(Published in Part - III Section 4 of the Gazette of India, Extraordinary)

TARIFF AUTHORITY FOR MAJOR PORTS

G. No. 141 **New Delhi, 16 September, 2003**

NOTIFICATION

In exercise of the powers conferred under Section 48 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal of the Mumbai Port Trust for fixation of rates for providing stevedoring services as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/89/2002-MBPT

The Mumbai Port Trust - - - - **Applicant**

ORDER

(Passed on this 10th day of September 2003)

The Mumbai Port Trust (MBPT) has submitted a proposal for fixation of rates for providing stevedoring services taken over by it.

2.1. The MBPT has made the following main points in its proposal:

(i). An analysis of the reasons for decline in cargo traffic at the Mumbai Port has revealed that the cargo handling operations are fragmented involving multiple agencies which contributes to high handling cost.

(ii). Presently, private stevedoring companies are licensed under the MBPT (licensing of stevedoring) Regulation, 1978 to carry out the stevedoring operation, for all type of cargo / container handled at the docks using the workers of the Dock Labour Board. With the absorption the Dock Labour Board workers in the MBPT, the stevedores are required to deploy workers from the MBPT on a day-to-day basis on recovery of charge therefor.

(iii). With a view to streamline on-board and shore cargo handling operations and to ensure that the workers are paid their legitimate dues in time and to enable the efficient management of port labour force, the Board of Trustees of the MBPT decided to take over the stevedoring operations from 1 November 2002.

(iv). For fixation of rate for stevedoring services, discussions were held with the vessel agents and details of the rates charged were collected from them. Rates worked out for various cargoes considering actual cost of labour, gear, etc., were compared to the prevailing rates collected by the vessel agents.

(v). Cost based rates were found to be much higher than those presently levied by the stevedores. Since the main purpose of taking over stevedoring operations is to reduce the cost of handling with integration in cargo handling operations and gainful utilisation of its manpower, the rates cannot be higher than those being presently charged.

2.2. In this backdrop, the proposed stevedoring rates have been worked out considering the middle point of the rates levied by the erstwhile stevedores or the average rates in some cases. A comparative statement showing the stevedoring rates for different types of cargo as furnished by the vessel agents and the basis of the proposed rates has also been furnished. The highlights of the proposal are as follows:

(i). The proposed rates include supply of gear charges for labour supervision, excluding transportation charges.

(ii). A rebate of Rs.30/- per TEU is proposed for lashing and unlashing work done by the vessel agent as applicable at the JNPT.

(iii). In case a vessel agent utilises his own gear for loading / unloading, stuffing and de-stuffing operations, a rebate equivalent to the rate at which the corresponding equipment is hired by the port is offered.

(iv). The Chairman (MBPT) is authorised to include rate for any other commodity, if found necessary.

(v). To review the proposed rates after one year based on the experience gained by the port.

(vi). Traffic growth of 5% is forecast with the proposed change.

2.3. The proposal has been endorsed by the Board of Trustees of the MBPT in its meeting held on 8 October 2002.

3.1. The proposal was discussed in a meeting held on 28 October 2002 at the MBPT premises. The MBPT officials and representatives of the SCI were present. The MBPT has submitted a written submission clarifying the following points:

(i). (a). The income from cargo handling activity with the present system of levy of Rs.630/- per labour shift plus piece rate at actuals and supervision charges at wage plus 187% levy works out to Rs.59.70 crores for the year 2001-02 as against operating expenditure of Rs.78.36 crores (excluding the expenditure on pension, gratuity and PLB payment).

(b). With the proposed rate including income from supply of gears, the deficit for this activity will drop to Rs.6.82 crores as against Rs.15.70 crores reported for the year 2001-02.

(ii). A few modification / corrections in its earlier proposal have been made which are summarised below:

(a). The unit of levy of on-board stevedoring charges on container is corrected from per TEU basis to per box basis.

(b). A specific rate for handling oil cake is incorporated in the revised proposal; a separate rate of Rs.107/- PMT is proposed for supply of labour for loading and filling food grains and pulses.

(c). A quantum of rebate for supply of gear has been proposed after negotiation of offers received from the suppliers for this purpose. It has sought approval of these rebates as 'upper limits' since hire charges may reduce further after negotiations with gear-suppliers.

3.2. The Shipping Corporation of India Limited (SCI) has also filed written submission arguing that the stevedoring rates should also take into consideration other elements of the package like productivity, third party liability, credit facility, etc., which are presently provided by the private stevedores. It has also agreed to submit a detailed comparison of the existing package and the proposed new package for the various items.

4.1. Since the MBPT proposed to commence the stevedoring service from 1 November 2002, at the request of the port, this Authority had passed an Order on 29 October 2002 according adhoc approval to the proposed stevedoring rates for a period of 3 months to be effective from 1 November 2002.

4.2. Since the case had not yet matured for a final decision in view of the action pending on the part of the MBPT and the users, the adhoc rate approved by this Authority were extended a couple of times. The validity of adhoc rates approved vide our Order dated 29 October 2002 has finally been extended till 31 August 2003 or till fixation of final rates, whichever is earlier.

5. In accordance with the consultative procedure adopted, the MBPT proposal was forwarded to concerned user organisations for their comments.

6. Joint hearings in this case were held on 8 January 2003, 24 April 2003, 3 July 2003 and 14 July 2003 and a personal hearing was allowed to the BSAL on 27 January 2003 in the presence of the MBPT officials. At the joint hearings, the MBPT and the concerned users have made their submissions.

7. 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 are also available at our website www.tariffauthority.org.

8. In response to the comments/written submission filed by the users, the MBPT has furnished its comments. Some of the main points made by the MBPT are summarised below:

On the comments of the MANSA and CSLA

(i). None of the vessel agent has forwarded any documentary evidence to verify the details of services covered in the stevedoring rates offered by their stevedoring agents.

(ii). Overtime allowances will not be charged separately. Other services such as supply of forklifts on board the vessel, special tally, insurance, if any, are value added service and cannot form part of stevedoring rates.

(iii). It has already been decided to extend the rebate in lashing/unlashing on total boxes loaded/discharged.

(iv). The rates fixed for stuffing/destuffing are inclusive of labour, supervision and documentation. Provision of forklift for stuffing/ destuffing operation by the erstwhile stevedores was a value added service. Notwithstanding this, the users have been informed about the names of forklift operators for supply of forklifts at the most competitive prices to ensure smooth operations.

(v). The MBPT has to maintain a large labour force for deploying work on board the vessel. The salaries and wages to these labour which is maintained purely for the benefit of vessel agents are payable even if they remain idle.

(vi). The recovery of wage plus levy at 187% of the wages is done as per the terms of Memorandum of Settlement (MOS) dated 24.7.2000 entered into between the BSAL, Transport and Dock Workers Union and the port. That MOS has no connection with the instant proposal. As per the clauses of MOS, the cost of maintaining the supervisory staff and allied workers was the responsibility of erstwhile stevedores. The port will have to recover the operating expense like wage of workers and supervisory staff from the stevedoring rates – albeit without increasing the rates as such. Other elements like administrative expenses, welfare medical, etc., have not been taken into account. The proposed rate may not even cover the mere operating expenditure.

(vii). Labour charges for stuffing / de-stuffing and gang idle charge / charges for cancellation of gangs are levied as per the Docks Scale of Rates (DSR). Overtime charges for on board labour are, however, not billed to the Vessel Agents. The fixation of stevedoring tariff is not to be linked to any other charges otherwise payable by the Agents as per the DSR. In any case, the Agents were paying the same tariff even during the existence of the then stevedores. In due course of time, however, all these rates will be merged and formulated into one single rate.

(viii). It has reiterated that mechanism is being developed to adjudicate the claims arising out of damages and to settle the same wherever negligence on the part of the port labour is found in course of the stevedoring operations. Despite repeated requests, none of the stevedores/agents have produced any document or agreement entered into for settlement of claims and the mechanism developed by them or any document as to how claims were settled / resolved earlier.

(ix). Various measures have been initiated to rationalise the piece rate scheme.

(x). The gangs are booked as per the agreed manning scale with the Union. The rate is fixed on per tonne basis, irrespective of the number of workers deployed. There are no standby gangs kept as such and the deployment of labour is done based on advance planning for cargo operations. If the actual manning were considered, the cost of operation would have been much higher. The issue about idle gang charges is being examined the impact will, however, be negligible.

(xi). Certain ancillary functions such as making payments for Customs overtime, filling of Export General Manifest (EGM), etc., are mainly the responsibilities of the Vessel Agents under the Customs Act. The ex-stevedores, were carrying out these documentation work as value added services. It has prescribed lower rates or midway rates for rendering stevedoring services and hence the ancillary work as stated by the MANSA cannot be rendered by the port.

(xii). As a general principle, stevedoring implies activities to be performed on board till the sling is brought on shore(wharf) in case of imports and while manoeuvring and taking the sling over the ship's side into hold in case of exports. It also perhaps includes related data submission to the vessel agents/Lines. The functions likely to be performed by the port as stevedore were already clarified to the MANSA during the meetings held earlier. It is, therefore, incorrect to include all other value added services provided by individual stevedores in the same stevedoring rates.

(xiii). The port is not cross-subsidising stevedoring rates of some cargoes. In fact, the BSAL have filed a Writ Petition in the Mumbai High Court to bring a stay on the Port's taking over the stevedoring activities, however, they couldn't succeed in bringing the stay.

<u>On the comments of the BSAL</u>

(i). The productivity achieved by it after taking over the stevedoring is consistently on the higher side. To substantiate the position, a statement showing the improvement in the productivity after the port taking over the stevedoring operations have been furnished. This has lead to an over-all reduction in the cost of cargo operations.

(ii). The pool fund is not in surplus as averred by the BSAL.

(iii). The views of the BSAL should not be taken into account since it is not directly or indirectly affected by the proposed rate.

9. In response to the MBPT's objections to consider the views of the BSAL, the BSAL has pointed out that since the licences of stevedoring agents were terminated by the MBPT with an intention to bring down the stevedoring rates, it is certainly entitled to point out to the TAMP if the port proposes a rate higher than the rate charged by the erstwhile stevedores. It has requested this Authority to direct the MBPT to discuss the various issues with it and come to an agreed point as decided in the joint hearing.

10. As decided in the joint hearings held in this case, the MBPT and the concerned user organisation were requested to take action and furnish information on the various points. Some of the main issues are summarised below:

<u>Information/ action by the Mumbai Port Trust.</u>

(i). To review the rates proposed for some of the commodities like project cargo, wheat, etc.; furnish details of rebates allowed and examine the users demand for supply of forklift and for providing comprehensive services upto CY.

(ii). A detail analysis of cost to users prior to and after it taking over the stevedoring operations; also, circulate these details to the concerned users for their comments.

(iii). Subsequently, based on the calculations furnished by the MBPT vide letter dated 10 June 2003 and 26 June 2003, the MBPT was again requested to furnish a detailed working of cost of rendering service for individual commodity to the MANSA(as decided in the joint hearing held on 30 June 2003).

(iv). To certify that the cost calculations furnished are based on actual cost incurred and not based on notional costs.

(v). Examine the possibility of reduction in the proposed rates with reference to items for which the proposed rates are higher and also furnish the financial implications thereof.

<u>Information/further action from the concerned users:</u>

(i). The MANSA and the MBPT were requested to sit together and verify the cost details and the MANSA to furnish specific comments, if any on the same.

(ii). The MANSA was advised to furnish its written submission on the cost calculation of the MBPT reportedly verified by it.

11.1. With reference to the various points decided in the joint hearing, the MBPT has forwarded the following information:

(i). Detailed analysis of cost to users prior to and after taking over the stevedoring operations has been furnished**.** Some of the main points made in the written submission are summarised below:

(a). The cost of service has been arrived at based on actual deployment of labour and supervisory staff for providing stevedoring service for the period November 2002 to 31 March 2003 for each of the commodities.

(b). The stevedoring rates proposed (subsequently) exclude cost for supply of gear.

(c). Comparison of the proposed rates with the actual cost of providing the stevedoring service and the cost to the vessel agent prior to it taking over the stevedoring operation indicates that the port incurs loss for majority of cargo except for a few commodities like dry bulk (export), mixed general cargo (imports) and charges for handling, stuffing / destuffing containers.

(d). The charges proposed for mixed general cargo, project cargo / machinery (import), steel coil (Export),general cargo, oil cake in bulk, dry bulk and container handling, stuffing/destuffing are higher as compared to the charges payable as per the earlier system.

(e). EX-BDLB has incurred an operating deficit of Rs.24.21 crores for the year 2002-03. Even the operating wages of the on board labour, supervisory staff and allied staff could not be recovered. An expenditure of Rs.5.76 crore has been incurred more than its income for the period 1.11.2002 to 31.3.2003.

(ii). The stevedoring rate for wood pulp is included in the mixed cargo and rate of Rs.117 per tonne is being levied. The actual cost of handling wood pulp is, however, Rs.72.28 per tonne and with escalation factor it works out to Rs.82.67 per tonne. Since, it is a high productivity cargo, requiring comparatively less manpower for handling, the TAMP may prescribe a separate rate for wood pulp based on cost of rendering service.

(iii). Clarifications on the various arguments made by the MANSA at the joint hearing held on 14 July 2003, about the piece rate payment not considered at actuals, refund of excessive incentive collected so far, etc., have been furnished by the MBPT. The main points made by the MBPT are summarised below:

(a). Non-payment of piece rate on certain commodities handled by on-board labour in particular for steel coil has been disputed by the users. Since the matter is under review of the Regional Labour Commissioner, the present method of costing has to be adhered to for all types of steel coils including those weighing more than 10 tonnes

(b). The rate of Rs.630 per shift per worker plus piece rate at actuals is recovered from the stevedores from 26 June 2001 in accordance with the TAMP Order No. TAMP/47/2000-MBPT dated 12 June 2001.

The balance, if any, of the piece rate collected from vessel agent / stevedores during the period June 2001 to 31 October 2002 will be refunded to the concerned parties after the dispute with the labour union on the piece rate is resolved. No refund is possible at this juncture.

(iv). Based on review of the items for which the proposed rate is higher than the cost of providing service (excluding idle labour), it has submitted that the proposed stevedoring rate may be reduced by a maximum of 10% of the rates collected at present as per the interim Order of the TAMP for the following items relevant to this case:

(a). Project cargo/machineries.
(b). Container stuffing
(c). Container handled by ship crane.
(d). Container handled by port crane.

In respect of mixed general cargo (export), dry bulk (export) and container destuffing, the port has requested this Authority to consider the cost at which the services are provided instead of the rate proposed in the comparative statement.

(v). Other than the items mentioned in point (iv) above, the proposed rate are lower than the cost of providing the services.

(vi). The modification suggested is to ensure that the overall revenue of the port does not reduce drastically in view of the fact that the overall revenue generated from stevedoring service was negative in the year 2002-03.

11.2. In the meanwhile, the MBPT vide letter dated 11 July 2003 has indicated the cost of rendering the service after considering inflation factor and has requested to reckon with the inflation factor while prescribing the per tonne rate for stevedoring services. An annual escalation factor of 7% appears to have been considered to cover the inflation factor.

11.3. In the light of the above modification, the proposed rates and the cost of rendering the service are shown in the table given below:

Sr. No.	Commodity / Activity	Basis of Charge	Interim rate approved by the TAMP		Proposed Rate (without gear) (in Rs.)	Cost incurred for providing the service (without escalation factor) (in Rs.)
			Rate (in Rs.)	Rebate for Vessel agents using own gear		
	IMPORT					
1.	Steel Coil	Per tonne	55.00	13.00	42.00	49.42
2.	Steel Plates ,Pipes and Angles	Per tonne	65.00	13.00	52.00	270.75

Sr. No.	Commodity / Activity	Basis of Charge	Interim rate approved by the TAMP		Proposed Rate (without gear) (in Rs.)	Cost incurred for providing the service (without escalation factor) (in Rs.)
			Rate (in Rs.)	Rebate for Vessel agents using own gear		
3.	Other steel products	Per tonne	60.00	13.00	47.00	57.78
4.	Bagged Cargo	Per tonne	110.00	13.00	97.00	117.92
5.	Wooden Logs	Per tonne	110.00	13.00	97.00	167.14
6.	Machinery/ Project Cargo	Per tonne	160.00	13.00	132.30**	116.63
7.	Vehicle- For RoRo operation	Per Vehicle Per operation	35.00	-	35.00	50.77
	For LoLo operation	-----"--------	250.00	-	250.00	283.52
8.	Mixed General Cargo	Per tonne	130.00	13.00	107.07 #	107.07
9.	Dry Bulk	Per tonne	108.00	22.00	86.00	117.94
10.	Wood Pulp	Per tonne	130.00	13.00	72.28	72.28
	EXPORT					
10.	Steel Coil	Per tonne	65.00	13.00	52.00	55.76
11.	Steel Plates, Pipes and Angles	Per tonne	85.00	13.00	72.00	106.32
12.	Other steel products	Per tonne	60.00	13.00	47.00	68.50
13.	Bagged Cargo	Per tonne	90.00	13.00	77.00	116.70
14.	General Cargo	Per tonne	-	-	112.60	112.60
15.	Oil cake in Bulk	Per tonne	130.00	10.00	120.00	226.60
16.	Dry Bulk	Per tonne	-	-	77.91	77.91
	Container					
17.	Stuffing	Per TEU	2800.00	15.00 per box	2506.50**	2177.21
18.	Destuffing	Per TEU	1600.00	15.00 per box	1543.44 #	1543.44
19.	On-board stevedoring using Ships Crane	Per Box	700.00	55.00	580.50 **	517.83
20.	On-board stevedoring using Port Gantry crane	Per Box	400.00	-	360.00**	235.21

Note: (i). (**) the rate has been reduced by 10%

(ii). For (#) the port has suggested to approve the rate at the cost at which the services are provided

12. The MANSA has pointed out that the MBPT statement do not mention commodity wise actual cargo handled. It has reiterated some of its earlier points. Subsequently, it has furnished specific comments on the MBPT cost details which are summarised below:

(i). The cost considered by the MBPT includes salary and wages for 16 labour per gang whereas actually 13 or 14 per gang are deployed thereby increasing the labour cost by approximately 15%. The cost of additional labour who are deployed for other activities not relating to stevedoring functions should not be considered as a 'stevedoring expense'.

(ii). The inclusion of estimates for various purposes like hospital and canteen expense, other expense, management expense, finance and miscellaneous expense, etc., for which no details have been furnished only inflates the stevedoring cost.

(iii). The port is collecting a very high piece rate on estimates which is not being paid to labour in particular for package above 10 tonnes (Rs.26.83 which constitute 60% of the stevedoring cost). The element of piece rate should be mentioned with a clear direction to the MBPT to refund all excess amount collected on account of piece rate to the port users once the issue is resolved.

(iv). Excess gangs are deployed by the port to try and utilise all the labour which leads to increase in the per ton cost of labour. In the case of chick peas in bulk, the productivity has fallen from 300 tonnes to 200 tonnes per gang shift resulting in 50% increase in the cost.

(v). In view of the position explained above, the proposed stevedoring charges should be reduced to the extent possible.

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

(i). The MBPT has taken over the stevedoring services w.e.f. 1 Nov 2002 in order to streamline on-board and shore cargo handling operations and also to avoid involvement of multiple agencies in cargo handling which has reportedly contributed to high handling cost at the Mumbai Port. Taking over of the stevedoring services is a management decision of the Board of Trustees of the MBPT and this Authority has no role to play in that. The limited issue before this Authority is to fix the rates at which the stevedoring services are provided by the port. In this context, it may be relevant to note the statistical highlights provided by the MBPT show that idle time has reduced and faster turnaround of vessels is achieved after it has taken over the stevedoring services.

(ii). Generally, tariff fixation at the major ports is subject to a cost plus regime. The MBPT does not want to adopt such a traditional cost plus model since the cost based rates were found to be higher than those rates earlier levied by the stevedores. The MBPT has, therefore, done well to analyse the market rates on the basis of information that they had collected from twelve shipping agents before proposing the rates for the services to be provided. The MBPT has explained that the proposed rates in most of the cases are the minimum in that category levied earlier by the stevedores. There is no scope to verify these details since the MBPT itself could not secure any documentary evidence in this regard from the stevedores / shipping agents. Even in this proceedings before this Authority, none of the participating user organization could produce any authentic document to counter the claim of MBPT about the earlier market rates.

(iii). Since the operation commenced from 1 Nov 2002, this Authority had already approved the proposed rates as an interim arrangement. At the interim rates, the MBPT has certified that this service has resulted in a revenue deficit of Rs.5.76 crores for the period from 1 Nov 2002 to 31 March 2003. It has also added that in the case of stevedoring activity, it could not even recover the operating wages of on board labour, supervisory staff and allied staff. While we do not want to analyse the various reasons contributing to this deficit position, this is a pointer to show that the interim rates allowed by this Authority have not resulted in creation of any excess surplus to the MBPT in absolute terms.

(iv). Before the MBPT took over stevedoring services, licenced private stevedores were providing this service by hiring labours from the port. The BSA Limited has been consulted by us not because they are a user group directly affected by the rates proposed by the MBPT but to take note of their experience in the field. This has become necessary since the MBPT's proposed rates are reportedly derived from the (then) existing market rates. Seen in this light, the objection of the MBPT against consulting BSA Limited does not carry any force.

(v). The BSA has argued that the MBPT proposes to adopt the rates collected by private stevedores whereas one of the reasons given by the port for taking over the stevedoring services is that the rates levied by the private stevedores are also responsible for high handling cost. As has been mentioned earlier, this Authority does not like to go into the reasons for taking over of stevedoring services by the MBPT. The MBPT has not in toto adopted the rates levied by the private stevedores. In most of the cases it has adopted the minimum of the market rates and in some cases, average rates have been considered. Instead of making only a statement, it would have been useful if the BSA had produced documentary evidence to show the exact rates levied earlier by its members.

(vi). One of the main objections raised by the users is that the MBPT as a stevedore does not provide many of the services which were provided by the erstwhile stevedores though the port has proposed to adopt the market rates levied by them. The users have, therefore, demanded that the proposed rates should be scaled down. The MBPT has contended that the erstwhile stevedores were performing certain ancillary functions as value added service. Since it has adopted midway/lower of the market rates, the port cannot offer such value added services. Even though the users have vigorously agitated this issue, none of them have furnished any documentary evidence to substantiate their claim. If such documents had been made available, it would have helped this Authority to identify the mandatory components of stevedoring services for which basic rate will apply and the optional services as value additions.

(vii). The BSA has pointed out that the MBPT has to work on 'no profit no loss' basis and, therefore, the rates should be reduced. It has also suggested that interest on 'pool fund' of about Rs.14 crores available with MBPT should be taken into account for arriving at the proposed rates.

It is noteworthy that port trusts are generally self-financing organizations. They are expected to generate revenue not only to meet operating expenses but also meet future developmental needs. In recognisation of this position only, a pre-determined rate of return is allowed to major ports while fixing their rates. That being so, it may not be correct to say that ports should operate only on 'no profit no loss' basis. In any case, the MBPT has reported loss at the proposed level of rates which are in operation since November 2001.

With the MBPT taking over stevedoring services, there will not be a separate levy for supervisory staff and allied workers. The MBPT has explained that the proposed rate may not even cover the operating expenditure and thus leaving the other expenses like overhead, administrative expenses, etc., totally uncovered. The MBPT has categorically denied that the pool fund is not in surplus as indicated by the BSA. That being so, the question of considering interest on such fund does not arise at all.

(viii). The CSLA and MANSA have made a genuine demand that MBPT should provide comprehensive service to containers and levy a box rate. Even though the MBPT has conceded this demand in principle and agreed in April 2003 to submit a suitable proposal, nothing has been heard from the port so far. Provision of comprehensive service to containers will be in line with the MBPT's decision to avoid involvement of multiple agencies in handling. The MBPT is advised to expedite submission of its proposal in this regard.

(ix). The existing Dock Scale of Rates prescribes charges in respect of labour requisitioned and supplied but not fully or properly utilized. The MANSA has contended that there is no justification for levy of gang idle charges / gang compensation since the MBPT is to provide a complete service. It has argued that on shore activity is the responsibility of the port hence gang idle/gang compensation charges should not be levied. In this context, the MBPT has clarified that even in the earlier system, the agents were paying this rate as per the Dock Scale of Rates. This charge is leviable only if the gang after its deployments is kept idle by the agents for whatsoever reasons. Further, it does not relate only to the stevedoring activity. Since this is an existing tariff arrangement, this Authority is not inclined to modify it at this juncture as part of this proposal. Nevertheless, the MBPT should address this issue frontally while proposing box rate for comprehensive services to be provided to containers.

(x). The MBPT has furnished a comparative statement showing the proposed rate without supply of gear, cost of providing the service and the cost incurred by the agents prior to it taking over the stevedoring operation. The MANSA has argued that the costs incurred by it earlier for the stevedoring service for steel coil, project cargo, wood puop were less than the proposed rate. It has furnished working of the stevedoring rate for a few commodities; but piece rates payable for different commodities are not fully considered.

The MANSA has pointed out that the piece rate collected by the MBPT is far is excess of the actual payment made by the port and have, therefore, demanded refund of the excess piece rate collected so far from the stevedores. The port has explained that the issue about payment of piece rate for certain commodities has been disputed by Labour Unions and is being reviewed by the RLC. The port has argued that the piece rate payment withheld by it for some of the commodities would become payable if the RLC verdict is not in the favour of the port. The port has, however, agreed to process refund of piece rate, if arises, once the matter is resolved. In view of this assurance made by the Port, it is not found necessary to dwell on this issue any further.

(xi). The MANSA has also pointed out that the MBPT has considered the cost of 16 labour per gang, whereas, the actual labour deployed is only 13 to 14 per gang. The MANSA has demanded that additional labour gang which are deployed for activities other than stevedoring should not be considered as a stevedoring expense. The MBPT has also admitted that the actual deployment may be less than 16 member gangs but, statutorily it has to deploy 16 workers. Hence, even if they are idle or working for other than stevedoring operation the direct wage plus piece rate payable to them has to be considered as overhead. The reply clearly indicates that there will be no change in the total cost of the service. If the wages for the extra workers are not counted as direct cost, it will figure in indirect cost. In any case, the proposal of MBPT is not fully for a cost based tariff fixation; and, there is a revenue deficit to the port at the proposed rates. Viewed from this perspective, the objection of MANSA in this regard is not found to be very relevant.

(xii). The rates proposed are lower than the cost of providing service and also lower in comparison with the per tonne cost to the users in the earlier system for most of the cargo items. For a few items like mixed general cargo and project cargo/machinery in import category and general cargo, dry bulk in export category and for container handling, the proposed rates are higher than the cost of providing service. The MBPT has reviewed the earlier proposed stevedoring rates for these items and have proposed to reduce the existing interim rates by a maximum of 10% for project cargo/machinery, container stuffing, container handled by ship crane and by port crane. For the remaining four items, it has suggested to consider the cost of rendering the service. Even after the proposed 10% reduction in the rates, the resultant rates will be more than cost of providing the service in case of few items. It is relevant to mention here that the cost considered here are only direct cost and not the total cost. Further, in most of the cases, the proposed rates are lower than the (direct) cost of service, which means they are also to be met by 'cross-subsidisation'. Bearing in mind the fact that fixing rates with reference to total costs will exorbitantly hike the rates and faced with a handicap of non availability of reliable documents from users to verify the market rates, this Authority is inclined to approve the modified rates proposed by the MBPT.

(xiii). The MANSA has pointed out that earlier a separate tariff category for wood pulp existed which should be restored. The MBPT has agreed to prescribe a separate rate in view of high volume of this cargo. The cost of providing service to wood pulp as indicated by the port is Rs.72.28 per tonne. This Authority, therefore, approves the stevedoring rate for wood pulp at Rs.72.00 per tonne at the level of cost of providing service for this cargo.

(xiv). While SCI has pleaded that supply of forklift for on board work should be included in the stevedoring rate, the MANSA has demanded that gear cost should be delinked from stevedoring rates. The demand of MANSA appears to be reasonable since the MBPT itself hires such gears and provide them for operations. In this backdrop, it is found logical to retain the rebate earlier approved as the ceiling rates for supply of gears by the MBPT. As earlier, the vessel agents will have the option to bring in their own gears.

(xv). The MBPT has furnished the revised rates without considering the annual price escalation factor. It has separately furnished a statement duly incorporating a 7% p.a. escalation. It is noteworthy that this Authority generally allows an escalation factor of 6% on costs in the second year. While there will be a cost escalation due to inflation, it has to be recognised that improved productivity will bring down cost; and, the MBPT has indicated about improvement in productivity after its taking over of stevedoring operation. That being so, an escalation factor of 5% for the second year is found to be sufficient. In other words, the rates approved now will be automatically enhanced by 5% in the second year.

(xvi). As has been mentioned earlier, the (originally) proposed rates have been implemented on an adhoc basis since Nov 2002. These rates are still continuing. The existing (interim) rates are allowed to continue till 30 September 2003. The revised rates approved now will be effective from 1 October 2003 and remain valid for two years thereafter. In the second year i.e., from 1 October 2004, the revised rates will automatically be enhanced by 5%. Further, in line with the policy direction given by the Government, the rates approved now will act as ceiling level only. If the MBPT wants to operate at a lower level on commercial considerations, it can do so. Likewise, the rebates approved will only be floor levels.

14. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the following:

(i). The rates approved for stevedoring services provided by MBPT vide earlier Order No. TAMP/Q/2002-MBPT dated 29 October 2002 shall continue to be in force till 30 September 2003.

(ii). The relevant Scale of Rates of MBPT is amended as given in **Annex**. This amendment shall come into effect from 1 October 2003 and remain valid for 2 years thereafter.

(A.L. Bongirwar)
Chairman

Annex

The existing Schedule in Sub-section (C) below Sub-section (B) of Section-IV, Composite Berth Hire Charges in the Scale of Rates charged at the Docks of the Mumbai Port Trust is substituted by the following:

(C). CHARGES FOR PROVIDING ON BOARD STEVEDORING SERVICES PAYABLE BY THE INDENTORS / VESSEL AGENTS / VESSEL OWNERS / CONTAINER OPERATORS

SR. NO.	Commodity / Activity	Basis of Charge	Stevedoring rate (with out gear) (in Rs.)	Ceiling Rate for supply of gear by the port (in Rs.)
	IMPORT			
1.	Steel Coil	Per tonne	42.00	13.00
2.	Steel Plates ,Pipes and Angles	Per tonne	52.00	13.00
3.	Other steel products	Per tonne	47.00	13.00
4.	Bagged Cargo	Per tonne	97.00	13.00
5.	Wooden Logs	Per tonne	97.00	13.00
6.	Mixed General Cargo	Per tonne	107.00	13.00
7.	Dry Bulk (Fertiliser, Fertiliser raw materials,clay,borax & other dry bulk materials, except scrap)	Per tonne	86.00	22.00
8.	Machinery/ Project Cargo	Per tonne	132.00	13.00
9.	Vehicle (a). For RoRo operation (b).For LoLo operation	 Per vehicle Per operation - do-	 35.00 250.00	 - -
10.	Wood Pulp	Per tonne	72.00	13.00
	EXPORT			
11.	Steel Coil	Per tonne	52.00	13.00
12.	Steel Plates, Pipes and Angles	Per tonne	72.00	13.00
13.	Other steel products	Per tonne	47.00	13.00
14.	Bagged Cargo	Per tonne	77.00	13.00
15.	General Cargo	Per tonne	112.50	13.00
16.	Oil cake in Bulk (trimming & bleeding of bags on Board)	Per tonne	120.00	10.00
17.	Dry Bulk	Per tonne	78.00	22.00
	Container			
18.	Stuffing	Per TEU	2506.50	15.00 per box
19.	Destuffing	Per TEU	1543.00	15.00 per box
20.	On-board stevedoring using Ship's crane	Per Box	580.50	55.00
21.	On-board stevedoring using Port Gantry crane	Per Box	360.00	-

Notes:

(i). A vessel agent may bring his own gear for loading/unloading, stuffing and de-stuffing operations. In case the port supplies gear for loading/unloading, stuffing and de-stuffing operations, then the rate as prescribed in column number (5) shall be leviable as a ceiling rate.

(ii). Lashing and unlashing containers on board the vessel shall be the responsibility of the vessel Agents. For lashing and unlashing work done by the vessel agent a rebate of Rs.30/- per box will be granted on all the boxes loaded/discharged.

(iii). Lashing of export steel cargo, especially steel pipes, is the responsibility of the shipping agents. The rates at Sr. Nos.11,12 and 13 do not include lashing charges and no rebate is, therefore, allowed for lashing.

(iv). Charges for supply of labour for the work of loading and filling of food grains and pulses will be Rs. 107/- per tonne.

(v). (a). The rate prescribed in the schedule given above will be valid for one year w.e.f. 1 October 2003 to 30 September 2004.

(b). An escalation factor of 5% will be applied on the stevedoring rates prescribed in the schedule given above w.e.f. 1 October 2004 and these rates will remain valid till 30 September 2005.

(vi). The rates prescribed in the Scale of Rates are ceiling levels; likewise, rebates and discounts are floor levels. The Port Trust may, if it so desires, charge lower rates and / or allow higher rebates and discounts.

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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/89/2002-MBPT - Proposal from the Mumbai Port Trust for fixation of rates for providing stevedoring services taken over by the Port.

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

Bombay Stevedores' Association Limited (BSAL)

(i). The rates proposed are actually based on the present average rates charged by the stevedores.

(ii). The rates charged by the erstwhile stevedores were inclusive of overheads and profit. Since the MBPT is supposed to work on 'no profit no loss' basis, the rates should be reduced to that extent.

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

The stevedoring rates proposed by the MBPT are acceptable for most of the cargo items, however, following points / suggestion need to be considered:

(i). Consider a lower rate may for a few cargo items like import of steel coil / slab / beams, bagged cargo and export of steel coils, fertiliser, etc.,

(ii). The stevedoring rates for export of machinery may be considered at Rs.120/- PMT since this item is not reflected separately in the MBPT proposal.

(iii). The rates should be worked out based on productivity, number of labours engaged together with the cost of gears for each operation.

(iv). Since the MBPT is having excess labour considering the total labour expenditure is not a rational approach.

(v). Rebate of Rs.30/- per container for lashing / unlashing should be granted for all the containers, and not restricted for the containers actually lashed.

(vi). The proposed rates must include not only on board stevedoring but, also the delivery of containers upto prestack and ***vice versa*** in line with the practice at the JNPT.

(vii). There is no justification to continue with levy of gang compensation charges for containers stuffed or destuffed.

(viii). The MBPT should be directly responsible for all damages, if any, occurred during the stevedoring operation and should promptly compensate for such loss without taking shelter under the Major Port Trust Act. So far the stevedores have been reimbursing the agents for such loss.

<u>The Shipping Corporation of India Limited (SCI)</u>

(i). For a general cargo vessel carrying cargo-mix like steel coils, steel plates, machinery, project cargo and containers there is no significant difference in the overall expenses incurred towards stevedoring after the MBPT taking over the stevedoring services as compared to the earlier expense.

(ii). It has reiterated the views of MANSA about reviewing the rates proposed for handling of project / machinery cargo.

(iii). The rates should be inclusive of supply of forklifts.

(iv). The Scale of Rates should clearly specify that the services relating to lashing / unlashing and also supply carpenters (as and when required during handling) will be provided by the Port.

1.2. The comments received from the above user organisations were forwarded to the MBPT as feedback information.

2. Joint hearings in this case were held on 8 January 2003, 24 April 2003, 3 July 2003 and 14 July 2003 and a personal hearing was allowed to the BSAL on 27 January 2003 in the presence of the MBPT officials. The submission made by the ports and the concerned user organisations in these joint hearings are summarised below:

<u>Mumbai Port Trust (MBPT)</u>

(i). We do not propose any change in the rebates. The ceiling already approved may continue.

(ii). Our rates are based on the figures indicated as ‘market rates’ by Steamer Agents. We did not get documentary support to this effect from them. In any case, we have proposed the lowest of the rates obtained from market for most of the cargo.

(iii). As regards the MANSA’s request for lower rate for bagged cargo (import), please note that we pay higher piece rate to workers handling import.

(iv). We have taken over stevedoring alone. We have never committed to supply gears. We have to hire gears and supply or the user can bring gears directly. In both the cases, there is cost involvement to users.

(v). These rates are not for the services provided upto CY. These are for stuffing / destuffing operations at CFS. These charges are levied as per the rates notified in the Dock Scale of Rates.

(vi). We are negotiating with an Insurance Company as regards the claim for damages.

(vii). We will review classification of wood pulp and prescribe separate rate.

(viii). We will work out afresh the rate for project cargo**.**

(ix). Rs.1.73 crores recovered from Stevedores earlier include pension and other indirect benefits to workers. Now, we propose to absorb such costs. Our costing is, therefore, based only on direct wages and piece rate earnings.

(x). We have improved productivity after taking over the stevedoring operations.

(xi). We can give cargo-wise cost analysis. But, total cost-based tariff will be much higher.

(xii). We are in the process of finalising the proposal for composite rate for container. In a months' time, we will finalise it. (This assurance was made in the joint hearing held on 24 April 2003)

(xiii). The issue about not levying shore idle labour, overtime charge separately will vanish when we introduce box rate for containers for which formulation of proposal is in an advanced stage.

(xiv). The MANSA's calculation relating to steel coil does not reckon with piece rate wages payable. We will furnish all the details of our calculations.

(xv). We have given actual piece rate payment figures to MANSA.

(xvi). We have discontinued payment of piece rates for steel coils weighing above 10 tonnes. The trade unions have raised a dispute in this regard before the RLC. We have included this element in the costing since the liability will be borne by us if RLC verdict goes against us.

(xvii). Statutorily, we have to deploy 16-member gangs. But, actual deployment may be less. The surplus labours are working elsewhere and we have not included cost of the miscellaneous work carried out by them. If we are not allowed to charge for all the 16 labours as direct cost, the surplus labour cost is to be taken as overhead. This means, there will not be any change in the cost position reported by us.

(xviii). We will return/refund excess incentives. We don't want to profiteer out of this.

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

(i). The port provides only 30% of the services in the stevedoring package. Rates proposed are, however, for a comprehensive service.

(ii). Rate cannot be looked in isolation with reference to cost alone. It should take into account comprehensiveness of the services provided.

(iii). The MBPT levies gang compensation charge, gang idle time and gang over time. Why should we pay these rates extra? We will pay 'one rate' for the stevedoring services provided. There is no justification to levy this charge under the DSR when the MBPT is to provide complete service.

(iv). The MBPT should bear the liability to damages. The private stevedores were responsible for this earlier.

(v). The word 'actual' in Note (ii) on container lashing should be clarified to mean all containers loaded or unloaded.

(vi). For dry bulk cargo handled by pay load and sling the MBPT charges Rs 30/- extra for gear. But, allows a rebate of Rs 22/-. This is anomalous.

(vii). For chick peas, the rate should be Rs 85/- PMT and over this a rebate of Rs 22/- should be allowed. We will give our cost calculations.

(viii). The rate for steel coil cannot be more than Rs 35/-. We will give cost of handling this cargo in two weeks.

(ix). The output for wood pulp is high. Do not take it under mixed general cargo. There was a separate category earlier. Now, the MBPT has included this commodity under mixed cargo.

(x). We are happy with the services provided by the MBPT. The rates proposed by them, however, require moderation with reference to services not provided.

(xi). In 95% cases, the MBPT does not provide gears. So, instead of allowing rebate for gears not used, the MBPT should have a rate without gear and levy charges for gear separately, if they are used.

(xii). The MBPT should finalise its proposal for comprehensive charges for containers quickly.

(xiii). Why should there be a separate charge for port labour for stuffing / destuffing of container? Now, everything is done by the MBPT and all workers are the MBPT employees. It is a notional charge.

(xiv). The MBPT has not given actual number of labour deployed and cargowise actual incentive period.

(xv). After RLC judgement, if verdict goes in favour of MBPT, they should refund excess incentives collected so far.

The Container Shipping Lines Association(CSLA)

(i). We endorse the views of the MANSA.

(ii). Let the MBPT offer a composite rate for all services provided.

(iii). When box rate is levied the MBPT should not charge separately for shore idle labour overtime, etc.

Bombay Stevedores' Association Limited (BSAL)

(i). There is an excess element of levy in the rate structure of the MBPT when compared to what we used to charge earlier after paying the MBPT for minimum committed number of supervisory staff.

(ii). We have given the list of services which used to be provided by us. We do not argue that all of them should be provided by the MBPT also. Service requirements are to be settled between the MBPT and vessel agents.

(iii). Since services provided are not comparable, the question of equating the rates should not arise.

(iv). Let the MBPT deny that stevedores were not providing the 12 services listed out by us. We will then produce documentary evidence.

(v). On one hand, the MBPT claims that stevedores were levying exorbitant rates; on the other hand, they say that their proposal is based on the prevailing rates levied by stevedores. It is contradictory.

(vi). Even if the MBPT admits that the BSA rates levied earlier were reasonable then also the proposed rates are to be moderated with reference to services not provided by the MBPT.

(vii). The MBPT holds Rs.14 crores in a pool fund. At least, the interest thereon should be taken into account for arriving at the proposed rates.

(viii). The MBPT's calculations show a wage liability of Rs.1.21 crores per month. But, we were paying around Rs.1.73 crores per month. If there is a reduction in wage burden then there must be a corresponding reduction in rates.

Shipping Corporation of India Limited (SCI)

(i). The Stevedoring cost should include supply of forklift.

(ii). For project cargo, the proposed rate is nearly 60% more.

(iii). Please define the services to be provided under 'lashing / unlashing' for general cargo.

(iv). The MBPT should give daily output report.

(v). The MBPT should supply forklifts also in stevedoring rates.

3. The concerned user organisations have also filed their written submissions on the MBPT proposal based on the arguments made at the joint hearings and on the observations of the MBPT. They have mainly reiterated the points made by them earlier. In addition to that, some of the main points made by them are summarised below:

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

(i). Number of gangs required for stevedoring and the assumed quantum of cargo have not been considered to derive the total expenditure. The estimates of income and expenditure are, however, irrelevant to the stevedoring activity carried out by the port.

(ii). Forklift charges must be included in per TEU rate of stuffing and destuffing. If this is a value added service provided by erstwhile stevedoring as contended by the port, the market rate which includes this component must be reduced to that extent.

(iii). The percentage of levy @ 187% of basic wages of supervisory staff recovered by the MBPT is in excess of what is actually required. This percentage of levy must be reviewed and reduced to actuals irrespective of any Memorandum of Agreement.

(iv). The present method of calculating piece rate do not correspond to datum. The port should come up with a more realistic datum for various commodities.

(v). Stevedoring rates based on average output of the commodities after taking into consideration cost of labour/supervisory staff, 10% overhead, 10% profit and Rs. 13/- as gear costs have been furnished for a few commodities for consideration.

The Container Shipping Lines Association(CSLA)

The proposal must incorporate a minimum productivity guarantee for operations both under conventional and gantry berths.

Bombay Stevedores' Association Limited (BSAL)

(i). It has listed out the following services provided by the erstwhile private stevedores for providing the stevedoring rates charged hitherto:

(a). Supply and utilisation of various types of gears and mobile equipments such as forklifts, top lifters, pay-loaders, grab, hopper and magnet.

(b). Lashing and unlashing of containers on board the vessels.

(c). Carting, receiving in case of export cargo and supervision of delivery in case of import cargo.

(d). Preparation of stowage plan.

(e). Documentation work, Customs sealing, Customs intermediary endorsements & final endorsements, Customs overtime and other Customs sundries.

(f). Stevedores supervision, overheads and profits.

(g). Accident compensation claims under the Workmen's Compensation Act, 1923 in respect of on-board injury to workmen and supervisory staff and allied workers.

(h). Accident involving ships crew / or officers of the ships.

(i). Loss / damage to cargo containers arising out of negligence of stevedores or their agents / servants.

(j). Supply of personal protective equipment to on-board workers and supervisory staff and allied workers on-board the vessel.

(k). Minimum cost of maintaining 3 sets of supervisory staff and allied workers (i.e., 20 supervisory staff and 7 allied workers) irrespective of whether there is work or not. (This was Rs.11,75,842/- per month per stevedore for the month of October 2002, as fixed by the MBPT.)

(l). Adherence to highest manning scales both in respect of on-board workers and supervisory staff and allied workers without any relaxation whatsoever, etc.

(ii). The proposed rates do not include any of the services listed above, except an element towards Workmen's Compensation claims. The rate should, therefore be reduced to give due allowance for the cost of the other services not included in the proposed rate.

(iii). The proposed rates need to be reduced by 40% taking into consideration the excessive element of 15% on supervisory staff charged by the MBPT from the stevedores prior to 1 November 2002, stevedores overheads at 10%, stevedores profit at 10% and non-rendering of various ancillary services at 5%.

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