that a meeting was taken by the Secretary (Shipping) and Additional Secretary (Commerce), wherein it was decided that the THC should be regulated by the TAMP.

2.2. Having analysed the THC at the Mumbai Port, the MBPT has given the following points in its proposal:

(i) The employees of the Bombay Dock Labour Board were absorbed by the Mumbai Port Trust in 1994; but, the accounts of the DLB was maintained separately. These accounts showed a huge deficit and, therefore, it was considered to increase the on board labour charges from Rs.525/- per worker to Rs.1030/- per worker. But, at the same time it was apprehended that the proposed increase would lead to an exorbitant increase in the THC. Therefore, a Committee of officers was appointed by the MBPT to work out (i) the optimum charge for supply of on board labour taking into account the average employment, wage structure & other benefits and (ii) cost analysis and optimum/reasonable cost of each element of THC with recommendation of the rates for each element thereof which has been privatised.

(ii). The committee recommended as under:

(a). The charge for supply of the on board labour be at wage plus 146% levy to cover other benefits and cost plus piece rate payments at actuals; and,

(b). The THC fixed by the Karmahom Conference is much higher than the actual costs even after considering the recommended rates and administrative costs. The optimum charges for each element of the THC was recommended by the Committee.

(iii). The analysis of the committee set up by the MBPT is as follows:

(a). Port-related charges : The port related charges are on the basis of rates already notified under the Scale of Rates. The Shipping lines, however, charge 8 days ground rent [licence (storage) fees] and, also recovers Container Detention Charges (CDC) after the expiry of 5 free days allowed at the port. Hence, for 3 days, the ports ground rent of US\$ 7.5 or Rs.301/- is recovered in excess, which needs to be corrected.

(b). Transportation: The rate charged for the transportation, assuming the average distance travelled to various locations from the CFS in the port is on the higher side even after considering the rise in the diesel prices. The optimum rate is Rs.2396/- for a 20' container and Rs.3791/- for a 40' container against the charges of Rs.2824/- for a 20' container and Rs.5053/- for a 40' container levied by the Lines under THC prior to 1 January 2000.

(c). Stevedoring: The present stevedoring charge under THC is nearly double especially in case of FCL containers and also the cost attributed under THC, on account of stuffing and de-stuffing operations using the port labour including the on board labour, is more.

The Committee of Officers had also found that the THC under the stevedoring cost included charge for on board stevedoring at Rs.640/- per TEU. The committee observed that the freight on container covered all cost till discharge of container on wharf; and, no such separate charge was recovered by Lines in the case of general cargo.

(d). Miscellaneous charges: These are the Customs charge for movement of containers beyond official Customs working hours. They do not form part of port service falling within the jurisdiction of TAMP.

(iv). The recommendations of the Committee were accepted by the Board of Trustees of MBPT in their meeting on 13 March 2000.

(v). The MBPT has worked out the proposed charges for stevedoring and transportation by allowing a contingency margin of 5%. However, no such contingency is provided in the port related charges, as they are already notified under the Scale of Rates.

(vi). The proposed rates for stevedoring and transportation are as under:

Activity	Import FCL (Port CFS)		Import and Export LCL (Port CFS)		Export factory stuffed		Import factory destuffed	
	20'	40'	20'	40'	20'	40'	20'	40'
Transportation/ Handling charges.	2432	3905	2432	3905	1599	2558	1812	2825
Stevedoring / Stuffing / Destuffing charges	2029	3558	3948	7667	788	788	788	788

(vii). Both the services (stevedoring & transportation) are provided by the private parties on authorisation by the MBPT. In case of stevedoring, the authorisation is through MBPT (Licencing of stevedores) Regulations, 1979, which are approved by the Government. In case of transportation, authorisation is through a registration scheme. The arrangement being in force for many years has the informal approval of the Government.

3.1. The proposal was forwarded to the concerned representative bodies of users and other relevant organisations for comments. A summary of the comments received is given below: _

Karmahom Conference

- (i). THC is an established concept in container shipping round the world governed by the UNCTAD rule which is duly incorporated in Karmahom Conference tariff.
- (ii). Two committees under the aegis of the DG (Shipping) had gone deeply into the components of THC and fixed the cost heads. Karmahom Conference have not added any new component but collect only what is charged by the service providers to Lines for the movement & handling of containers.
- (iii). The THC and CFS service charges at the Mumbai Port started moving up since mid 97 due to the following factors:
 - (a). The MBPT converted the rupee based charges to US\$ denomination leading to an increase of 115% in the Ground Rent – Exports and 105% hike in the wharfage and on shore labour charges.
 - (b). The MBPT have doubled their earnings due to the exchange rate fluctuations alone. The MBPT announced an increase of 48% in the Stevedoring labour charges, which resulted in an increase of around Rs.1100/- for exports and Rs.750/- for imports.
- (iv). They charge the trade on the basis of weighted average for stevedoring charges.
- (v). Lift on / Lift off charges are approved by a committee headed by the (then) DG (Shipping) and such charge cannot be removed while computing THC.
- (vi). The Nhava Shava Container Terminal Operators Association has confirmed that the transportation charges are being paid to the transporters anywhere between Rs.2200/- to Rs.2400/- per TEU. They have imposed a further surcharge of Rs.300/- per TEU for loaded / empty container, due to diesel price hike, w.e.f. 1 October 99.
- (vii). The MBPT have not taken any steps to reduce its own charges by improving productivity or reducing cost and abolishing notional charges like gang compensation or on shore labour charges, that too in dollar denominated tariff. Instead, the MBPT has proposed to increase the “On Board Stevedoring” charges based on cost plus formula although there is a surplus staff of 50%.
- (viii). The activities / costs (of individual elements of the THC) are determined by respective service providers and none of them falls within the realms of Karmahom Conference Lines.

(ix). Certain charges like empty lift on / lift off, movement of empties between ESY / CFS and CFS / ESY, survey, etc., which are not strictly under the purview of the port, will continue to be a part of THC, as per the Line notified charges.

(x). Recovering of ancillary charges are treated as an extension of freight and Lines are called upon to pay 3.6% Income tax on total income and not on residual portion of income, after disbursement is made to respective service providers.

(xi). The Lines block their working capital upfront to pay THC/ CFS services and wait for reimbursement through recovery by way of THC/ CFS service charge.

(xii). (a). They are prepared to accept the proposed charges to be notified under Section 42 of MPT Act, provided the MBPT confirms that they will provide all the services presently given to the Lines, that the level of charges proposed are binding upon the respective service providers and further that the Lines are not called upon to pay any extra cost over and above the charges proposed by the MBPT.

(b). Alternatively, the MBPT may collect the prescribed THC directly from importers and exporters and pay the service providers leaving the Lines to concentrate on ocean transportation.

(xiii). If the TAMP decides that it is incumbent on the Lines to collect THC from Trade, the amount so collectible should be grossed up by the tax element and a reasonable administration fee should be added.

The Container Shipping Lines Association (CSLA)

It has fully endorsed the views expressed by the Karmahom Conference.

The Bombay Stevedores' Association Ltd. (BSA)

(i). The wage for the purpose of on board labour charges may be clarified i.e. whether it is average daily wage of all the categories of on board labour (erstwhile Bombay Dock Labour Board) combined or whether it is the highest reigning wage of each category. Further, the definition of wage may be clarified as to the inclusion of the various elements of wages.

(ii). Bipartite Wage Negotiation Committee constituted by Govt. of India in the MOST has signed on 2 August 2000 a Memorandum of Settlement on wage revision, benefits and condition of services of dock and

port workers at the Major Port under Section 12 (3) of Industrial Dispute Act 1947. Accordingly the element of stevedoring / stuffing / destuffing charges included in the proposal of the MBPT will undergo a change as follows:

(a). On account of revision of wages, the highest daily wage of senior worker will go up by 44% approximately over the pre-revised daily wage. If the proposed 146% of levy is also considered, the cumulative increase will be 108% approximately.

(b). The cost of supervisory staff and allied workers (on deputation to various stevedores upto 31 July 2000), which is to be paid by the stevedores to MBPT will go up by 54% and shall have to be borne by the stevedores even if they do not have any cargo handling work at the port.

(c). The wage revision arrears from 01.01.1998 has been kept at 20% in the proposed 146% levy as against the 36% arrears arrived in accordance with the terms of wage settlement by the Committee.

The Mumbai and Nhava Sheva Ship – Intermodal Agents’ Association (MANSA)

(i). The negotiation which is in the final stages between the MBPT, BSA and Dock Workers’ union regarding transfer of supervisory staff who are on deputation to stevedores to the port will totally change the working procedure and will produce impact on the costs which will eventually have to be borne by the Shipping Agents / Lines. They will be forced to pass it on to the trade as they cannot absorb this increase. This will adversely effect the container traffic at the MBPT.

(ii). The proposal to create a pool of supervisory staff to be managed by the traffic manager will alleviate the burden upon individual stevedores of dealing volumes:

The Shipping Corporation of India Ltd. (SCI)

(i). It has endorsed the comments furnished by the Karmahom Conference in this matter.

(ii). In case of further revision in the charges, a minimum notice period of six months must be given by the MBPT to the shipping lines and the trade.

The Indian National Shipowners’ Association (INSA)

It has endorsed the views expressed by the Karmahom Conference and Shipping Corporation of India.

The Maharashtra Rajya Truck Tempo Tankers Bus Vahatuk Mahasang

Reduction in transportation charges is unjustified due to abnormal increase in the price of diesel cost.

3.2. A copy of the comments received from the above users was forwarded to the MBPT by way of feed back information. The responses received from the MBPT are as follows:

(i). The point made of increase in THC due to denomination of port tariffs in dollar terms is not valid as recovery by the agents on these counts is also in dollar terms.

(ii). Stevedore labour charges was much higher under the erstwhile DLB. On absorption of BDLB employees, the rate was fixed at Rs.325 per worker in 1994 and raised to Rs.525 per worker per shift from 1997 to recover the actual cost. Even this rate now does not cover the actual labour costs.

(iii). Lift on / off charges have been taken into account in the working of transportation cost at all points, the ship side, the stack-yard and the CFS.

(iv). Despite a lower rate for on board labour at Rs.525/-, stevedoring cost is much higher in the THC (notified by the Karmahom Conference). Even if the port recovers full cost of labour on the proposed cost plus basis, the rate for stevedoring is still higher.

(v). The suggestion of the MBPT recovering the THC and making payment to various service providers appears to be out of context. The container lines obtain various services from different operators and they are responsible for recovery of the relevant charges and for distributing the same.

(vi). Once the TAMP approves the rates to be levied by various service providers, the MBPT can enforce such rates. Till now, the service providers are levying the charges at their discretion as per their contractual terms.

4.1. Further, all the Major Ports / Private Terminal Operators were requested to furnish their comments on whether the regulation may be done for the individual service providers or of the THC for the port as a whole through prescription of 'ceilings' of the rates to be applied to authorised service providers.

4.2. The comments received from Ports / terminal operators are briefly given below:

The Jawaharlal Nehru Port Trust (JNPT)

- (i). The various elements of activities covered under THC at MBPT are different from that of JNPT.
- (ii). At JNPT, the notified composite rate covers the stevedoring, wharfage and transportation whereas in MBPT all the three elements are separated and performed by different agencies viz. port, stevedores and transport contractors.
- (iii). At JNPT, stuffing and destuffing operation are performed by the CFS operators outside the ports' limit using their own labour whereas at the MBPT ports' labour as deployed within the port limit.

The Mormugao Port Trust (MOPT)

- (i). As suggested by the MBPT the ceiling rates for THC may be prescribed separately for individual ports.
- (ii). The volume of container traffic is not substantial at the MOPT; and, the THC charged at the MOPT is much lower as compared to other ports to attract the container traffic.

Paradip Port Trust (PPT)

- (i). MBPT proposal is a step in the right direction to regulate the Port costs.
- (ii). The authorised service providers may be permitted to operate only with the previous sanction of the Central Government as provided u/s 42(3) of MPT Act 1963. The informal approval of the Government for container transportation service at the MBPT is not in line with the provision of the Act.
- (iii). THC paid by the shipping Lines are not usually disclosed to the port authorities. There is no mechanism to ensure that the rates provided are followed by the authorised service providers.
- (iv). Under the Stevedoring Regulation, a port itself can act as stevedore and notify the rates for stevedoring operations on board the vessel in respect of various cargo/container services. At PPT, the port is a registered stevedore and undertakes stevedoring operations for some of the cargo/containers.

(v). Notifying the charges for stuffing and destuffing, stevedoring and transportation charges will indirectly compel the port to take over the services at notified rates in case no private service provider is willing to provide the services at such rates which might create problem as the port may not be able to provide the services as efficiently as a private operator.

(vi). It is desirable to have stevedoring as a separate service instead of combining them with stuffing / destuffing.

(vii). Containers are not handled at PPT, so there is no immediate requirement to notify THC.

Calcutta Port Trust (CPT)

(i). If the transport companies have not been authorised by the MBPT as per Section 42 (3) of MPT Act, 1963, TAMP cannot fix the charges for the same. Also, the TAMP cannot exercise its authority over that portion of transportation which takes place outside the port premises e.g. transportation from exporters' warehouse to port or vice versa may not necessarily be in the port approaches.

(ii). The TAMP has got jurisdiction for fixation of port related charges, stevedoring charges (where DLB is merged with Port Trust) and for Intra-port transportation charges.

(iii). Bringing THC within the purview of TAMP will be in the overall interest of the Import / Export Trade.

PSA SICAL Terminals Ltd.

THC shall be determined by the market forces and shall not be regulated.

The Nhava Sheva International Container Terminal Ltd., (NSICT)

(i). The proposal of MBPT is reasonable.

(ii). The ocean freight constitutes the largest portion of the transportation charge for the containers. Terminal Charge is a minuscule portion of the total charge incurred to ship containers.

(iii). Lines openly operate in cartels and even increase the tariff as a part of the cartel.

(iv). Lines do not have any regulator. The entire Shipping Industry does not have any regulator for tariff except the TAMP in the case of Port tariff.

5.1 A joint hearing in this case was held on 15 September 2000 at the MBPT. During the joint hearing following submissions were made:

Bombay Custom House Agents Association (BCHAA)

- (i). Let the MBPT circulate details of its study which expose the gap between what Lines pay to the Port and what they collect from the shippers.
- (ii). Please go by the UNCTAD definition of THC. Karmoham compilation refers to THC commencing from CFS not from wharf or yard.
- (iii). 'Liner' terms as given by the UNCTAD may be referred. Freight includes 'on board stevedoring charges'.
- (iv). What are the components of THC? THC should commence from the points where trade is allowed to handle cargo. All other (earlier) expenses should go into 'freight'.
- (v). It is a fallacy that the cost of THC will go up because of cost of Dock labour. The Lines book minimum labour; but, collect a lot more through excessive THC per container.
- (vi). The THC calculation of the Lines is based on a small number of containers being handled. The position is very different now.
- (vii). 'Free days' must start from the point the container reaches CFS.
- (viii). THC is an average cost with respect to 4 or 5 small operators. Consequently, there is a wide margin for the big operators.

The Mumbai & Nhava Sheva Ship Intermodel Agent's Association (MANSA)

- (i). Overtime of Customs is payable when loading / unloading occurs u/s 36 of the Customs Act. Rules framed thereunder require every time to pay over time for the same staff. The financial burden is also heavy and we do not agree with BCHAA.
- (ii). DG (Shipping) had dealt with the components covered by THC clearly and comprehensively. THC is in two parts: Factory stuffed THC; CFS stuffed THC. There is no dock stuffing for THC purpose. This is the international practice.
- (iii). The TAMP has jurisdiction only over some components of THC; not over the composite THC in toto.

- (iv). Stevedores and transporters have to react to the MBPT's proposal; not so much the Lines. The Karmoham composite rate is not open to scrutiny by the TAMP or the Port.
- (v). Why can the MBPT not slap an order, as part of the licensing condition, on stevedores and transporters to adhere to certain rates. Why should the TAMP come in?
- (vi). Karnataka High Court has passed an Order stating that THC is cost recovery; not freight.
- (vii). One-third of vessel side stevedoring is absorbed by the Lines. Only two third is included in the THC.
- (viii). For some perishable cargo (e.g. onions) THC is included in freight. But, that is an aberration.

Karmahom Conference

- (i). Components of THC has been identified by DG (Shipping), not by us.
- (ii). Cost of some of the components has been going up (e.g. Ground rent and wharfage have gone up enormously). We have, therefore, to hike the THC.
- (iii). Dollar denominated tariffs amount to 24.80%. Whenever exchange rate goes up, the Port collects from us at the current rate of exchange. Therefore, we have to increase. Where is the need to consult? We are compelled to raise.
- (iv). The BCHAA goes by the practice followed in break bulk trade, which is not relevant. It is only container today. The UNCTAD definition is with respect to break bulk.
- (v). We are following the international practice, which has been confirmed by the SCI.
- (vi). Stevedoring is included in the composite THC. It is not included in freight.
- (vii). Earlier shippers had to take our 'No Objection Certificate' to go to a non-conference ship. Now, they are free to go anywhere. Why complain against us? Let them go to the cheapest source.

(viii). We are not interested in doing all this. Let the port, as a terminal operator, take over this function; and, recover costs directly from users.

(ix). The MBPT says, they have no control over Dock Labour – Who then controls them?

(x). The analysis given by the Port has not taken into account several elements of THC.

The Container Shipping Lines Association (CSLA)

(i). The TAMP is not empowered to deal with THC in toto. It can deal with only some components.

(ii). Terminal operator, internationally, is now required to give composite complete services.

(iii). There is no conformity between what we pay the Port and what we collect from shippers because we pay many others many things.

(iv). Karmahom is not a monopoly.

(v). THC can not say it has no control over its labour. It must control and take Government's help if necessary.

(vi). The UNCTAD code is not used now. Market forces determine what is THC.

The Shipping Corporation of India

(i). TAMP can only deal with some components of the THC.

(ii). Stevedoring is a part of composite THC. It is not a part of freight.

(iii). At the MBPT there is no single terminal operator. Container handling becomes complex because of this multiplicity of service providers.

(iv). Karmahom is not a monopoly. There are many non – conference lines. The THC is governed by competitive market forces.

(v). UNCTAD is a theoretical document. Market forces operate and determine differently.

The Indian National Shipowners' Association (INSA)

(i). THC is well within TAMP jurisdiction.

- (ii). Let the TAMP conclusively decide what are the components of THC.
- (iii). Coastal traffic must get concession in THC also and should be denominated in local currency.

The Bombay Stevedores' Association (BSA)

Labour Pool is formed and managed by the MBPT. They have raised the rates enormously. This has not been considered in the stuffing/destuffing cost cited by the MBPT in its proposal.

Western India Shippers Association (WISA)

- (i). There is no doubt about TAMP jurisdiction. Let TAMP deal with this as a test case.
- (ii). Legal fiction is that container is an extension of the vessel hatch. Container handling is, therefore, a vessel related activity. On Board handling charges should, therefore, be part of 'freight'.
- (iii). The activities relevant here are 'from CY to CFS'. Others can not be relevant to THC.
- (iv). Go by the IPBCC definition of THC. Karmahom is a member of the IPBCC.
- (v). While doing the costing, recent increases in productivity should be taken into account. Karmahom reckons an out put of 7 containers whereas today the output is at 14 per shift.
- (vi). Look at the availability of traffic both ways for costing of transportation. The MBPT proposal does not clarify this.
- (vii). DG (Shipping)'s committee report; Bansali report and all other reports on THC say that the rates are high.
- (viii). Dollar denomination of certain container handling activities is wrong. The TAMP did not consult us. The Order may be reviewed.

Jawaharlal Nehru Port Trust (JNPT)

We already have a composite operation and a composite charge. At the MBPT, three parties provide these services. Hence, these are not comparable.

5.2. In response to the above the MBPT's submissions were as follows:

- (i). We have mooted this proposal because SCOPE (Shipping) has stridently recommended it. Shippers have constantly demanded such steps.
- (ii). Our study reveals that cost recovered by service providers, are very high. The idea is to reduce the cost to importer.
- (iii). Stevedoring / transportation / port related charges are included in our proposal for THC. Customs related charges are not included in THC.
- (iv). Karmahom has recently increased THC again. They do it unilaterally and do not discuss with us at all.
- (v). The recent wage revision has an impact of 40% on the cost.
- (vi). UNCTAD Guidelines states that the THC shall not include 'on board handling charge'; that is part of 'freight'.
- (vii). 'Free period' should commence from the time cargo reaches the CFS/nominated area.
- (viii). Productivity has increased. The MBPT has persuaded Unions to accept an out put of 15 containers against earlier norm of 7 containers. But Lines do not give any rebate in THC for extra productivity.
- (ix). We cannot overnight give a contract for a composite service at a composite rate. There may be labour restrictions. In anyway, competition is better.
- (ix). For transportation cost, only one way traffic availability is assumed.

5.3. In the joint hearing, the WISA, and BSA have furnished written submissions as summarised below:

The Western India Shippers Association (WISA)

- (i). The IPBCC tariff defines THC in case of export FCL container, as the charge payable by the merchant for its reception at the Terminal, its handling and its presentation to the vessel for loading. This confirms that "On Board Stevedoring" is an activity covered by loading and the Merchant's liabilities ceases immediately after the container is presented to the vessel.

(ii). In respect of the import FCL container the IPBCC tariff defines it as the charges payable for its reception alongside the vessel and its handling at Terminal together with associated documentation. This means the merchant is liable for charge only from the point at the wharf when the container is off-loaded from the vessel.

(iii). Some of the main points listed down in the analysis of the Port's Committee as reasons for the higher THC at the Mumbai Port are as follows:

(a). There are no free days for containers. Thus, though the storage fees at the Mumbai Port are lower, the total THC works out higher.

(b). The benefit accruing from ICON scheme has not been passed on to the trade.

(c). Transportation cost is worked out on a one way operation assuming a return journey with no load.

(d). No weightage have been given for volume discount offered by both stevedores and transporters to shipping lines.

(e). Cost benefit arising out of transporter-wise pre stack arrangements have not been passed on.

(iv). Survey fees are included in THC; but, the same is to be borne by the shipping lines who engage their own surveyors in order to avoid any dispute about the condition of the container. _

The Bombay Stevedores Association Limited (BSA)

(i). In the MBPT proposal the stevedoring charges covers only on board labour cost excluding supervisory cost which is separately billed.

(ii). The MBPT has considered an out put of 15 TEUs per gang for destuffing in their costing. This assured out put has hardly been achieved.

(iii). The MBPT is charging 66% more levy and that is on the daily wages of the highest pay scales instead of average daily wages paid to supervisory staff and allied workers.

(iv). Impact of wage arrears from 1.1.1998 has not been considered in the costing. This impact should be included under the head stevedoring or alternatively, surcharges on containers and cargo may be levied by the MBPT from shipowners prospectively to cover the arrears of wages, as they are the actual beneficiaries of the service.

(v). A stevedore is required to pay a minimum amount to the MBPT irrespective of whether he has work or not and this amount represents the daily wages of 3 sets of supervisory staff and allied workers (27 personnel). This element of idle cost is not considered in the costing of stevedoring cost.

5.4. At the joint hearing, the following decisions were taken:

(i). (a). The CSLA to give a note in 4 weeks' time clarifying the UNCTAD definitions.

(b). KARMAHOM and SCI to give a joint note about a complete listing of the components of the THC.

(c). INSA to give a note in 4 weeks about TAMP's jurisdiction over THC.

(ii). Copies of these notes would be given simultaneously to the MBPT and the BCHAA so that they could, within 4 weeks thereafter, submit their comments thereon.

(iii). On receipt of notes and other information, a further joint hearing would be held, if necessary.

6.1. Subsequent to the joint hearing, the BCHAA furnished the following comments on the MBPT proposal:

(i). The TAMP has legal authority u/s 48(e) read with Section 42 of the MPT Act, 1963 to notify the Scale of Rates for services performed by the Board or other person.

(ii). The definition of Liner term given by INCOTERMS and P&O definitions which states that freight includes cost of loading onto and discharging from the vessel. This clearly confirms that on board stevedoring cost presently included by the shipping companies in THC cannot be a component of THC. Freight rate includes all cost incurred till the container is delivered by the carrier to the CY/CFS, from where the trade is permitted to receive or handle the container.

(iii). The definition of THC as a charge for handling FCL's at Ocean terminals confirms that all charges incurred only after a container is received at the terminals can be part of THC. All cost incurred for the container to be offloaded and stored at the Container yard in the Terminal, form part of Sea freight and all cost incurred for handling FCL's thereafter, would be part of THC.

(iv). The TAMP has correctly denominated the on board stevedoring charges, etc. for the MBPT in US Dollars, as the said expense is part of ocean/sea freight and is recovered by Shipping Lines and their Agents from the trade in convertible Indian currency.

(v). The DG (Shipping) committee findings were never accepted by the Trade. The Lines have unilaterally revised the THC and introduced many new elements.

(vi). The exercise carried out by the MBPT shows that a minimum of 25% to 40% is being recovered by the Lines under the guise of THC. If the cost of loading and unloading on / from vessel, which forms part of sea freight, is excluded, the excess recovery made will be more than 60%.

(vii). Certain components are charged twice.

(a). Ground rent is levied under THC as well as in CDC.

(b). An expense for supplying forklift is shown whereas no such equipment has ever been supplied by the Lines or their agents.

(c). THC includes round trip for containers i.e., from the time it lands at port till it is brought back to port for re-shipment. However, THC on export containers is also recovered.

(d). Survey fees are shown as an expense under THC, whereas the same is borne by the Trade directly. In the case of break bulk cargo, the Lines have their own surveyors and the charges have never been recovered from the Trade.

(viii). Labour cost for destuffing included in THC is based on a minimum destuffing of 7 containers by a labour gang in a shift. The shipping lines place indent with the port for supply of one labour gang per shift, whereas on an average 70 to 100 TEUs are destuffed within a shift by the Trade, who are forced to bring in additional labour at their cost. This results in huge amounts being recovered by the Lines.

(ix). Karmahom Conference has confirmed that THC is reimbursement of actual cost incurred. There is no possibility of there being any play of market forces in THC since it is not determined on the principle of 'supply and demand' or 'option being available'. The arguments of lines that THC should be left to market forces can be accepted, if THC is not a monopoly of the Lines.

(x). How can the THC be same for a small shipping line which handle only 200 to 300 containers in a year and the Lines which handle more than a lakh TEUs per year? This exposes the myth of the Lines argument of THC being reimbursement of actual cost; and, proves that THC cannot be left to market forces.

(xi). Though the operations are different at both the MBPT and the JNPT, the Lines recover the same tariff of THC from Trade. The only difference is that for movement of container at JNPT, part amount of THC is recovered by the CFS operators and the entire THC is not recovered by the Lines.

(xii). Eventhough Lines claim that THC is reimbursement of actual expenses incurred, the Government of India has deemed it fit to levy a tax on their gross receipts, as it has arrived at a conclusion that the Lines are profiteering. The MBPT report further substantiates this position.

6.2. The comments offered by the Karmahom Conference with reference to the above narrated comments of the BCHAA are summarised below:

(i). TAMP has jurisdiction only over those THC elements notified by the MBPT viz. ground rent, wharfage and on shore labour. All other elements of THC falls outside the purview of TAMP.

(ii). With the introduction of NET freight w.e.f. 1 April 1982, the Shippers are free to exercise their freedom to ship by any vessels to secure any rate advantage. Currently only FAK rates are quoted in the market. As long as the shippers do not pay the liner freight, they cannot expect the lines to follow the liner terms.

(iii). The BCHAA argument about storage charges, etc. forming part of sea freight was not accepted even by the DG (Shipping) report. The UNCTAD has defined THC, which is also incorporated in the Conference tariff.

(iv). As long as KARMAHOM Lines receive the services from the service providers without any add on / incentives, they do not have any dispute on THC.

(v). Labour productivity norm is not fixed by Lines. If the MBPT notifies the productivity norm and corresponding charges, the Lines will abide by that provided they get the services at the notified rates.

(vi). THC at Mumbai is different from THC at the JNPT.

(vii). If definition of income as prescribed by Tax Authorities is accepted, then THC cannot be construed as reimbursement of cost. It will be an extension of freight and hence there is no reason for it to be subjected to jurisdiction of regulatory authorities. If the TAMP still considers the THC as reimbursement of cost, then an element of Tax @ 3.6% shall be added.

(viii). The TAMP must consider a reasonable provision towards Administration cost and Financing cost shall be added to THC.

7.1. As agreed in the joint hearing, the different agencies submitted their notes on the different points of reference. A summary of the submissions is given below: _

The Container Shipping Lines Association (CSLA)

(i). The UNCTAD definition of liner terms does not clarify the point referred to in the joint hearing.

(ii). Where a rate is quoted as 'liner terms', it simply means that the rate includes loading and discharging costs. Depending upon the terms of the contract, the loading / discharging costs will be simply the responsibility of different parties.

(iii). In container trade, rates are generally quoted with five elements viz. haulage (at load port) , terminal handling (at load port), sea freight, terminal handling (at discharge port), destination haulage (to destination). These elements may be quoted separately or as a composite rate.

(iv). A liner term rate would generally include terminal charges but it does not imply that terminal handling cost does not have to be met.

(v). If this logic is true and if Lines quote through rates, then they have to absorb not only terminal costs but inland costs as well, which is manifestly not correct._

Karmahom Conference

(i). The various elements of THC as identified by two separate committees appointed by the Ministry of Surface Transport are:

(a). Transportation/Movement of empty Container.

(b). Empty lift on at Depot.

- (c). Empty lift – off BPT (TLT) at stuffing point.
 - (d). Fork lift
 - (e). Lift-on/off container at stuffing point.
 - (f). Transportation to vessel including Lift off/on at pre-stack MBPT transtainer and drayage at hook point.
 - (g). Stuffing cost paid to stevedores.
 - (h). Stuffing cost payable to port/MBPT labour.
 - (i). Gate night allowance.
 - (j). Custom appraiser/examination.
 - (k). Container Wharfage.
 - (l). Ground Rent to MBPT.
 - (m). Receiving cargo in shed.
 - (n). Container Lock seal, Survey, Inspection, Scrutiny.
 - (o). Service charge.
- (ii). When the MBPT was handling more than 5 lakh TEUs, due to congestion, it took on an average 14 days for an imported container to reach the nominated site. By deducting 5 free days at CY and 1 free day at nominated site the chargeable days work out to 8 days, which is recovered under THC. Likewise, it was the experience of Lines then that an export container took 6 days to reach ship's side from the nominated site.
- (iii). Though CDC becomes applicable after 5 days, Lines spend much higher amount for following reasons:
- (a). The MBPT did not offer any free period on container.
 - (b). Containers were moved from yard to nominated site after 6 / 10 days. Lines had to absorb extra burden of ground rent from 6 to 10 days and also allowed one day extra free day at nominated site.

Due to the position explained above, the Karmahom decided in 1994 to include at least the cost of 3 days ground rent in THC for Mumbai. This is not a double recovery. Despite this, the Lines still remain out of pocket

on CDC recovery since importers do not pay any CDC till container reaches nominated site plus one extra free day at the nominated site.

(iv). On-shore labour charge is only a notional cost to make good for the perceived labour redundancy. The MBPT has not explained what type of value added service is rendered to warrant recovery of this charge.

(v). Lift on / off is an actual charge incurred and paid by lines; and has the sanction under 1988 DG (Shipping) report. The MBPT cannot exclude this from THC.

(vi). Despite the higher charges prescribed in Bombay Stevedores Association (BSA) tariff, Karmahom lines recover weighted average of destuffing/stuffing cost through THC.

(vii). No comments with reference to on-board stevedoring charge are necessary since the MBPT have increased this charge from Rs. 600/- to Rs. 750/-.

(viii). Reasonable administration cost and financing cost should be added to existing THC to arrive at actual cost, which should be reimbursed by the shippers.

(ix). Terms and conditions and payment of freight come as a package and cannot be dealt in isolation. Since the trade pays the market rate and not the Conference 1985 tariff rates, it cannot expect the benefits of conference tariff terms and conditions.

(x). It will be incorrect to say that container lines operate only on Liner terms. They accept cargo on FIO terms as well.

Indian National Shipowners Association (INSA)

The INSA has not submitted any separate note but informed that the Karmahom Conference note may be taken as reflecting its views also.

8. At the joint hearing, the MBPT submitted a copy of its internal notes explaining the methodology adopted in estimating stevedoring rates and transportation cost.

9. On a preliminary scrutiny of the proposal, the MBPT was requested to furnish additional information/clarification on various points. The MBPT has furnished the requisite information / clarifications. Some of the main points are summarised below:

(i). In the year 1994, the Central Govt. revoked all Schemes framed under the Dock Workers (Regulation of Employment) Act, 1948. Further, it superseded the Bombay Dock Labour Board for a period of one year. The period of supersession has been extended from time to time till date. The powers and functions of the BDLB were vested in the Chairman (MBPT). All workers and staff of the erstwhile BDLB were absorbed in the MBPT from 1 March 1994 and from that date they have become employees of the MBPT for all purposes. Even if the BDLB is revived in future, they cannot be transferred back to the BDLB, against their desire.

(ii). The pre-stack areas are nominated transporter-wise so as to enable the concerned shipping agents and Lines to make maximum utilization of equipment and trailers. It is the sole discretion destined to the CFSs.

(iii). The proposed transportation cost covers only one way operation. Back loading of containers for exports forms part of THC for export containers. In practice, the transporters plan operations so that the trailers do not come back empty.

(iv). On shore labour cost for loading / unloading is not included in THC as the cost is covered under wharfage. When containers are destuffed / stuffed at port CFSs, port labour is supplied for the operation. Since the cost of this labour is not covered by wharfage, a separate charge is levied.

(v). The proposed Transportation cost is based on the discussions the port had with transporters. The cost of oil, fuel consumption, etc. needs to be reviewed, if necessary. Weightage for long trip of trailers is given to compensate notional loss in earning potential.

(vi). Creation of a common pool of supervisory staff, who have been repatriated to the Port by stevedores, will not have any adverse impact on THC.

10. The MBPT has also furnished the following comments on the notes submitted by the BCHAA, Karmahom Conference and the CSLA:

(i). It agrees with most of the comments of the BCHAA.

(ii). Ocean freight includes cost of loading on to and discharging from the vessel; therefore, separate on board stevedoring should not be recovered under the THC.

(iii). The components of THC listed by the 1985 committee of DG (Shipping) are as follows:

- (a). Port related.
 - (aa). Licence (Storage) fees.
 - (ab). Wharfage.
 - (ac). Ground rent at CFS.
 - (ad). Labour cost.
- (b). Transportation.
 - (ba). Lift on / off empty at empty yard
 - (bb). Lift on / off empty at CFS.
 - (bc). Transportation from empty yard to CFS to pre-stack
 - (bd). Lift on / off laden container at CY / CFS.
 - (be). Lift on / off laden container from CY to Ship – Ship to CY.
- (c). Stevedoring
 - (ca). Stuffing / destuffing / lift on and transportation.
 - (cb). On board stevedoring including fork lift to CY.
- (d). Miscellaneous.
 - (da). Survey at the time of loading / unloading.
 - (db). Survey at CFS.
 - (dc). Customs charge.

The MBPT proposal includes the above components.

- (iv). Transportation and stevedoring are port functions authorised to private parties and hence, fall within TAMP's jurisdiction.
- (v). CDC are recovered after 5 days though ground rent for the period of 8 days is included under THC.
- (vi). Forklift used in destuffing is generally provided by stevedores. However, most of the time consignees bring forklift and use them for destuffing.

(vii). The Port grants 7 free days for cargo inside FCL and, therefore, exerts pressure on transporters to move the FCLs to respective CFSs within three days from the landing. As many as 70.43% of FCL, 79.07% of LCL and 64.72% of ICD containers were in fact delivered from the port within 14 days of landing during the period from 1 January 2000 to 31 July 2000. Presently, the stay of containers in the Docks is reduced to an average of 5 days but THC has not been reduced.

(viii). Karmahom's argument that the MBPT has accepted the on board stevedoring as an element of THC is not correct. In the proposal, this element is added in THC as the Lines do not accept its inclusion in freight. The MBPT, however, maintains that on board stevedoring should have been a part of ocean freight.

(ix). The on board labour charge needs an annual revision to accommodate wage increase of workers. Likewise, transportation cost needs to be automatically adjusted for increase in fuel prices.

11.1. Based on the arguments advanced by the various parties in the first joint hearing and the written submissions made by them subsequently, the following specific issues emerged for consideration:

(i). Whether on board stevedoring cost is included in ocean freight.

(ii). Recovery of ground rent in both THC and CDC.

(iii). Reasonableness of the cost estimates made by the MBPT for different elements of THC.

(iv). What can / will be the alternate arrangements if Lines refuse to render services at the notified rates.

(v). The justification for denominating the charges for wharfage and storage charges in US Dollar terms.

(vi). How can THC be determined by market forces when the Lines claim it as reimbursement of actual costs?

11.2. In this backdrop, a second joint hearing was held on 15 January 2001 at the MBPT premises to consider the specific issues mentioned above. At the joint hearing, the following submissions were made:

Director General of Shipping

(i). Our regulation was informal based on a common agreement. We have no statutory authority to regulate THC.

(ii). We will give all assistance to the TAMP.

Karmahom Conference

(i). In container shipping there are no stevedores. The JNPT engages its contractors. They levy a composite rate.

(ii). UNCTAD has defined 'Liner terms'. Users can not pick and choose items at will.

(iii). As of 4 December 2000 entire 8 days ground rent have been removed from the THC.

(iv). We do not want to do terminal handling at all. Let somebody else take this over.

(v). We have not received details of costing. We will comment later on costing.

(vi). If Bill of Lading states that additional payment are required, then that will have to be honoured. Otherwise, the BHCAA claim is acceptable.

The Mumbai Nhava Sheva Intermodal Agents Association (MANSA)

(i). We are not licensed operators. We do not provide any services. How can we be regulated with respect to charges levied by others?

(ii). THC is a composite charge. We can not be asked to itemise our charge.

(iii). Transporters are licensed by the port. Their rates can be regulated.

(iv). Our representation about composite berth hire charges levied at the MBPT refers liner terms in the context of break bulk cargo and not containers. Containers are carried on FIO terms.

(v). Like wharfage charged directly to shippers, let the ports do the THC service itself and charge directly.

(vi). THC is an insignificant portion of the total cost and hence there is no need to regulate THC.

(vii). In case of 'dock – stuffed' containers, shippers go to the Lines out of their own volition. There shall, therefore, be no question of regulating our THC in such cases. We must talk about regulating THC of only 'factory stuffed' containers.

(viii). Lines must have an 'administrative surcharge' for doing terminal services. For instance the JNPT levies an administrative surcharge for collecting customs overtime charge.

(ix). Nowhere in the world is THC regulated.

The Bombay Custom House Agent's Association (BCHAA)

(i). SCOPE (Shipping), Ministry of Shipping (MOS) and Ministry of Commerce (MOC) have all said that the TAMP should regulate THC.

(ii). The Lines talk of market forces. In fact, the MBPT has proposed the rates in consultation with all including Lines. Why should they object now?

(iii). If liner terms is for bulk & break bulk, then container is also a break bulk and hence it applies. We are clear about the UNCTAD definition.

(iv). We are being exploited. We have given the details about the excess amount recovered.

(v). Lines are creating a 'fear psychosis' by threatening to stop the services, etc. No such thing will happen. The MBPT can handle all this well if it comes to that.

(vi). Bill of Lading specifically mentions notified 'place of delivery' which means there shall be no extra transportation charge in the THC for the movement between the port and the place of delivery.

(vii). Karmahom claims of reduction of THC w.e.f. 4 Dec. 2000. The Karmahom has not done anything. The reduction is a result of more free time allowed by the MBPT. The Lines charge CDC, which is a higher rate and we end up paying more.

(viii). Regulation of THC will have no implications for stevedores._

Confederation of Indian Industry (CII)

(i). We endorse the responses given so far on behalf of the trade.

(ii). We emphasise transparency in all operations. Why should the Lines hesitate to break up the components of their composite charge.

(iii). The THC may be insignificant to the Lines. But, to a shipper it is very significant. Such relative considerations cannot be relied upon in this context. In today's competitive context, every rupee counts.

The Western India Shipper's Association (WISA)

(i). The IPBCC definition of the THC is very clear. On board handling does not come into picture at all.

(ii). There need be no fear about stoppage of services. Even if Lines withdraw the cargo will continue to move.

(iii). Why talk of international practice? Nowhere else do they have the legal fictions of container being an extension of the hatch.

(iv). The views of BCHAA about notified place of delivery mentioned in the Bill of Lading, are valid.

(v). Why cannot the port do this regulation as a part of the licensing condition?_

The Bombay Stevedores' Association (BSA)

(i). Port licences the stevedores. The License is subject to various conditions. The Port itself could have regulated our charges. If they did not, there was a reason because our services vary from customer to customer.

(ii). We are becoming a de-regulated society. Why add a new regulation?

(iii). What will TAMP regulate? 95% of our cost is labour cost. Labour is from the port and their wages, etc., are well prescribed.

(iv). Already five stevedores have closed their operation. If you regulate our tariffs in the prevailing conditions more will close.

Maharashtra Rajya Tempo, Truck, Bus Vahatuk Mahasangh & Other Transporters

(i). We charge different rates for different customers. Our rate has not increased for the last four years. Only when the diesel rate was increased by 40% last year, we increased our rate by 8% to 12%.

(ii). Labour cost is increasing but the work is reducing. Idle labour is increasing and we are affected.

(iii). Our manoeuvrability to absorb increases is severely limited.

The Container Shipping Lines Association (CSLA)

(i). TAMP is not the correct Authority to regulate THC. Nowhere else is it regulated.

(ii). This is an age of deregulation. Therefore, to regulate THC will be a retrograde step.

(iii). Lines are not collecting from the trade more than what they pay to service providers.

(iv). Port must regulate licensees. They cannot abdicate this responsibility in favour of anybody else.

(v). Indication of 'place of delivery' in the Bill of Lading does not by itself indicate that freight includes cost of delivery at that place. There has to be a specific contract therefor.

(vi). We do get concessions and rebates from ports and private terminal operations. But, we go by averages in THC. Some Lines may benefit; some may lose.

Indian Merchant's Chamber (IMC)

(i). CSLA and MANSAL welcome TAMP as a regulator when it comes to Port tariff. Their objection to regulation of THC by TAMP is illogical.

(ii). The MBPT cannot deliver all terminal services. Lines must be reasonable and continue to provide these services.

The Shipping Corporation of India (SCI)

If the MBPT can ensure these services at the rates proposed, we will include them as such in the THC.

The Jawaharlal Nehru Port Trust (JNPT)

(i). We have no doubt about TAMP's jurisdiction to regulate THC. For JNPT all these have already been regulated by TAMP.

(ii). As a licensor, the port can and must regulate stevedores.

(iii). Movement of cargo from CY to CFS is the responsibility of the line not of the port.

The Mumbai Port Trust (MBPT)

- (i). Karmahom has passed on the benefit of increase in free days. But, they have offset more than that by levying CDC.
- (ii). It needs to be carefully examined whether the freight includes on-board handling and customs overtime.
- (iii). Whether wharfage on containers should be included in THC at all.
- (iv). If it becomes necessary the MBPT will provide / organise the terminal services.

12. Some of the user organisations made written submission at the joint hearing, the salient points of which are as follows:–

Confederation of Indian Industry (CII)

- (i). On board stevedoring cost is included in ocean freight. As such, its collection as an element of THC is unfair.
- (ii). Ground rent should not be collected twice and its cost element should be excluded.
- (iii). There is no justification in denominating the charges for wharfage and storage in US dollar.
- (iv). The THC cannot be determined by the market forces as these are actual costs incurred by the Lines.
- (v). If the liner Lines refuse to render services at the notified rates, the port may make arrangement to provide this facility.
- (vi). Transportation and stevedoring constitute the main costs. These are raised periodically. There is a need for these rates to be notified to ensure an element of fairness.

The Mumbai Nhava Sheva Ship International Agent's Association (MANSA)

- (i). In case of factory stuffed THC the shipper picks up containers from Lines depot taking it to his factory/private CFS and brings it back to the port CY. The line takes the responsibilities of the container from the CY and the cost of transporting from CY to vessel and loading into the vessel is charged as factory staffed THC.

(ii). In case of CFS / Dock stuffing, the shippers opt to bring the cargo to Line's CFS and the Line takes the responsibility to stuff the cargo into the container. The cost of stuffing the cargo into the container, transporting it to the port/CY and subsequently loading into the vessel is included in CFS/Dock stuffed THC.

(iii). The factory stuffed THC charged by the Lines is insignificant to the average value of cargo. Factory stuffed THC works out to 0.21% of FOB value of containers at the MBPT.

(iv). If the port/cargo interest feel that the charges are excessive they can recover all the charges directly from the trade.

(v). The Lines are carrying on the activities of Terminal operators at the MBPT. The NSICT and to a lesser extent the JNPT are the only Indian Ports which provide all terminal services. In all other Indian Ports, the Lines carry out the terminal operator's function.

(vi). It will be reasonable for the Lines to add administrative surcharge of about 20% on their outgoings (on account of payment to service providers engaged by them).

13. Subsequently, the BCHAA filed a further submission in light of the discussion during the second joint hearing. It has reiterated most of the arguments made by it earlier. In addition, it has made the following statements:

(i). Its argument that sea freight includes all costs incurred till the containers are delivered at the nominated place (as stated in the Bill of Lading) has not been disputed by the Lines or Karmahom Conference in the joint hearing.

(ii). The Karmahom has reduced THC by barely Rs.500/- per TEU w.e.f. 4 Dec. 2000 in view of the increase in free days allowed by the Port. Instead, it has now started computing free days under CDC from the day container is off loaded from vessel and not after the container has reached the CFS. This amplifies the attitude and manner by which the Lines exploit the Trade in recovering cost which are incurred.

(iii). On board stevedoring charges recovered by the Ports should be dollar denominated as it relates to sea freight.

14. The CSLA also submitted further comments highlighting the following:

(i). THC are calculated using an average of all lines costs and, therefore, any benefit secured by one Line (by way of rebate from terminal operators) will impact the THC to some extent.

(ii). When a cost component, which is an agreed THC component, changes, then THC will be adjusted. This is based on the principle that the THC is cost recovery.

(iii). With reference to the BCHAA argument about the nominated place of delivery mentioned in the Bill of Lading, the following points are relevant:

(a). The copies of Bill of Lading furnished by the BCHAA are not Lines B/Ls. They are NVOCC documents.

(b). Documentation and local customs and practice are also relevant. There may be other documentations in the form of service contracts. Further, a detailed clausing of the B/L may specify that THC is collectable. Local custom and practice may be that a THC is always collectable.

(c). Absence of a THC on B/L does not obligate the Lines to deliver to the location free of charge.

15. In April 2001, the BCHAA brought to our notice that the MANSAA has unilaterally revised documentation processing fee to cover the increasing input costs and upgradation of the agencies for EDI. The BCHAA has also produced a copy of letter dated 30 Jan. 1999 issued by the MBPT addressed to the MANSA which states that levy of documentation fee should have the prior approval of the Port.

16. With reference to the totality of information collected during the processing of this case and based on records produced by various organisations participated in this proceedings, the following position emerges:

(i). Terminal Handling Charges are collected by the Shipping Lines for different services provided to containers at a container terminal. Eventhough these services are provided within the port area, the charges are realised by the Lines since they engage different service providers. These charges realised form a bone of contention between the Trade and the Lines, particularly with reference to the transparency and reasonableness of the charges. These charges have never been regulated by any statutory authority. The two committees of DG (Shipping), referred by many users in this context, have done primarily a listing of various elements of services qualify under the THC. The Trade has categorically

mentioned that it had rejected these reports. As has been admitted by the DG (Shipping) in the joint hearing in this case, the efforts made by the Directorate was informal; and, it lacked any statutory backing. Before the Authority was created in April 1997, the Board of Trustees of a major port, with the prior sanction of the Govt. was vested the powers to fix tariffs. Under the provisions of the MPT Act, the Board of Trustees could have regulated rates for various services for which THC was collected. This has, however, never happened. The proposal of the MBPT under consideration is perhaps the first attempt to statutorily regulate rates for different services under THC. To our limited knowledge, this may perhaps be the first attempt in the world to statutorily regulate various elements of charges under THC.

(ii). In this backdrop, the MBPT deserves to be complimented for formulating a well structured and reasoned proposal. The proposal contains objective analysis of all related matters and provides a great insight into the relevant issues.

(iii). The Authority's jurisdiction to regulate THC has been questioned mainly by the Lines. In this context, it is relevant to refer to the concerned statutory provisions contained in the MPT Act. Section 48 of the Act empowers the Authority to frame Scale of Rates at which and statement of conditions under which the various services specified under clauses (a) to (e) shall be performed by a Board (of major port) or any other person authorised under Section 42 at or in relation to the Port. Section 42(3) of the Act empowers a Port Trust Board to authorise any person to perform any of the services mentioned under Section 42(1). Such authorisation, however, requires prior sanction of the Central Government. Section 42(4) clearly states that such authorised person cannot charge or recover for his services in excess of the rates prescribed by the Authority. This amply shows that the Authority can regulate the relevant activities, as services specifically identified under section 42 *ibid*, when the following three conditions are fulfilled:

(a). The THC component shall be in respect of a service specified in clauses (a) to (e) of Section 48 of the Major Port Trust Act.

(b). The service shall be provided under a specific authorisation of the Board of Trustees.

(c). Previous sanction of the Central Government must have been obtained for such authorisation.

It is noteworthy that the Karmahom Conference and the MANSA have also admitted that some of the elements of THC can be regulated by the Authority.

The THC has been broadly split into 4 groups viz. Port related charges, Stevedoring Charges, Transportation and Miscellaneous. Port related charges are already regulated by the Authority.

If Stevedoring and Transportation activities are carried out in port area, they undoubtedly qualify as services listed under Section 48(1) and also 42(1). Some of the charges under the sub-head 'miscellaneous' relate to customs and not port related activity. That being so, the Authority is statutorily duty bound to prescribe 'ceiling' rates only for all the qualifying activities. It is noteworthy that these services are provided by the Terminal Operators themselves at the JNPT; and, the Authority has notified the rates charged by them.

(iv). Regulation of the rates for different qualifying services for which THC is collected by the Lines can be done in two ways:

(a). Regulation of rates to be levied by individual service providers.

(b). Regulation of relevant rates under THC for the Port as a whole through prescription of 'ceilings' of rates to be applied to 'authorised service-providers'.

In case of (a) above, regulation can be done only when the three pre-conditions mentioned under sub-para (iii) above are fulfilled. In case of (b) above, regulation can be done without reference to individual service-providers. In this case, 'ceilings' of rates for various elements of THC will be prescribed for a particular port; and, the Port Trust concerned will ensure their application to authorised service-providers by making this a condition precedent before authorising them in terms of Section 42(3) of the MPT Act.

The MBPT proposal seeks to follow the model at (b) narrated above. The approach proposed by the MBPT appears reasonable. In any event, it may not be possible for this Authority to meaningfully prescribe rates for individual service-providers based on their cost of operation, in view of the huge number of individual service-providers operating within the Mumbai Port precincts. It is to be recognised that the rates proposed by the MBPT are based on an extensive study of market and past and anticipated performance levels. It is relevant in the context that the rates to be approved by the Authority are only ceilings and service-providers can

levy charges below that limit. It is for the MBPT to enforce the adherence of rates notified by the Authority through specific licensing conditions.

It is noteworthy that the MBPT authorises stevedoring through Regulation framed with the approval of the Government and transporters through a registration scheme.

(v). It is relevant here to examine the nature of THC. The Karmahom Conference has sometimes argued that it is a recovery of cost incurred and at some other point mentioned that it should be treated as an extension of sea freight. The CSLA and MANSA have categorically mentioned that THC is a recovery of cost incurred. The MANSA has even cited a judgement of Karnataka High Court to bolster its argument in this regard. The Karmahom Conference has not produced any evidence to show that THC is an-extension of sea freight. That being so, THC can only be treated as a recovery of cost incurred.

The cost incurred, in this context, is the payments made to the service-providers by the Lines. Statutorily, the service-providers cannot levy anything for port-related activities in excess of the rates fixed by this Authority. That being so, this analysis indicates that the ceiling rates fixed by the Authority for individual services will be the ceiling rates in THC which the Lines can levy. In view of this clearly emerging position, the MANSA's objection that 'the Lines are not licensed by Port; and, their charges cannot be regulated' is found to be devoid of any merit. The position clearly emerging is that the regulation of relevant element of THC is not direct but incidental.

(vi). For an accepted definition of THC, the BCHAA, WISA and even the MBPT have relied on the definitions contained in the IBPC Container tariff rules / regulations. The WISA has also pointed out that the Karmahom Conference is also a member of IBPCC. These definitions clearly show that THC is for terminal services provided till presentation of containers for loading in case of export and for terminal services provided after reception of containers alongside the vessel in case of import. This definition is not contested or challenged by the Lines. The BCHAA has, however, argued that the THC must commence from the place where Trade is allowed to handle containers. The argument of CSLA that such services provided before delivery / loading cannot be free of cost deserves to be admitted.

Since the definition of IPBCC about THC is adopted by operators / agents in India and is in vogue since long, there is no reason why it cannot be accepted as reflecting the correct position.

(vii). The proceedings in this case have brought forth various vital issues which are to be settled before we proceed to fix ceiling rates for different services. The main issues relevant here are as follows:

- (a). Whether on boarding stevedoring charge is included in freight?
- (b). On board labour charges levied by the MBPT.
- (c). Recovery of ground rent.

These issues are dealt with in the following paragraphs.

(viii). The UNCTAD definition of 'Liner terms' says freight includes the cost of loading onto and discharging from the vessel. Based on this definition, the BCHAA has strongly argued that on board stevedoring cost for loading and discharging containers from the vessel cannot be a component of THC.

The document of P&O Nedloyds produced by the BCHAA also contains the same definition of 'Liner terms'. The MBPT has also endorsed the argument that on board stevedoring is a part of sea freight and not THC. The MBPT has explained that inclusion of this element of cost in its proposal is only in the light of the Lines refusal to accept its inclusion in freight. It is noteworthy that the IBPCC definition of THC does not include loading / unloading in the ambit of THC. In a representation filed by the MANSA about composite berth hire at the MBPT (which has been dealt by this Authority separately) it has clearly mentioned that freight under liner terms includes on board stevedoring.

The Karmahom Conference has, however, argued that the Trade does not pay liner freight so it cannot demand liner terms. It is relevant that the Karmahom Conference and the CSLA have not denied the UNCTAD definition of Liner terms. They have only argued that freight can be fixed other than on liner terms. The Karmahom Conference has also pointed out cargo can be accepted on Free In / Out (FIO) terms as well. The MANSA has, however, claimed that part of stevedoring cost is included in freight.

We do not find any reason why the universally accepted definition of Liner terms made by the UNCTAD cannot be accepted. A 'liner' is a vessel plying a regular trade / defined route against a published sailing schedule. All the container lines, or at least a majority of them, operate liners. There can be an argument that if FIO terms are prevalent, the charterer should have the freedom to arrange for loading / unloading containers. In that case, he will pay for terminal services direct to the service-providers and not to the Lines.

The BCHAA and the WISA have produced credible evidence to show that freight includes on board stevedoring. The Lines have only argued that freight collected by them is not on liner terms. This mere disclaimer cannot be sufficient to counter the strong arguments of the BCHAA & WISA, which relied on the definitions of an UN body, a leading Shipping Line and the IBPCC. Further, the BCHAA's claim that on-board stevedoring is included in the freight in case of break-bulk and this break-bulk is now containerised deserves consideration. The Lines have to prove with evidence that on board stevedoring cost is not included in their freight rates.

In view of the position explained above, it becomes clear that on board stevedoring cost is included in ocean freight. If it is reckoned within both freight and THC, it is only a double counting of same element. If this is allowed, it will only amount to unjust enrichment of the Lines. Since the THC is to be regulated where freight is not, it is reasonable to eliminate the cost of on board stevedoring from the stevedoring element of THC. That being so, on board stevedoring cannot be a component of THC.

(ix). The proposal of the MBPT to regulate THC stems from the need to increase its on board labour charges; and, its fear that such increase may result in steep hike of THC by the Lines. The on board labour charges are being levied by the MBPT. Legally, it cannot collect any charge not notified by the Authority.

The on-board labour charge relates to supply of erstwhile BDLB employees for on board work. The BDLB has been superseded; and, its employees have merged with the Port Trust. The MBPT has also admitted that the erstwhile BDLB employees, after their absorption in the Port Trust cannot go back to the DLB, even if that body is revived. This shows that the on board labour supply is done by the MBPT and the employees in question are MBPT employees. It is noteworthy that all employment schemes formulated by the erstwhile BDLB have been revoked. The mere fact that accounts are kept separately and the Chairman (MBPT) exercises the power of the erstwhile BDLB cannot be reasons for the MBPT to fix its own rate for supply of on board labour without the approval of this Authority. Legally, the Chairman (MBPT) representing the superseded BDLB is an entity with no employee. It cannot fix the rates for supply of MBPT employees for on board work.

We are inclined to accept the proposed revision of on board labour charges for the purposes of disposing of the THC proposal. The MBPT is, however, directed to come up with an appropriate proposal for fixing on board labour charges within three months from now. While formulating such a proposal for the consideration of this Authority, it will be worthwhile

for the MBPT to examine the possibilities of prescribing a 'per tonne' or per 'per TEU' rate instead of the traditional method of labour levy system.

Some of the major ports and even an existing DLB has already switched over to a per tonne rate for on board charges.

(x). The BCHAA, WISA and the CII have alleged that ground rent is collected by the Lines twice – once in the THC and again as a part of CDC. The Karmahom Conference has argued that ground rent has been split into two components and realised accordingly in THC and CDC. The position explained by the Karmahom Conference shows that the average dwell time considered by them is based on a period when the Mumbai Port as handling more than 5 lakh TEUs per annum and the congested facilities as a result of that. The position has drastically changed at least in the last two or three years, but still the Lines appear to be pursuing with an outdated average figure. The CSLA argument that the THC is an average cost and can vary between individual Lines cannot be accepted to mean that the average should be with reference to a peak extraordinary situation. The average needs to be reviewed periodically in the light of changing volumes and cost.

This Authority had already passed an Order on 12 May 2000 about regulation of Container Detention Charges (CDC). The proceedings in that case clearly showed that 'ground rent' was collected as a part of CDC. Since this Authority did not admit CDC for a statutory regulation, it observed that the double recovery of ground rent both in THC and CDC would be taken up as a part of regulation of THC by it. In the relevant Order, it was indicated that no ground rent would be admitted as a component of the THC if it is found to have been included as a component of the CDC. The MBPT, the BCHAA and the WISA have clearly brought out that ground rent is included in CDC. The Karmahom Conference has also admitted this position. That being so, as decided by this Authority earlier, ground rent need not be admitted as an element of THC. Since various service components of THC are regulated and CDC is not, it is convenient to monitor non-recovery of ground rent through THC.

The Karmahom Conference has mentioned that it has excluded the entire ground rent element from THC revised w.e.f. 4 Dec. 2000. This change made by the Lines is in right direction and also confirms the allegation made by the Trade bodies that this element has been double counted so far.

Eventhough CDC does not fall under the regulatory ambit of this Authority, it is to be noted that the Karmahom Conference has now revised CDC to prescribe only five free days from the day following the date of

landing of containers irrespective of the place of delivery. Earlier, the free period under CDC commenced from CY or nominated site. Considering the facts that the Vessel agents / Lines control movement of containers from pre-stack to CFSs and the MBPT follows General Landing Date (GLD) concept to levy storage charges, there is little justification to allow free time from the following date of landing irrespective of place of delivery. It has also to be stressed in this context that utilisation of the 'free time' shall commence only after the container reaches a delivery point.

(xi). The MBPT has given detailed reasoning for the proposed rates. The proposal has been circulated to all concerned for comments. Before the second joint hearing, all the user organisations have been specifically requested to comment on the reasonableness of the cost estimates made by the MBPT for different elements of THC. The Karmahom Conference mentioned at the joint hearing held on January 2001 that it would comment on the costings later but even four months thereafter, it has not furnished any comments. It is noteworthy that an opportunity has been given to everyone to comment on the cost estimates and no one has challenged them so far, except the BSA Ltd. about stevedoring cost. Stevedoring labour cost is that charge realised by the Port and hence we have no reason to reject Port's estimate on this account. The MBPT has given detailed logic of individual estimates and again we have no reason to reject them on our own.

(xii). It is relevant here to discuss the various elements of THC and the rates proposed by the MBPT therefor.

(a). Port related Costs

(aa). Ground rent : This item has already been exhaustively dealt with under sub-para (x) above. Since it is not to be a part of THC and the Karmahom Conference has already deleted it from the THC, no further discussion is necessary. The MBPT, however, proposed inclusion of this under THC. To this extent, the port's proposal is not accepted.

(ab). Wharfage on container (**not** containerised cargo): This will be levied as per notified Scale of Rates of the MBPT. This charge is denominated in US\$ terms. The argument of Karmahom Conference that THC requires frequent revision due to exchange rate fluctuations as a result of dollar denominated port cost is valid. The issue of dollar denomination of container charges, in general for all ports and in particular for the MBPT, needs to be analysed afresh and the existing practice requires to be reviewed. Since such a review will involve time and will have prospective application, it will not affect the instant proposal.

(ac). Shore labour charge : This charge is for the shore labour assigned for stuffing / destuffing at port CFSs. This charge is also to be realised as per the tariff approved in the Scale of Rates of the MBPT.

(b). Stevedoring Costs

(ba). On board stevedoring: The position with respect to this element of service has already been discussed in sub-para (viii) above. This element cannot be a part of THC. The MBPT is, however, to initiate immediate steps to include on board labour charges in its Scale of Rates.

(bb). Stuffing / destuffing: This represents cost for on-board (erstwhile BDLB) labour assigned for stuffing/ destuffing work at CFSs. This rate shall also be levied as per the tariff in the Scale of Rates. Till that happens, the rate proposed by the MBPT is approved as an interim measure.

(bc). Forklift charges: This charge is applicable only in case of LCLs stuffed / destuffed in port CFSs. The BCHAA has objected to this charge contending that forklifts are brought by Trade. The MBPT has, however, mentioned that the forklifts used is essentially a part of stevedoring gear and generally provided by Stevedores. The MBPT has also added that most of the time consignees bring forklifts and to that extent the stevedores need to reduce THC. So, this rate is approved subject to the condition that it is leviable only when the stevedore actually provides the forklift.

(c). Transportation Cost

The MBPT has considered only on way trip to workout costing eventhough logically it can consider two way movement – if not all 100% trips at least 60% of the trips. Fuel consumption rate estimated appears to be higher. Since cost per move has been worked out with reference to total cost and total moves, there appears no need to give any weightage to long trips and workout a higher rate for such trips. The Port has also allowed a 5% contingencies in the cost. The Karmahom Conference has pointed out Lift on / off charges are THC element but not proposed by the MBPT. The MBPT has clarified that he proposed transportation cost includes lift on / off charges. Eventhough the fuel price considered is Rs.17.04 per litre which has gone up since submission of the proposal, there is no need to revise the rates proposed by the MBPT in view of the inbuilt cushions available in the cost estimate as explained above. The rate proposed by the MBPT is approved. Significantly, the

transporters who participated in the joint hearings have also not objected to the rates proposed.

(xiii). As has already been mentioned, Customs related components in the THC do not come under the scope of regulation by the Authority. Eventhough the MBPT has covered most of the related items of THC, it appears from the arguments advanced by the BCHAA that at least the elements survey fee and documentation charges have not been considered by the MBPT for proposing ceiling rates. The BCHAA has clearly indicated that survey fee is borne by the Trade direct. The MBPT has also mentioned that there is no justification for levying survey fee on cargo being stuffed (into containers). In respect of break bulk cargo, both BCHAA and the MBPT have indicated that survey fee is collected as a part of sea freight and not separately. Similarly, documentation arises in the context of various terminal services. The charges for documentation are accordingly to be regulated. The MBPT has way back in January 1999 intimated the MANSA to levy documentation fee only with the prior approval of the Port. In the instant proposal, however, the port has not proposed any rate for this service. Since the examination of admissibility and determination of quantum of these charges will take sometime, we do not want to hold up the main proposal for such thing to happen. The MBPT is, however, advised to further examine these two charges and come up with an appropriate proposal. Till that happens, the existing position will continue.

(xiv). The MBPT has requested that there shall be an inbuilt mechanism to review rates periodically at least once in a year. From the foregoing analysis, it becomes clear that rates for most of the service elements of the THC are to be recovered as per tariffs in the MBPT Scale of Rates. With the tariffs for on board labour is decided to be included in the Scale of Rates, the transportation cost is the only major element, which will not be a notified item in the Scale of Rates. This Authority has prescribed a norm for estimation of costs for determining port tariffs and accordingly allows a two-year cycle of validity. That being so, the elements which are governed by Port's Scale of Rates will have a validity co-terminus with the Scale of Rates. In case of transportation, the MBPT may review the cost position annually and propose adjustment of tariffs. Since the 'on board labour charge' in the instant case is approved as an interim measure, it will have validity till this Authority approves a final rate for inclusion in the Scale of Rates of the MBPT, after considering a proposal to be submitted by the MBPT in this regard.

(xv). As has already been mentioned, the Karmahom Conference's argument about the need for frequent revision of THC due to dollar denomination of Port tariff is valid. Since these charges are to be

recovered through THC at the same rate approved in the Scale of Rates, the Lines may convert these charges into Indian Rupee at the time of billing based on the same exchange rate adopted by the Port for billing the Lines. This procedure appears to be reasonable when seen in the perspective that THC is a recovery of cost incurred by the Lines.

(xvi). The Karmahom Conference request to allow administrative cost and taxation also as element of THC, on the face of it, cannot be accepted. This Authority cannot prescribe any such rate under the given provisions of the MPT Act. The rates proposed by the MBPT, however, include provisions for items like 'contingencies', which take care of such factors.

(xvii). The Lines argument that the MBPT shall provide all terminal services or arrange such services cannot be accepted. Under the Act, a Port Trust can perform all the listed functions or it can authorise private operators to do them. Lines cannot force the Port to undertake all the services. When services are provided by the private (authorised) operators, service charges are payable to them direct and not to the Port Trust. The Port Trust cannot act as a collection agent. In any case, the MBPT has assured that it will organize the terminal services, if it becomes absolutely essential. We do not consider that prescription of a ceiling rate for different terminal services, that too as warranted by the relevant statute, can change the position altogether from the one existing now. We are sure that the service-providers will also realise that adhering to the legal prescription and the actions taken thereunder, is a basic condition for carrying on business at the Mumbai Port.

(xviii). The question of whether THC is market driven or to be regulated has been discussed and various arguments advanced by the different parties. This question itself is irrelevant. The law requires it to be regulated by the Authority. If they find necessary, the Lines should approach the Government for amending the law. Agitating this issue before the forum of this Authority is of no relevance. Likewise, the MANSA's explanation that THC is a negligible portion of the value of goods is also out of context.

17. In the result, and for the reasons given above and based on a collective application of mind, this Authority approves the following rates for the service providers authorised by the MBPT under Section 42(3) of the MPT Act subject to the condition that the MBPT will enforce these rate while authorizing them. As a result, these rates only can be realised at the maximum as elements of THC at the Mumbai Port.

Activity	Port CFS Stuffed / destuffed	Factory stuffed / destuffed
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	Import (FCL)		Export and Import (LCL)		Import		Export	
	20'	40'	20'	40'	20'	40'	20'	40'
<u>A. Port Related</u>								
1. Ground rent	Covered in CDC							
2. Wharfage	As per Scale of Rates							
3. On shore labour	As per Scale of Rates							
<u>B. Transportation</u>	2432	3905	2432	3905	1812	2825	1599	2558
(including 5% contingency)								
<u>C. Stevedoring</u>								
1. On board stevedoring	Covered in ocean freight							
2. Stuffing / destuffing* (including 5% contingency)	1241	2771	2846	6250	0	0	0	0
3. Forklift**	0	0	315	630	0	0	0	0
	1241	2771	3161	6880	0	0	0	0

* interim rate

** Only when forklift is actually provided.

(S. Sathyam)

Chairman

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