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Tariff Authority for Major Ports

G. No. : 131 **New Delhi, 28 August 2003**

NOTIFICATION

In exercise of the powers conferred by Sections 48 and 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal received from the Jawaharlal Nehru Port Trust for amendment to terms of Paved Area Agreement entered into between the JNPT and Consortia of Shipping Lines for handling and management of export containers in the designated yards allocated at JN Port as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports

Case No. TAMP/93/2002-JNPT

The Jawaharlal Nehru Port Trust (JNPT) ... Applicant

O R D E R

(Passed on this 11th day of August 2003)

This case relates to a proposal received from the Jawaharlal Nehru Port Trust (JNPT) for amendment to terms of Paved Area Agreement entered into between the JNPT and Consortia of Shipping Lines for handling and management of export containers in the designated yards allocated at JN Port.

2.1. The JNPT had leased out paved container yards to Safmarine Contship Consortium and the Shipping Corporation of India. The validity of their earlier agreements had expired on 31 March 2002. The Board of Trustees of the JNPT has decided to renew these agreements for a further period of two year with effect from 1 April 2002 as per the existing terms and conditions of the respective agreements. The JNPT has sought the approval of the Authority for certain amendments to the terms of existing agreements for implementation. The proposed amendments are briefly given below:

(i). The yard civil maintenance charge of Rs.2.60 per sq. mtr per month is proposed to be increased to Rs.3.60 per sq. mtr. per month due to increase in the execution cost of such work.

(ii). The dwell time charge levied as per the notified tariff is proposed to be waived.

(iii). Rebates are proposed to be offered on shutout charges levied as per the notified tariff since the port does not provide services towards lift on, lift off, transportation and yard planning activities. Initially, the JNPT proposed a rebate of Rs.800/- and Rs.1200/- for 20' and 40' export containers respectively and subsequently revised them to Rs.850/- and Rs.1275/-. The break up of the shut out charges recovered by the Port and the rebates proposed are furnished below:

(a). Shutout charges recovered

Sl. No.	Particulars	20' (Loaded / Empty)	40' (Loaded / Empty)
(a).	Lift on operation	Rs.400	Rs.600
(b).	Transportation of containers	Rs.500	Rs.750
(c).	Lift off operation	Rs.400	Rs.600
(d).	Yard planning and penalty charges	Rs.700	Rs.1050
	Total	**Rs.2000**	**Rs.3000**

(b).

Rebates proposed	**Foreign-going Vessel**	**Coastal Vessel**
For 20' container	US $ 17.50	Rs. 850/-
For 40' container	US $ 26.25	Rs.1275/-

(iv). Royalty at Rs.120/- per TEU for utilising the Safmarine – Contship Consortium yard for the export containers of M/s. Container Marine Agency (CMA) is proposed to be collected.

2.2. The above proposal has been approved by the Board of Trustees of the JNPT in its meeting held on 27 September 2002.

3. At the time of acknowledgement of the proposal, the JNPT was requested to furnish clarification / additional information on the following main points:

(i). Justification for the proposed rate of Rs.3.60 per sq. mtr. with reference to capital and maintenance cost of the concerned yard.

(ii). The reasons for restricting the proposed rebate in shut out charges to Rs.800/- per TEU.

(iii). Confirmation whether sub-letting is permissible under the Government policy on port land management.

(iv). The proposed rate of Rs.120/- per TEU appears to be a fee for storage of containers. The reasons for levying royalty and not licence fee for the area or dwell time charges on containers, as per the notified Scale of Rates.

4. In accordance with the consultative procedure prescribed, the JNPT proposal was forwarded to concerned user organisations for their comments. The comments received from them are forwarded to the JNPT as feed back information.

5. A joint hearing in this case was held on 23 April 2003 at the office of this Authority in Mumbai. At the joint hearing, the JNPT and the concerned users have made their submissions.

6. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details will also be available at our website www.tariffauthority.org.

7. As agreed at the joint hearing, the JNPT has furnished the following comments/ clarifications:

A. Dwell Time Charges

(i). The waiver of dwell time charges retrospectively with effect from 1995 is not acceptable as such charges were paid by M/s. Contship & M/s. Safmarine Container Lines as per the agreed terms and conditions.

(ii). The request made by the M/s. CMA regarding extension of waiver of dwell time charges to those lines to whom the usage of private yard has been subleased, is also not acceptable since such issues are dealt in accordance with the terms and conditions stipulated by the JNPT for sub-lease of private yards.

B. Maintenance Charges

(i). The collection of maintenance charges at Rs.2.60 per sq. mtr. per month is towards realisation of the port's investment in the development of such paved area.

(ii). The proposed increase from Rs.2.60 per sq. mtr. per month to Rs.3.60 per sq. mtr. per month is after considering maintenance cost per sq. mtr. For maintenance of container yards 40 mm thick asphaultic concrete (AC) is required to be laid. Relaying of AC will be required after three years. The rate for providing and laying 40 mm thick AC for per sq. mtr. will be Rs.129/-. Therefore, the maintenance cost per sq. mtr. per month will be Rs.3.60/- per sq. mtr. per month.

C. Rebate on shut out charges

(I). (i). Rates indicated in the original proposal for yard planning and penalty charges, in the break-up of shut out charges, are Rs.700 for 20' and Rs.1050 for 40' containers.

(ii). No specific rate is fixed for "yard planning" in the notified Scale of Rates. Based on experience, Rates of Rs.100 for 20' containers and Rs.150 for 40' containers are suggested.

(iii). Yard planning activity is carried out by private yard operator.

(iv). Private yard operator has suggested that the port may charge Rs.25 or Rs.50 for carrying out necessary amendments in their records as an administration charge for change of VIA for shut out containers. This suggestion may be considered for acceptance.

(v). Accordingly, it is proposed to consider a rebate of Rs.50 for 20' shut out container and Rs.75 for 40' shut out container handled in the private yard towards yard planning activity in addition to the rebates proposed for other activities earlier.

(II). (i). The notified consolidated charges for services rendered to containers & containerised cargo include stevedoring, use of transfer crane, use of gantry crane, wharfage on tare weight of containers, wharfage on containerised cargo, transportation and contribution towards Railway infrastructure. No separate provision is made towards Administration cost and supervision charges incurred by the port. The notified rate is deemed to include the cost attributable to Administration and supervision charges.

(ii). No separate rate is approved for Administration and supervision charges associated with transportation of containers from container gate complex to the designated yard operated by the private operator and management on gate complex in the container terminal.

(iii). The percentage of containers moved through (in and out) the container gate complex upto common yard or designated yard and *vice versa* accounts for 71.36% of the total traffic in the year 2002-03. The cost incurred by the port for management of gate complex and supervision of movement of containers between gate complex and container yards is currently considered and recovered as an element of shut out charges.

(iv). If the quantum of rebate offered is not considered by the Authority and the arguments advanced by the port customers are considered reasonable, it is advisable to discontinue the rebates stipulated for any vessels bringing more than 1000 TEUs in a single call to any consortium of shipping lines operating at JNPCT with paved area agreement and fixed window berthing agreement. This is suggested taking into account loss of revenue to the port on account of waiver of dwell time charges and shut out charges.

(III). The request of the CMA for extension of concession in shut out charges to the sub-lessees will be dealt with in accordance with the terms and conditions stipulated by the port for sub-lease of private yards.

D. <u>Royalty</u>

The proposal to collect royalty @ Rs.120/- per TEU for handling of export containers of other shipping lines or new services of consortium of shipping lines in the paved area leased by the port is as per the agreement as well as in line with the practice of collection of such royalty from the CWC for containers handled in port's CFS and Buffer Yard which has been approved by the Authority in its Order No. TAMP/1/97-JNPT dated 2 June 99. The Contship Container lines has proposed royalty of Rs.120/- for a 20' container and one and half times for a 40' container, which is normal tariff for the port i.e., Rs.180/- for 40' container. This proposal may be considered for acceptance.

E. Lease Rental Rate

The rate of Rs.21.30 per sq. mtr. per month is correct and is as per the corrigendum Order No.TAMP/3/2002-JNPT dated 19 February 2003.

8.1. With reference to the response of the JNPT on the comments of users, the JNPT was requested to furnish additional information / clarification on the following points:

(i). The estimate of expenditure on laying 40 mm Ac in the yard may be validated with reference to the expenditure incurred in the last five years. The details of expenditure actually incurred in this regard and the area covered in each of the years may be furnished.

(ii). (a). To justify that the proposed rebate on shut out charges commensurate with the services not provided.

(b). The linkage between allowing higher rebate for shut out containers and withdrawal of the existing volume incentive for vessels bringing more than 1000 TEU in a single call is not apparent.

(iii). (a). A comparative financial analysis may be made considering (i) revenue from the containers of sub-lessee with Rs.120/- per TEU (Rs.180/- for 40') as royalty; and, (ii) the revenue on such traffic that would have accrued to JNPT if the sub-lease is not permitted. From this analysis, it may be shown whether permitting sub-leasing will be financially beneficial to the JNPT.

(b). Though this may not be directly connected with fixing the rates, the JNPT may indicate the financial arrangement between the lessee and the sub-lessee. The benefits accruing to the original lessee due to the sub-leasing arrangement may also be explained.

8.2. The additional information / clarification furnished by the JNPT on the points raised by us are summarised and given below:

(i). Maintenance charge

The life of the hard surfacing is five years. The average maintenance cost of Rs.3.60 per sq. mter. per month has been fixed considering this total expenditure incurred for the area. Every year the expenditure may not be to the extent of Rs.3.60 per sq. mtr. per month. The average for the entire life of the paved area is taken.

(ii). Shutout charges

(a). Rebate of Rs.850/- and Rs.1275/- is proposed to be allowed on shutout charges. Thus, the shutout charges of Rs.1150/- and Rs.1725/- are proposed to be collected.

(b). These shutout charges include various cost elements like shutout penalty, fixed cost like depreciation, interest, administration and supervision charges applicable for lift on / off, transportation and container planning charges.

(c). As per current schedule of rates, handling charge for 20' loaded container is Rs.400/- and transportation charge is Rs.500/-. In case, port user deploys his own equipment for container handling and transportation, rebate of Rs.250/- and Rs.300/- respectively are to be provided by the Port as indicated in schedule of rates.

(d). The consolidated charges notified cover expenditure incurred on overall administration and supervision. Due to this reason, even if port user deploys his own equipment for 20' container, full rebate of Rs.400/- and Rs.500/- respectively are not considered in the notified Scale of Rates. Accordingly, it is reasonable to cover balance amount of Rs.150/- and Rs.200/- respectively towards fixed cost, administration and supervision charges for handling and transportation of 20’ container when the port has not rendered services for container handling and transportation in private yards.

(e). The yard operator carries out the yard planning activity for handling of export shutout containers handled through the private yard. However, the port has to amend its records for change in VIA for shutout containers and the port is required to monitor status of such containers till loading of the same on designated vessel. Thus, on account of container planning charges, it is considered reasonable to levy Rs.50/- and Rs.75/- respectively for 20’ and 40’ loaded/empty shutout containers.

(f). The cost break-up of shutout charges leviable for 20’ and 40’ loaded / empty export shutout containers handled through the private yards leased to the shipping lines is given below:

Sl. No.	**Cost elements**	**20’ loaded/ empty (in Rs.)**	**40’ loaded / empty (in Rs.)**
1.	Shutout penalty, Administration & management of Gate complex, supervision of movement of containers from gate complex to private yards.	600	900
2.	Fixed cost, Administration & supervision charges on lift-on operation of containers in private yard	150	225
3.	Fixed cost, Administration & supervision charges on transportation of containers through private yard	200	300
4.	Fixed cost, Administration & supervision charges on lift-off operation of containers in private yard.	150	225
5.	Container planning charges	50	75
	Total	**1150**	**1725**

(iii). <u>Withdrawal of volume discount</u>

The details in respect of total dwell time charges collected, total shutout charges received and total volume rebate given by the port to the shipping lines during the financial year 2002-03 vis-à-vis dwell time charges, shutout charges and volume rebate on account of vessels handled by shipping lines through private yards is given below of ready reference:

<u>For the Financial year 2002-03</u>

Total Dwell time charge earned on export containers by JNPT **Rs.8,39,40,047/-**	Dwell time on A/c of 1,71,229 export containers handled through private yard **Rs.1,99,60,321/-**	% w.r.t. total dwell time charge **23.77%**
Total shut-out charges recovered by JNPT on export containers is **Rs.2,36,20,206/-**	Shutout charges on A/c of 1,71,229 export containers handled through private yard **Rs.1,65,92,136/-**	% w.r.t. total shutout charge **70.24%**
Total volume rebate given by the port to shipping lines **Rs.7,14,42,978/-**	Volume rebate on A/c of vessels handled through private yards for 3,12,125 TEUs **Rs.5,41,58,204/-**	% w.r.t. total volume rebate **75.80%**

The loss of revenue arising due to (a) waiver of dwell time charges on containers handled by shipping lines through private yards; and, (b) by allowing higher rebate on export shutout containers handled through private yards is a matter of concern for the port. In view of substantial increase in fuel cost for RTGC and the 6% annual price escalation payable for leased RMQCs, RTYGCs and RMGCs, the port has proposed to discontinue the volume rebate scheme. It is relevant to indicate that the average parcel size of vessel operated by shipping lines through private yards has substantially increased from 1,192 TEUs in the year 1997 to 2,979 TEUs in the year 2002-03. Therefore, it may not be necessary to continue volume rebate in future.

(iv). Royalty:

(a). Net income to the port for a normal 20' export TEU will be Rs.2349/- in case sub-lease is permitted and it will be Rs.2294/- in case the same is not permitted by the port.

(b). As the port has not yet given approval in the instant case, the port is not aware about the financial arrangement between the lessee and sub-lessee. The original lessee has to incur fixed cost to mobilise yard equipment for handling of containers within the same allotted area, on rentals of leased area and yard planning and management. By handing containers of sub-lessee, these fixed costs get proportionately distributed over total containers handled within the same allotted area, which gives financial benefits to the original lessee.

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

(i). The JNPT follows a practice of leasing its container yard to shipping lines / consortium of shipping lines for their exclusive use of storing / exporting containers. Such allotments are governed by separate lease agreement; but, recovery of charges are generally governed by the notified Scale of Rates. The JNPT has already extended the lease agreements for a period beyond 1 April 2002 in respect of some of the lessees. The Port has, however, proposed revision in some of the terms of the lease agreement and also the quantum of royalty to be levied in case of utilization of the leased yard by some other third party. Generally, the amendments proposed are to provide relief to the lessees. The proposed amendments are analysed item-wise in the following paragraphs.

(ii). Maintenance Charge

(a). The JNPT has proposed to increase the yard maintenance charge from the existing level of Rs.2.60 per sq. mt per month to Rs.3.60 per sq. mt. per month. Increase in the maintenance cost is shown as the main reason for the proposed increase. The users have vehemently opposed this proposal. The Port has initially, after being asked to furnish cost justification towards its proposal, provided a rough estimate of the cost of laying 40 mm thick A.C. surface and indicated the life of the surface once laid as 3 years. Since this estimate is not validated, the JNPT was asked to furnish the details of actual expenditure of maintenance of the private yards in the last 5 years. This information has not been furnished by the JNPT. It has only stated that life of A.C. surfacing is 5 years and maintenance cost is determined based on average cost of maintenance. Since the absolute total cost is not available, it is difficult to accept the port's estimate of average cost. Not only the port's estimate is not validated but also it is wavering since without citing any reason the port has subsequently revised the life of AC surface to 5 years from the original position of 3 years.

(b). No cost details are furnished to justify the proposed rate of maintenance charge; and, a mere statement that the rate has been fixed by the port considering average cost is not sufficient to approve a tariff increase. There does not, therefore, appear to be any case for increasing the yard maintenance charge to Rs.3.60 per sq. mt per month.

(c). As a matter of fact, the existing rate of Rs.2.60 per sq. mt per month itself is not a rate approved by this Authority. The JNPT has, however, cited an approval accorded by this Authority in the buffer yard case. It is noteworthy that this Authority's order in the buffer yard case approves only the rates for movement of containers and lift to lift operations at the JNPT buffer yard. The maintenance cost of Rs.2.60 per sq. mt and royalty of Rs.120 per TEU payable by CWC to JNPT for buffer yard operations are only indicated by the JNPT in that proceedings. This cannot be taken as an incidental approval of this Authority to the rates which are perhaps flowing from an agreement between the JNPT and CWC. It is noteworthy that the maintenance charge of Rs.2.60 is perhaps the prevailing rate which was agreed and paid by the private yard lessees to JNPT by mutual agreement during the previous lease period.

(iii). <u>Lease Rental</u>

The notified Scale of Rates of the JNPT prescribes lease rental for the lands in question. There were some confusion about the application of annual escalation to the base lease rent rate. This Authority has already issued a corrigendum on 8 July 2003 setting out the correct date for applying the annual escalation of 5%. The lease rentals payable by the lessees of the private yard will be governed by the notified Scale of Rates of the JNPT.

As per the approved Scale of Rates and applying the approved escalation factor, the lease rentals payable by the lessees of the private yard will be Rs.21.30 per sq. mtr. per month for the period 1 April 2002 to 31 March 2004

(iv). <u>Waiver of dwell time charges</u>

(a). As per the existing arrangement, even on the containers stored in the leased private yard, dwell time charges for storage are levied in addition to lease rentals. Such an arrangement was earlier prevalent in case of the area leased for storage of motor cars. At the time of the last general revision of the Scale of Rates of the JNPT effected in September 2002, this Authority held that charging of lease rentals and in addition dwell time charges for storage of motor vehicle, even in the leased area, would amount to double recoveries. The Scale of Rates was, therefore, amended to eliminate the incidence of double recovery by deleting the provision of levy of dwell time charges of motor cars stored in the leased area. The JNPT has now proposed to extend this principle in the case of containers stored in the leased private yard.

(b). There is an argument that this principle should be extended retrospectively to eliminate double recovery made in the past. It is noteworthy that the earlier lease agreements provided for recovery of both lease rental and dwell time charges. There does not appear to be any justification for retrospective tinkering with the agreement earlier signed with the mutual consent of both the parties. That being so, the proposal for the waiver of dwell time charges will have only prospective effect. As a matter of fact, in the case of motor cars also levy of dwell time charges was discontinued with prospective effect.

(v). <u>Rebates in shut out charges</u>

(a). The notified Scale of Rates of the JNPT prescribes a consolidated shut out charge. This charge is presently being levied even on export containers from the private yard which are shut out. Even though no break up of the consolidated shut out charge has been indicated in the Scale of Rates, the

JNPT has attempted to split the consolidated charge into four sub-items. It is noteworthy that the users have only objected to the rebate proposed to be allowed on some of the sub items which are not performed by the JNPT but have not questioned the break up of the consolidated charge derived by the JNPT. Though no cost details are available to justify the derived rates for these sub-items, the approach adopted by the JNPT is found to be reasonable.

(b). The users have demanded complete waiver of shut out charges since the JNPT does not provide any services to the shut out containers of the private yards. It has to be recognised that shut out of cargo / containers affects not only the planning of vessels but also that of the port. As a deterrent, it may not be unreasonable for a port to levy a penalty charge and yard planning charge for containers. The JNPT has, however, subsequently agreed to allow a further rebate of Rs 50 per TEU towards yard planning. Since penalty charge can not have any connection with the services provided or not provided, the rate for the sub item penalty and the residual portion of yard planning may be retained by the JNPT out of the consolidated shut out charge leviable from the shut out containers of private yards.

(c). The other three components of shut out charge are lift on, lift off and transportation of containers. In its own admission, the JNPT does not carry out any of these activities in respect of shut out containers of private yards. In view of this position, the users have demanded complete waiver of charges for these sub items. The JNPT has, however, proposed to allow rebate for these sub - items as per the existing rebate structure approved in its Scale of Rates which are lower than the rates for these sub items as per the break up derived by the JNPT. There appears some force in the JNPT's arguments that each of the consolidated rates contained provision for recovery of its fixed overhead and other administration and management charges. Since no cost analysis is available, the quantum of such fixed overhead included in each of the tariff items cannot be easily verified. For verification of such cost details, a complete analysis of the finance and cost position of the port is necessary which is generally carried out only at the time of general revision of tariffs. When the last general revision of the JNPT tariff was carried out in September 2002, all major users of the port were consulted and there was no serious objection to the existing rebate structure prescribed in the Scale of Rates. Further, if complete waiver of the rate is allowed for the containers of private yards, it will have repercussions on containers handled elsewhere in the port. Modification of the rebate structure at this stage will, therefore, affect the financing model considered at the time of the last general revision of the Scale of Rates of the JNPT. As has been mentioned earlier, an analysis to find out whether the rebate proposed to be allowed commensurate with the direct cost of the service not rendered is difficult to be made in isolation only with reference to shut out containers of private yards. It can be conveniently done at the time of the next general revision of the Scale of Rates of the JNPT. Till such time, the prevailing rate structure approved in the existing Scale of Rates of the JNPT may apply for the three sub items of services not provided by the JNPT in respect of the shut out containers of the private yard.

(d). The JNPT has mentioned about the withdrawal of the volume discount scheme already available in the Scale of Rates. This is not an issue under consideration in the present proposal. There is no justification given to discontinue the existing scheme with an analysis of the change in the traffic volumes. In any case, the volume discount scheme is applicable not only to the private yards but also to containers handled elsewhere at the JNPT. There is no justification to withdraw the existing volume discount scheme to offset revenue loss on account of waiver of dwell time charges and rebate on of shut out charges in respect of containers of private yard.

(e). The consolidated shut out charge is a dollar denominated tariff item. For the purpose of dollar denomination, the then existing exchange rate prevailing at the time of the last general revision was adopted. Since the rebate structure is only in rupee term, it is now necessary to prescribe the quantum of rebate also in dollar terms in respect of three specific sub items discussed earlier. For the purpose of prescribing rebate in dollar term, the exchange rate adopted earlier for prescribing the base rate is to be applied; otherwise, there will be a mis-match while allowing rebate in rates denominated in dollar terms and those denominated in rupee terms.

(f). One of the main factors weighing in favour of allowing private yards is improvement in operational efficiency. From the details furnished by the JNPT, it is clear that about 70% of the total shut outs arises from the private yards. In the absence of an analysis of reasons for shut outs furnished, we are unable to understand how private yards have added to efficiency. In any case, it cannot be denied that shut out cost is a cost incurred due to inefficient operation, faulty planning, etc., which is to be avoided. It will be appropriate for the JNPT to examine this issue further and take corrective measures.

(vi). <u>Royalty</u>

The JNPT proposes to permit the existing lessee to allow storage of containers of some other third party in the leased yard. The arrangement envisaged is for sharing of the precious operational area of the port and it does not appear to be a transfer the leased yard to a third party by way of sub lease by the original lessee. It is quite evident that the original lessee and the third party which may opt for this arrangement will also have benefits accruing to them; otherwise, they would not have opted for such an arrangement. In this backdrop, it does not appear to be unjustified on part of the port to permit an existing lessee to allow storage of containers of a third party and levy a royalty therefor.

It is obvious that the original lessee will levy some charges from the third party which uses the leased area. The JNPT has stated that the details of such transactions are not available with it. It is also not clear at this stage whether the services provided by the original lessee at the leased yard will be covered by the services identified u/s 42 of the MPT Act and whether the original lessee will qualify as the authorized service provider under that provision of the MPT Act. This issue may further be examined by the JNPT and if the conditions stipulated in Section 42 of the MPT Act are satisfied in this case then it may propose fixation of suitable ceiling rates tariff leviable by the original lessee for the services provided at the private yard of the JNPT.

The details furnished by the JNPT to justify the quantum of royalty proposed at Rs.120/- per TEU are found to be incomplete. The JNPT may further analyse the benefits accruing to it and the third party using the private yards and submit a suitable proposal for fixing the quantum of royalty.

In this backdrop, this Authority approves in principle the proposal of the port to sub lease the private yards for stacking of containers of a third party and levy of royalty for allowing such arrangement. The quantum of royalty will, however, be fixed when the port submits a well analysed proposal.

(vii). The Paved Area Agreements were due for renewal on 1 April 2002. It was not clear from the proposal whether the proposed amendments to the terms and conditions of licencing paved area are sought to be included retrospectively from 1 April 2002 for the renewed period. The JNPT has subsequently confirmed that the proposed amendments would be incorporated in the agreements with prospective effect only. Significantly, the concerned Lessees have also not prayed for any retrospective amendment. From the copies of correspondence made available by the JNPT, it becomes clear that the private yard operators have agreed for renewal beyond 1 April 2002 on the existing terms.

(viii). Generally, the major port trusts are to levy charges at the rates fixed by this Authority. In order to provide level playing field between major ports and private terminals in the matter of flexibility in charging rates, it may be useful if the rates fixed by this Authority are notified as ceiling rates in the case of major port trusts also. A beginning at the JNPT in this direction can be made from this case and the shallow draught berth case, which has also been decided today. This Authority approves the rates leviable in this case as ceiling rates and the discounts / rebates to be offered as floor level. The JNPT, if necessary, can operate at reduced level of rates and/ or allow rebates / discounts at higher level. While doing so, the JNPT must ensure that it recovers at least operating costs from this activity.

10. In the result, and for the reasons give above, and based on a collective application of mind, this Authority decides the following:

(i). To reject the proposal to increase the yard maintenance charge from Rs.2.60 per sq. mtr. per month to Rs.3.60 per sq. mtr. per month.

(ii). To approve the proposal for not levying dwell time charges in respect of the containers stored in the private yards.

(iii). To approve the following rebate in the consolidated shutout charges leviable on shut-out containers of private yards.

	20' containers	**40' containers**
Coastal vessels	Rs.850/-	Rs.1275
Foreign-going vessel	US $ 17.50	US $ 26.25

(iv). To approve in principle the proposal of the JNPT to collect a royalty when containers of a third party are stored in the leased private yards. The JNPT is advised to submit a suitable proposal for fixing the quantum of royalty.

(v). The prescribe that the approved rates will be the ceiling rates and the discount / rebate will be floor levels. The JNPT is at liberty to levy rates below the ceiling level and / or allow rebates / discounts at a higher level, if necessary, subject to ensuring that at least operating costs are recovered after allowing concessions at higher levels.

(A.L. Bongirwar)
Chairman

SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY

F. No. TAMP/93/2002-JNPT - **Proposal received from the Jawaharlal Nehru Port Trust for amendment to terms of "Paved Area Agreement" entered into between the JNPT and Consortia of Shipping Lines for handling and management of export containers in the designated yards allocated at JN Port.**

The comments received from the port users / representative bodies of port users are summarised below:

The Shipping Corporation of India Limited

(i). The port is not undertaking any maintenance work in the Private Yards and have enough reserve funds available with them from the money so collected from the members of the private yard and not used for any maintenance purpose. There is no justification to increase the yard maintenance charge from Rs.2.60 to Rs.3.60 per sq. mtr. per month. The port is also maintaining the common yard area, but it has not increased any maintenance cost for these common yards.

(ii). We welcome the proposal to waive the dwell time charges.

(iii). Since the port does not carry out yard planning for private yards, the rebate should apply to yard planning also. The port should have proposed for complete waiver of shut out charges.

(iv). The notified rate for developed space inside the port has been fixed as Rs.16 per sq. mtr as on March 1997, to be increased by 5% every year. It is, therefore, the applicable rate works out to Rs.20.40 and not Rs.21.30 as proposed by the Port.

Mumbai and Nahva-Sheva Ship-Agents' Association (MANSA)

(i). The port should provide details of maintenance provided for Rs.2.60 per sq. mtr. per month and the details of maintenance proposed to be provided for Rs.3.60 per sq. mtr. per month.

(ii). We welcome the proposal to waive the dwell time charges.

(iii). In the event the functions for the shutout containers are performed by the respective consortia then there is no justification for JNPT to hold back shut out charges for themselves. The port should render service for any collection of money.

(iv). The port should elaborate the basis of charging Rs.120/- per TEU as royalty and what is the equivalent service they contemplate to provide either to the CMA or to the consortium in general.

M/s. Container Marine Agencies Private Limited

(i). Proposal for increase of maintenance charges for the paved container yard is not justifiable. The users of the general yard are not affected by this increased cost. It is discriminatory to increase cost only for the private paved yard users.

(ii). We support the proposal to waive the dwell time charges.

(iii). The JNPT does not perform any of the four operations in connection with the shut out containers. There should be a complete waiver of shut out charges to those who use leased yard. The rebate should also be extended to those lines for which the usage of the yard has been subleased.

(iv). The CMA - CGM / Super Galex Consortium proposal to use one of the already leased paved container yard was in view of their limited volume and consequent high cost per TEU by leasing another paved yard from the port and employing equipment on it. The JNPT charging any royalty is double recovery and amounts to profiteering.

M/s. Contship Containers & Safmarine Containers Liens

(i). The JNPT has been charging maintenance charges over and above the lease rental for the yard. The Port has not justified with evidence of any maintenance carried out that requires additional charges. There is no justification for even Rs.2.60 being presently charged by them.

(ii). We welcome the proposal to waive dwell time charge. The waiver should be with retrospective effect from 1995.

(iii). In respect of shut out containers in the private yards, the Port is in no way involved in the planning of containers. Therefore, there is no question of charging for yard planning and penalty charges. They could charge a nominal amount as administrative charge for rectifying their computerised records.

(iv). The royalty should not be restricted only to the CMA proposal but as a general case where the private yard is handling container of other lines with the Port's permission.

The Container Shipping Lines Association (CSLA)

(i). Till date the port has not done any maintenance in the paved yard. The port also maintains the common yard area, but the port is not increasing maintenance charges from the lines using these common yards. No financial statement is furnished to support that there is deficit under this head for private yards which warrants an increase as per the cost plus model.

(ii). We support the proposal to waive dwell time charges.

(iii). In connection with shutouts, if the port is not involved in any activity as outlined in the break up of the shut out charges, no shut out charges should be applicable.

Waiver should also apply to the containers which undergo VIA change as the entire physical operation & planning associated by the renomination is performed by the private yard itself.

(iv). The concept of asking for royalty on handling of containers for other consortium service is reasonable. As the basis for setting the figure of Rs.120/- per TEU has not been set out, it is not possible to comment on the rate.

2. A joint hearing in this case was held on 23 April 2003 at the office of this Authority. At the joint hearing following submissions were made:

Jawaharlal Nehru Port Trust

(i). Explained all the 4 components of the proposal.

(ii). The existing yard maintenance rate of Rs.2.60 was approved by TAMP in the ‘Buffer Yard’ case.

(iii). We will give detailed justification for recovery of Rs.1200/- on shutout container.

(iv). Our computer system is expensive. We have to recover its maintenance cost from all containers.

The Shipping Corporation of India Limited

(i). JNPT does no maintenance in the area allotted to us. There is no justification even for the existing maintenance charge.

(ii). In shut out containers, JNPT does not do yard planning. So, they should give discount.

(iii). JNPT proposes to levy illumination charges. Where is TAMP’s approval for this?

M/s. Contship Containers & Safemarine Containers Lines

(i). When a container handled in our yard is shut out, it does not move out of our area. Why should JNPT levy anything for shut out ?

(ii). We welcome the royalty proposed by JNPT.

(iii). Why should a separate charge for illumination? Like all other boxes, it should be seen to have been covered in the handling charge.

M/s. Container Marine Agencies Pvt. Ltd.,

Why should port charge royalty? After all, lease rent for the area is paid.