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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 311

New Delhi,

01 August 2016

NOTIFICATION

This Authority, in exercise of the powers conferred on it under Sections 48, 49 & 50 of the Major Port Trusts Act, 1963, had disposed of the proposal received from the Mumbai Port Trust (MBPT) for general revision of its Scale of Rates, in the Meeting of this Authority held on 21 June 2016. However, considering the time involved for notifying (Speaking) Order along with the Scale of Rates, approved by this Authority, this Authority decided to notify only the revised Scale of Rates immediately. Accordingly, the Scale of Rates approved on 21 June 2016 was notified in the Gazette of India on 20 July 2016 vide Gazette No.297. It was stated in the said Notification that this Authority will notify the Speaking Order, in due course of time. Accordingly, this Authority hereby notifies the reasoned Speaking Order connected with disposal of the proposal of the MBPT for general revision of its Scale of Rates as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/78/2015-MBPT

The Mumbai Port Trust

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Applicant

QUORUM

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Rajat Sachar, Member (Economic)

ORDER

(Passed on this 21st day of June, 2016)

This case relates to a proposal received from the Mumbai Port Trust (MBPT) for General Revision of its Scale of Rates (SOR).

2. The SOR of MBPT was last revised in January 2015 vide Order No. TAMP/23/2013-MBPT dated 02 January 2015. This Order was notified in the Gazette of India on 26 February 2015 vide Gazette No. 68. The validity of the SOR of the MBPT prescribed vide Order dated 02 January 2015 was upto 31 March 2017.

3.1 The Ministry of Shipping (MOS), vide its letter No.8(1)/2014-TAMP dated 13 January 2015 issued a new "Policy for determination of Tariff for Major Port Trusts, 2015 which was notified in the Gazette of India vide Gazette No. 30 dated 27 January 2015. The new "Policy for determination of Tariff for Major Port Trusts, 2015" has come into effect from 13 January 2015.

3.2 Thereafter, based on the stipulation contained in Clause 1.5 of the Tariff Policy 2015, the Working Guidelines to operationalize the Tariff Policy 2015, were firmed up and notified after consulting all the Major Port Trusts.

4.1 In this backdrop, the MBPT has filed its proposal following Tariff Policy, 2015, vide its letter No. FA/ACC/203/5735 dated 16 December 2015 for general revision of its Scale of Rates.

4.2. The main submissions made by the MBPT in its proposal are summarized below:

- (i). The general revision of SOR has become effective from 18.02.2015 wherein 23% increase in cargo related charges and stevedoring charges have already been approved by TAMP.
- (ii). TAMP has not approved the proposed increase of 23% in vessel related charges on the ground that the vessel related activity shows a surplus position. As per revised policy for determination of tariff 2015, Port shall decide Scale of Rates in such a way that estimated revenue generation from the proposed increase in SOR is within the ceiling Annual Revenue Requirement. Since the Estimated Annual Revenue Requirement is to the tune of ₹488 crore, increase of 10% on the vessel related charges may be considered for the period upto 31.03.2017. This will provide an additional revenue of approximately ₹49 crore p.a. to the Port.
- (iii). In the previous Tariff Order dated 2.1.2015, the Authority has not approved proposed increase of 70% in License (Storage) Fees and Warehousing Charges on the ground that MBPT has not determined these charges based on stipulation contained in Land Policy Guidelines of 2014. A Land Allotment Committee (LAC) shall determine the Market Value of Land as per the methodology prescribed in clause 18(c) of the policy. Valuation of Land is one of the parameters prescribed in Land Policy. The tender for appointment of valuer is under process.

However, the MBPT will not be in a position to increase storage charges taking the land rates of Mumbai, as 'the rates of land' in Mumbai area, like 'Ballard Estate' etc.

are very high. Therefore, a conscious decision has been taken to not go as per Land Policy considering 6% return on the market rate. Even after considering the lowest rate i.e. Ready Reckoner rate the increase in storage fees works out to 400% which will result in loss of cargo to the port and hence has not been recommended by the Board.

Further, Section 3.3 of SOR deals with facility to support import/ export cargo activities at Mumbai Port. The area covered under the License (storage) Fees is utilized for Cargo handling activity and not for the Estate Related Activity. The area is being used for storage of Import cargo on common user basis for temporary period. Hence, If licence fee is revised as per Ready reckoner Rates, same will have adverse impact on cargo traffic of the Port. (The rates under section 3.3 of SOR were last revised on 28 October 2006).

- (iv). Though the MBPT had sought 23% increase from 01.04.2014, TAMP approved revision in SOR only in January 2015 which came into effect from 18.02.2015 thereby causing delay of around 11 months. TAMP has stated in para 11 (xvi) (m) that to make good the time gap, option available is to grant a quantum of increase higher than 23% during the remaining tariff cycle of 26 months and the Authority is open to consider a proposal from MBPT in this regard. The Port has lost revenue of 23% for a period of 11 months and the same has to be recovered over a period of 20 months considering that the new rates are made applicable from August 2015. Hence, an increase of 13% over and above 23% is considered.
- (v). The TAMP has advised the Port that the advalorem rates need to be phased out and many of the Major Ports have already phased out the advalorem rates. MBPT has also been advised to phase out the advalorem rates during next review of tariff. The Major items wherein the advalorem wharfage rate is prevalent in MBPT are automobiles, project cargo, rail cars, etc. This is reviewed for prescribing unit rate/per tonne rates as far as possible.

By TR No. 244 dated 27.03.2015, the Board had proposed to take a holistic view on advalorem rates. It is seen that the major traffic coming under advalorem rates are automobiles, project cargo, rail cars, etc. As far as project cargo is concerned, since it consumes space and take more time for movement, gives lower productivity, etc., it is proposed to continue the advalorem rates.

As far as rail cars are concerned the rate works out to approx. ₹4 lakhs per wagon which is abnormally high as compared with other ports as brought out in TR No. 244 dated 27.03.2015. It is felt essential that for retention of cargo, the rates for rail cars have to be moderated failing which the cargo may not come to Mumbai Port. In view thereof, that rate is proposed at ₹1.80 lakhs per wagon for foreign and ₹1.08 lakhs per wagon for coastal movement and balance to be treated as remitted. Since the Board has approved ICTPL's proposal to handle automobiles through OCT and ICTPL will be submitting a proposal to TAMP, the same is not considered for conversion to unit rates.

Subsequently, the MBPT vide its letter dated 9 March 2016 communicated that the Port Trust Board in its meeting held on 29 February 2016, has decided to review the rate of wharfage on rail cars and that a view will be taken in the next Board Meeting to be held in last week of March 2016. In view of the above, the MBPT had requested that the consideration on the rate of wharfage on rail cars be deferred till the final decision of the Board is taken.

Thereafter, the MBPT vide its letter dated 31 March 2016 has stated that the Board of Trustees of MBPT in its meeting held on 30 March 2016, has decided to retain per wagon rate of wharfage on rail cars @ ₹1.80 lakhs for foreign / ₹1.08 lakhs for coastal as proposed in revision of SOR submitted to TAMP. Therefore, it has requested to consider and approve the rate of wharfage of rail cars under section 3.1(A) of chapter III of proposed SOR.

- (vi). The proposed increase will generate an estimated additional revenue to the tune of ₹159 crores during the current tariff cycle, i.e. upto 31.03.2017.
- (vii). As per Clause 2.7 of the Tariff Policy 2015, while going for a change in SOR, the Major Port Trusts will have to ensure that, as a result of the changes in SOR there will not be a loss of traffic to the port and the responsibility of ensuring this would rest with the Chairman of the Major Port Trusts. The revenue generation considering traffic for the year 2014-15 and proposed increase in scale of rates including proposed increase of 70% in License (Storage) Fees and Warehousing Charges is within the ceiling of ARR.

4.3. The proposal of the port is as given below :

- (i) Vessel related charges 10% hike
- (ii). Storage (License fee) & Warehousing charges 70% hike
- (iii). Cargo related charges 13% hike
- (iv). Following amendments/additional charges are introduced in the proposed Scale of Rates:
 - (a). A note has been introduced below section 2.1. mentioning that, shifting charges are without Tugs. If the Tugs are used then dock charges will be applicable.
 - (b). Description of Schedule 2.2 – The existing description of section 2.2. and the proposed description are given below:

Existing	Proposed
Charges on Vessels /Barges /Boats for arranging alongside other vessel for working of cargo in mid-stream and Port Lighterage Anchorage Area (Double Banking).	Charges on vessels/Barges/ boats/ pass pilot vessels and barges for arranging alongside other vessel for working of cargo in mid-stream and Port Lighterage Anchorage Area (Double Banking).

- (c). The JNPT operates its pilot service through the common user channel owned by MBPT for the operational requirements of ships entering / leaving MBPT and it is regulated by a Protocol Agreement dated 31 August 1989 entered between JNPT and MBPT. In respect of the ships calling at JNPT, the MBPT has authorized JNPT to collect the port dues of the MBPT as applicable. Presently, it is 32% of the rates of ports dues of MBPT. The Port dues of the MBPT so collected by JNPT shall be in addition to the port dues prescribed in the SOR of JNPT. The Port dues payable to MBPT by JNPT is reduced to 18% of the port dues of MBPT by an Agreement dated 20.12.2012 entered between JNPT and MBPT.
- (d). The rates prescribed in Note (ii) below Schedule 2.18 were not amended by this Authority while issuing corrigendum dated 15.5.2015 for Stevedoring Rates. Hence rates are increased considering approved increase of 23% on Stevedoring rates and over that the current increase of 13% is calculated.
- (e). Inclusion of specific rate for Rail Car under Sr.No.14 of Schedule 3.1(A) for wharfage charges.
- (f) Slipway charges under Schedule 9.5.

4.4. The revenue generation considering traffic for the year 2014-15 and proposed increase in scale of rates is within ceiling ARR which is duly certified by Chartered Accountant in the prescribed formats.

4.5. The MBPT has furnished detailed computation of Annual Revenue Requirement (ARR) under Form 1 and Revenue estimation at the proposed Scale of Rates in Form 3.

(i) A summary position of ARR computation as furnished by MBPT is tabulated below:

(₹ in lakhs)

Sl. No	Description	FY1 (2011-12)			FY2 (2012-2013)			FY3 (2013-2014)		
(1)	Total Expenditure (As per Audited Annual Accounts)	MBPT	BDLB	TOTAL	MBPT	BDLB	TOTAL	MBPT	BDLB	TOTAL
(i).	Operating expenses (including depreciation)	60,387.00	15,599.08	75,986.08	69,140.00	18,849.38	87,989.38	71,047.00	18,076.43	89,123.43
(ii).	Management & general Overheads	21,760.00	1,722.37	23,482.37	25,369.00	2,200.81	27,569.81	25,535.00	2,298.41	27,833.41
(iii).	Finance and Miscellaneous expenses (FME) (note 'a')	62,226.00	5,203.73	67,429.73	72,122.00	7,340.11	79,462.11	79,347.00	10,454.29	89,801.29
	Subtotal 1=(i)+(ii)+(iii)+(iv)	144,373.00	22,525.18	166,898.18	166,631.00	28,390.30	195,021.30	175,929.00	30,829.13	206,758.13
(2)	Less Adjustments:									
(i).	Estate related expenses									
	(a). Operating expenses (including depreciation)	6,686.00	-	6,686.00	7,471.00	-	7,471.00	7,143.00	-	7,143.00
	(b). Allocated Management & Administrative Overheads (note 'b')	1,250.51	-	1,250.51	1,321.15	-	1,321.15	1,225.62	-	1,225.62
	(c). Allocated FME (note 'b')	1,632.00	-	1,632.00	1,801.00	-	1,801.00	2,092.00	-	2,092.00
	Subtotal 2(i)=[(a)+(b)+(c)]	9,568.51	-	9,568.51	10,593.15	-	10,593.15	10,460.62	-	10,460.62
(ii).	Interest on loans	-	-	-	-	-	-	-	-	-
(iii).	4/5th of One time expenses, if any like arrears of wages, arrears of pension / gratuity, arrears of exgratia payment, etc. (list out each of the items)									
	(a). Arrears of wages	196.80		196.80	512.80		512.80	2,352.00		2,352.00
	(b).SVRS Compension	0.80		0.80	0.80		0.80	3,396.80	1,532.98	4,929.78
	(c).									
	Subtotal 2(iii) = [(a)+(b)+(c)]	197.60	-	197.60	513.60	-	513.60	5,748.80	1,532.98	7,281.78
(iv).	4/5th of the Contribution to the Pension Fund (note 'c')	33,440.00	3,834.10	37,274.10	40,080.00	5,288.16	45,368.16	50,000.00	6,597.54	56,597.54

(v).	Management and General overheads over & above 25% of the aggregate of the operating expenditure and depreciation	8,334.75	-	8,334.75	9,951.75	-	9,951.75	9,559.00	-	9,559.00
(vi).	Expenses relevant for tariff fixation of Captive Berth, if any governed under clause 2.10. of the Tariff Policy, 2015.									
	(a). Operating Expenses									
	(b). Depreciation									
	(c). Allocated Mgt & Admn O/H									
	(d). Allocated FME									
	Subtotal 2(vi) = [(a)+(b)+(c)+(d)]	-	-	-	-	-	-	-	-	-
	Total of 2 = 2(i)+2(ii)+2(iii)+2(iv)+2(v)+2(vi)	51,540.86	3,834.10	55,374.96	61,138.50	5,288.16	66,426.66	75,768.42	8,130.52	83,898.94
(3)	Total Expenditure after Total Adjustments (3 = 1-2)	92,832.14	18,691.08	111,523.22	105,492.50	23,102.14	128,594.64	100,160.58	22,698.61	122,859.19
(4)	Avg. Exp of SI No. 3 = [y1+y2+y3]/3									120,992.35
5	Capital Employed									
	(i). Net Fixed Assets as on 31.03.2014 (As per Audited Annual Accounts MBPT + BDLB)	51,261.69								
	(ii). Add : Work in Progress as on 31.03.2014 (As per Audited Annual Accounts)	74,321.00								
	(iii). Less: Net value of Fixed assets related to Estate activity as on 31.03.2014 as per Audited Annual Accounts.	789.19								
	(iv). Less : Net value of fixed assets, if any, transferred to BOT operator as on 31 March 2014 as per Audited Accounts.	0								
	(v). Less : Net value of fixed assets as on 31 March 2014 as per Audited Accounts relevant to be considered for captive berths, if any, under clause 2.10. of the Tariff Policy, 2015.	0								
	(vi). Add : Working Capital as per norms prescribed in clause 2.5. of the Working Guidelines									
	(a) Inventory	937.31								
	(b) Sundry Debtors	4,005.00								
	(c) Cash	7,535.00								
	(d) Sum of (a) + (b) + (c)	12,477.31								
	(vii). Total Capital Employed [(i)+(ii)-(iii)-(iv)-(v)+(vi)(d)]	137,270.81								
6	Return on Capital Employed 16% on SI. No. 5(vii)	21,963.33								
7	Annual Revenue Requirement (ARR) as on 31 March 2014 [(4)+ (6)]	142,955.68								
8	Indexation in the ARR @ 100% of the WPI applicable for the year 2014-15 (7*1.06)	151,533.02								
9	Indexation in the ARR @ 100% of the WPI applicable for the year 2015-16 i.e. @3.82% (8*1.0382)	157,321.58								
10	Ceiling Indexed Annual Revenue Requirement (ARR)	157,321.58								
11	Revenue Estimation at the Proposed indexed SOR within the ceiling indexed ARR estimated in SI. No.10 above	130,657.82								

- (ii) The MBPT has, in Form 3, furnished working of revenue estimation considering the existing tariff and the proposed tariff based on the actual traffic of 2014-15. As per the said form, the total revenue estimated from Cargo handling, Stevedoring,

Storage (License Fees), Demurrage and Vessel Related is ₹130657.82 Lacs, at the proposed tariff.

- (iii) Clause 2.5 of the Tariff Policy, 2015 stipulates that the traffic to be considered would be overall traffic estimated exclusive for the port for the year 2014-15. As per Annexure A to Form 3 submitted alongwith the proposal, the traffic for the year 2014-15 is seen to be 61.66 million MT.
- (iv). The Performance Standards proposed by MBPT in Form-6 are as follows:

Sl. No.	Performance Parameters	Proposed to 2015-16
(1)	Cargo Related Services	
(a)	Average Ship Berth day Output (in tonnes) in respect of Major Cargo groups	8700
	(i) Liquid Bulk	21200
	(ii) Dry Bulk	1360
	(iii) Break Bulk	2930
(b)	Average Moves per hour (in TEUs) in respect of Containers	-
(2)	Vessel Related Services	
(a)	Average Turnaround Time of Vessels (in days)	2.85
(b)	Average Pre-Berthing Time of Vessels (in days)	0.29
(3)	Any other parameters found relevant by the Port	---

4.6. The proposal of the MBPT has the approval of its Board of Trustees.

5.1. Clause 3.2 and 3.3. of the Tariff Policy, 2015 stipulate that Major Port Trusts shall host the draft SOR along with the proposed Performance Standards on its website, giving the designated email address of Port as well as for TAMP for comments of relevant users / user organisations, within 15 days' time. The Major Port Trust is to submit its replies on the comments to be received from Port Users to TAMP not later than 15 days from the last date of receipt of comments from the port user. Accordingly, we have vide our letter dated 1 January 2016 requested MBPT to confirm the hosting of draft SOR and performance standards on its website. In this regard, a list of concerned users/ user organisations was also forwarded to MBPT. In this connection, the MBPT vide its letters dated 05 January 2016 and 14 January 2016 is seen to have intimated all the concerned users / User Organisations about hosting of the Draft SOR alongwith the performance standards in the website of MBPT and is also seen to have requested the users / user organisation to furnish their comments within 15 days to MBPT with a copy endorsed to TAMP.

5.2. Accordingly, some of the users / user organisations have furnished their comments, which were forwarded to MBPT as feedback information. The MBPT has responded to the comments of the users vide its letters dated 2 February 2016 and 3 February 2016.

6.1. Subsequently, the MBPT vide its letter dated FA/ACC/203/218 dated 02 March 2016 has submitted its proposal for amendment in levy of demurrage in SOR on export of vehicles through Mumbai Port. The main submissions made by the MBPT in its proposal are summarized below:

- (i). As per the earlier scale of rates of MBPT effective from 22.12.2011 to 17.02.2015, the demurrage on 'per vehicle per day' basis at section 3.1 (b) was applicable only for import vehicles. Demurrage on export vehicles was recovered on 'per tonne per day' basis as per section 3.1 (a). In the revised SOR effective from 18.02.2015, demurrage charges on 'per vehicle per day' basis at section 3.1 B(b) have been made applicable on export of vehicles also without distinction between import and export.
- (ii). Exporters of automobiles have expressed their concern about levy of demurrage on 'per vehicle per day' basis instead of 'per tonne per day' basis. Users have stated that sudden rise in port demurrage has impacted an increase of approx.1312% which is very high and may affect automobile export adversely. They have further

requested to carry out necessary amendments in SOR and to charge demurrage on 'per tonne basis' on export vehicles.

- (iii). Automobile export is a clean cargo and generate substantial revenue to the tune of ₹100.13 crores towards vessel and cargo related charges. It is thus felt necessary that export vehicles to be charged demurrage on 'per tonne per day basis' as was prescribed in the SOR prior to the revised SOR effective from 18.02.2015.
- (iv). Vide Trustees Resolution No. 154 dated 31.01.2016, the Board has approved a proposal to carry out necessary amendments in the Section 3.1 (B) (b) of existing SOR by inserting the word 'import' as under :

Class of Goods	How charged	Rate (in ₹.)		
		For first to 20 th day	For 21 st to 40 th day	For 41 st days onwards
1	2	3	4	5
(a). In respect of all goods classified in the wharfage schedule in section-3.1(A) above (other than goods specified in (b) below.	Per tonne per day or part thereof	59.96	89.91	119.93
(b) Motor vehicles including bull dozers, forklifts, tractors, cranes and Military Tanks (Import)	Per vehicle per day	640	1599	3198

- (v). Further, Board has accorded approval to implement the above amendment in Section 3.1(B) (b) of SOR with effect from 30.01.2016 since the rates on 'per tonne per day basis' are lower than existing rates on 'per vehicle per day' basis and it is as per the request of trade. (The copy of the Board Resolution has been furnished by the MBPT.)
- (vi). A statement of Existing SOR effective form 18.02.2016 and Proposed amendments in the existing SOR as furnished by MBPT, is given below:

- Existing provision:

Class of Goods	How charged	Rate (in ₹.)		
		For first to 20 th day	For 21 st to 40 th day	For 41 st days onwards
1	2	3	4	5
(a). In respect of all goods classified in the wharfage schedule in section-3.1(A) above (other than goods specified in (b) below.	Per tonne per day or part thereof	59.96	89.91	119.93
(b) Motor vehicles including bull dozers, forklifts, tractors, cranes and Military Tanks	Per vehicle per day	640	1599	3198

- Proposed provision to be incorporated in the SOR drafted as per Tariff Policy, 2015:

Class of Goods	How charged	Rate (in ₹.)		
		For first to 20 th day	For 21 st to 40 th day	For 41 st days onwards

1	2	3	4	5
(a). In respect of all goods classified in the wharfage schedule in section-3.1(A) above (other than goods specified in (b) below.	Per tonne per day or part thereof	67.75	101.60	135.52
(b) Motor vehicles including bull dozers, forklifts, tractors, cranes and Military Tanks (Import)	Per vehicle per day	723	1807	3614

6.2. MBPT has, therefore, requested this Authority to approve proposed amendment by inserting the word "import" in the 3.1 (B) (b) of Section 3.1 (B) – Demurrage under chapter III, cargo related charges of existing SOR and also in proposed SOR forwarded to TAMP on 16.12.2015 for approval.

6.3. Since the proposed provision is with reference to the amendment to the Scale of rates of the MBPT, this proposal is dealt alongwith the general revision proposal of MBPT.

6.4. In accordance with the consultative procedure prescribed, a copy of the MBPT proposal dated 02 March 2016 was also forwarded to the concerned users/ user organisations vide our letter dated 07 March 2016 to their comments. Some of the users have furnished their comments. These comments were forwarded to MBPT as feedback information. The MBPT has responded to the comments of users.

7.1 A joint hearing on the case in reference was held on 10 March 2016 at the Office of this Authority. At the joint hearing, the MBPT made a brief power point presentation on the proposal. The users / user organisations and the MBPT have made their submissions at the joint hearing.

7.2. After the joint hearing, some of the users / user organisations have furnished their comments on the MBPT proposal dated 16 December 2015 and 02 March 2016. These comments were forwarded to MBPT as feedback information. The MBPT has responded.

8. In the meanwhile, we have vide our letter dated 28 March 2016 sought some additional information/ clarification from MBPT on few points. After reminders dated 13 April 2016 and 03 May 2016, the MBPT has responded vide its letter dated nil (received on 03 May 2016). The additional information/ clarification sought by us and the response of MBPT thereon are tabulated as stated below:

Sl. No.	Information / Clarification sought by us	Reply furnished by MBPT
(i).	It may be recalled that during the last general revision of tariff of MBPT in 2015, though the MBPT had reported that the License (storage) Fees and warehousing charges are to be fixed following the Land Policy Guidelines, the MBPT had sought an increase of 70% in the License (Storage) Fees and Warehousing Charges, based on the cost position and without following the methodology prescribed in the Land Policy Guidelines. The MBPT had then compared the Ready Reckoner Rates to the then existing Licence (storage) Fees and had stated that increasing the licence fee as per	License (storage) charges are not estate related charges. The license (storage) charges and warehousing charges are for use of area inside dock on common user basis . The said area is not allotted for longer period or for exclusive use. The area is used for temporary storage of EXIM cargo. Thus, charges for use of said area cannot be compared with Estate related use. Port has already taken a stand that increase of the storage charges on the basis of Land Policy is detrimental to the Port and has therefore proposed an increase of 70% in the existing rates.

	Ready reckoner Rates will have adverse impact on cargo traffic of the Port. Section 3.3 of SOR deals with facility to support import/ export cargo activities at Mumbai Port. In this connection, since this Authority is mandated to follow the Land Policy Guidelines issued by the Government from time to time for the purpose of determining estate related charges for the estates of Port Trusts and since the MBPT has not determined the License (Storage) Fees and Warehousing Charges based on the stipulation contained in the Land Policy Guidelines of 2014, it was felt appropriate to prescribe the License (Storage) Fees and Warehousing Charges at the then existing level only. The MBPT was advised to formulate a well analysed proposal to prescribe License (Storage) Fees, Warehousing Charges and Slipway charges in line with the stipulations contained in the Land Policy Guidelines of 2014. It was also brought to the notice of MBPT that if the rates reflecting the market condition are quite high, Land Policy Guidelines of 2014 provides for moderation of Rates backed by reasons. In this backdrop, in the current proposal, the MBPT on the ground that even after considering the lowest rate i.e. Ready Reckoner rate the increase in storage fees works out to 400% which will result in loss of cargo of the port, and since Clause 2.7 of the Tariff Policy 2015 stipulates that, while going for a change in SOR, the Major Port Trusts will have to ensure that, as a result of the changes in SOR there will not be a loss of traffic to the port and the responsibility of ensuring this would rest with the Chairman of the Major Port Trusts, the MBPT has proposed increase of 70% in License (Storage) Fees and Warehousing Charges which is reported to be within the ceiling of ARR. Paragraphs 10 and 11 of the Revised Land Policy Guidelines of Government, issued in the year 2014 stipulate allotment of land inside and outside Custom Bond area taking into account the Reserve Price notified by this Authority. Para 13 of the said policy gives flexibility to the Port Trust not to choose the highest of the factors listed under para 13 with reasons. In view of the Land Policy position, the MBPT to delink prescription of License (Storage) Fees and Warehousing Charges from its general revision proposal, and file a well analysed proposal following	
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	the stipulations contained in the Land Policy Guidelines of 2014.	
(ii).	Based on a direction issued by the Ministry of Shipping (MOS) vide its letter No.8/(15)2015-TAMP dated 17 September 2015 to this Authority partially modifying the coastal concession policy issued by the then Ministry of Shipping, Road Transport & Highways (MSRTH) in January 2005, this Authority has passed a common Order No. TAMP/4/2004-Genl. dated 5 October 2015 to all the Major Port Trusts communicating the direction of the MOS that vessel related charges for coastal vessel should take into account the exchange rate fluctuation of the Indian Rupee vs the US\$ so that vessel related charges for all coastal vessels do not exceed 60% of the corresponding charges for other vessels and these charges will be collected in Indian Rupees at the applicable exchange rate. Also, as regards container related charges denominated in US\$ for foreign containers, the tariff for coastal container shall not exceed 60% of the corresponding charges applicable for other foreign containers and these charges will be collected in Indian Rupees at the applicable exchange rate. Based on this position, the MBPT in its proposed draft Scale of Rates has proposed at the relevant places, a note stating that <i>“Rate for coastal vessel is upto 60% (of the rate for foreign-going vessel juxtaposed) calculated by taking into account the exchange rate fluctuation”</i>. However, the MBPT is not seen to have captured the impact of the higher coastal income that would accrue to MBPT due to the proposed amendment, in its revenue estimation calculation. The MBPT to therefore make necessary modification in Form – 3 in this regard.	Amended Form-3 considering higher coastal income due to proposed amendment in coastal rates is attached. The estimated increase in coastal revenue in berth hire, pilotage, pier dues, port dues and charges for use of dry dock is considered in the statement for vessel related charges. As MBPT does not have any container handling equipment, increase in revenue on coastal charges for container handling equipment is not considered.
(iii).	Modification in the existing Scale of Rates:	
(a).	Section 2.1 A – Composite Pilotage & Towage charges, the MBPT has introduced a note stating that <i>shifting charges is without tugs and if tugs are used, then dock charges will be applicable</i>. The reason for the proposed introduction of note to be furnished.	There is no clarity as to whether ‘shifting’ means berth to berth with mooring lines i.e. ‘warping’; or berth to berth with the help of tugs e.g. in Indira Dock when vessel shifts from berth i.e. from BPS to Harbour Wall or from outer berth to insider Indira Dock basin or vice versa, then in such case tugs are used for shifting. Thus there is no difference between nature of pilotage while docking/undocking vessel. Similarly, when vessel is shifted from JD to Pir Pau or vice versa, tugs are used. This ‘shifting with tugs’ is to be treated as docking charges. Hence inclusion

		of suitable footnote in Section 2.1 (A) is proposed.
(b).	The existing description of Section 2.2 – Charges on vessel/ barges/ boats for arranging alongside other vessel for working of cargo in mid-stream and Port Lighterage Anchorage Area (Double Banking) is proposed to be modified as Charges on vessel/ barges/ boats/ <i>Pass pilot vessels and barges</i> for arranging alongside other vessel for working of cargo in mid-stream and Port Lighterage Anchorage Area (Double Banking). The reason for the proposed change in description to be furnished.	Almost all the barges/tugs/vessels engaged in loading/ discharging of cargo in midstream and PLA are having Pass Pilot Permission. With Pass Pilot Permission MBPT allow the barges to perform 'n' number of movements from Dharamtar/ <u>To Stream/</u> <u>To Dharamtar/</u> PNP Jetty/ Alongside mother vessel/ PNP Jetty/ Dock/Bunder Mid-stream operation Dock/Bunder without taking MBPT pilot. These Pass Pilot vessels/ barges are paying Water Conveyance charge which does not take into account Double Banking Charge. As a result Pass Pilot vessels/barges so excluded from levy of double banking charges whenever they go alongside of mother vessel for working cargo in mid-stream, which they otherwise have to pay if these movements are done with MBPT pilot. Since most of the mid-stream operation is done by Pass Pilot barges/ vessels Double Banking revenue of port is very low. It is relevant to mention here that barges which ply without taking Pass Pilot permission are paying Pilotage and Double banking charges for going alongside of mother vessel (double banking) for working cargo in mid-stream. For the reasons stated above, suitable change is proposed in description of Section 2.2.
(c).	Under the Wharfage Schedule, the MBPT has introduced wharfage rate for Rail cars at ₹ 180000/- per wagon. The MBPT to furnish basis to arrive at the proposed rate and to capture the revenue on account of this new item in the Form-3.	The ad-valorem rate @0.24% at Kandla Port Trust is considered for calculation of wharfage charges for one railcar which works out to ₹173,627/-rounded off to ₹ 1,80,000/- per wagon. MBPT handled 6 railcars for the first time in January 2016. Since there is no certainty about revenue generation from this item during the next tariff cycle, revenue on account of wharfage from railcars is not captured in Form-3.
(d).	Under the Wharfage Schedule, the Wharfage in respect of Motor vehicles and cars, including bull dozers, forklifts, tractors, cranes and military tanks (Import and Export) continue to be prescribed in advalorem basis. Clause 2.10 of the Working Guidelines requires the Port Trust to do away with advalorem wharfage rate in the existing SOR and determine specific wharfage rate taking into consideration special case to be taken for handling such	As has already been brought out in TR 74 of 9.10.2015, major items wherein advalorem rate is prevalent in MBPT for automobiles, project cargo & railcars. For railcars a separate unit is already proposed by MBPT in the tariff proposal. In response to MOS letter dated 14.12.2015 and TAMP letter dated 1.1.2016 MBPT is formulating a proposal for 'per unit rate for Automobile cargo'. Once the Board is

	cargo or a market determined tariff. Therefore, the MBPT to: (i).Prescribe wharfage on per unit basis for all cargo items. (ii).Furnish basis to arrive at the unit levy to be proposed to be furnished. (iii). Furnish Revenue on account of the proposed unit levy to be captured in the Form - 3.	constituted, the proposal will be submitted for approval. A separate petition will be filed thereafter for these items. Till such time MBPT may be allowed to levy the tariff proposed in tariff proposal dated 16.12.2015. As far as project cargo is concerned, since it consumes space, take more time for movement and gives lower productivity, it is proposed to continue with ad-valorem rate.																				
(e).	Slip way charge has been introduced at Section 9.5. During the last revision, MBPT had proposed a rate for Slip way charges and had stated that it would be covered by the Land Policy Guidelines. For the reasons given earlier (relating to License fees), slip way charges were not approved. Basis to arrive at the proposed rate has not been furnished. Revenue on account of this new item has not been captured in the Form -3.	Basis to arrive at the proposed rate as per land policy for Slipway charges is furnished. The details furnished by MBPT is given below: Workings for Charges for Slipway as per Ready Reckoner 2015: (amount in ₹) <table><tr><td>Market value of 1 sq.m of Land p.a. (Village no./Zone no. 10/80)</td><td>₹ 24600/-</td></tr><tr><td>6% Return on Market Value p.a</td><td>₹ 1476/-</td></tr><tr><td>Total no. of shifts per slip way (365 days x 3 shifts)</td><td>1095</td></tr><tr><td>Rental charges per shift per sq.m per slipway per annum (1476 / 1095)</td><td>₹ 1.34795</td></tr><tr><td>Rental charges for -</td><td></td></tr><tr><td>Slipway no. 1 & 2 (Total area 80 mt x 14 mt x 2 mt = 2240 sq. mtrs) x ₹1.34795 per sq.m</td><td>₹ 3019.41</td></tr><tr><td>Slipway no. 3 & 4 (Total area 80 mt x 12 mt x 2 mt = 1920 sq. mtrs) x ₹1.34795 per sq.m</td><td>₹ 2588.06</td></tr><tr><td>Slipway no. 5 & 6 (Total area 60 mt x 8 mt x 2 mt = 960 sq. mtrs) x ₹1.34795 per sq.m</td><td>₹ 1294.03</td></tr><tr><td>Total Rental charges for 6 slipways</td><td>₹ 6901.50</td></tr><tr><td>Rental charges for 1 slipway</td><td>₹ 1150/-</td></tr></table> Accordingly, the revenue of ₹6,73,900/- (₹ 1150 X 586 shifts during 2015-16) from this item has been captured in Form-3 as a separate item.	Market value of 1 sq.m of Land p.a. (Village no./Zone no. 10/80)	₹ 24600/-	6% Return on Market Value p.a	₹ 1476/-	Total no. of shifts per slip way (365 days x 3 shifts)	1095	Rental charges per shift per sq.m per slipway per annum (1476 / 1095)	₹ 1.34795	Rental charges for -		Slipway no. 1 & 2 (Total area 80 mt x 14 mt x 2 mt = 2240 sq. mtrs) x ₹1.34795 per sq.m	₹ 3019.41	Slipway no. 3 & 4 (Total area 80 mt x 12 mt x 2 mt = 1920 sq. mtrs) x ₹1.34795 per sq.m	₹ 2588.06	Slipway no. 5 & 6 (Total area 60 mt x 8 mt x 2 mt = 960 sq. mtrs) x ₹1.34795 per sq.m	₹ 1294.03	Total Rental charges for 6 slipways	₹ 6901.50	Rental charges for 1 slipway	₹ 1150/-
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(iv).	This Authority has passed the common Order No. TAMP/14/2016-Misc dated 9 February 2016 relating to prescription of lower charges for cargo & vessels related services as well as special discount in port charges for the services rendered after regular hours by the Major Port Trusts and BOT Operators operating thereat in pursuance of MOS letter No. PD/14033/101/2015-PD.V dated 3	As regards prescription of lower charges for services rendered after regular hours it is stated that Mumbai Port offers services round the clock and entire day is regular hours in Docks. There are, therefore, no services which can be considered as provided after regular hours. MBPT has already intimated MOS accordingly.																				

	February 2016. The MBPT to prescribe the said note in its proposed Scale of Rates.	
(v).	The Major Port Trusts were also requested to include suitable note in their Scale of Rates based on the position as reflected vide our letters brought out at Sl. No. (a) and (b):	
	(a). Letter No. TAMP/35/2013-Misc. dated 7 August 2014 directing all Major Port Trusts to prescribe a suitable note in their respective SOR regarding applicability of wharfage rates for Defence Stores in such a way that there is no ambiguity in mind of users on the application of the prescribed rates.	Note for Defence Stores has already been incorporated at Sr.No.13 of General Notes to Section 3.1(A).
	(b). Letter No. PD-25021/7/2015-PD.1. dated 16 April 2015 of Ministry of Shipping (MOS) directing all Major Port Trusts to follow the TAMP letter No. TAMP/53/2002-Misc dated 25 March 2015 regarding wharfage charges on vessel manifested as cargo in the Import General Manifest (IGM) or Export General Manifest (EGM). It is however seen that the MBPT has not included the relevant provisions in the proposed SOR. The MBPT to incorporate the same in the SOR and consider the impact, if any, in the revenue estimates.	In compliance to MOS letter dated 16.4.2015 directing all major ports to follow the TAMP letter No.TAMP/53/2002-Misc dated 25.3.2015 regarding wharfage charges on vessel manifested as cargo in the IGM/EGM, since TAMP has, on the basis of legal opinion, already passed an order for Chennai Port Trust(CHPT) for incorporation of the Note in this regard, the similar Note at Sr.No.14 under General Notes to Section 3.1(A) may be inserted in MBPT SOR: <i>“(14) Vessels calling the Port on her first voyage, which are declared as cargo in the Import General Manifest or Export General Manifest for the purposes of Customs Act, 1962, shall not be treated as cargo and no wharfage shall be levied on such vessels, if the vessels come into the port on their own steam and sail out of the port limits on their own steam. However, when loading or unloading of vessels takes place within the Port limits, wharfage as per 3.1(A) above shall be payable on such vessels.”</i>
(vi).	As the MBPT may be aware, during the joint hearing, one of the users viz., Sea Master Shipping Private Limited (SMSPL) had submitted that as per existing SOR, Inland vessels are treated like Coastal vessels and that with the new policy on coastal concession and with MBPT proposing the note as per the new policy, it was amounting to a steep increase in tariff for coastal vessels including Inland Vessels which earns and pays in INR only. Accordingly, it was proposed by SMSPL that the Inland Vessels should be classified and charged separately. During the joint hearing, the MBPT had made a mention about looking into the matter. The MBPT to therefore clarify the position. The financial implication on account of the proposed amendment, if any, to be effected by MBPT, may also be captured.	Since berth hire charges for Barges is already at discounted rate compared to Coastal vessel, existing parity between Coastal vessel and Barges needs to be maintained. Further, both charges are now linked to foreign rate and recovered from vessel owner/agent. In view of above, there is no case for further concession to Barges.

9. The MOS vide its letter dated 17 September 2015 issued a direction to this Authority partially modifying the coastal concession policy issued by the (then) MSRTH in January 2005. As per the letter dated 17 September 2015 of the MOS, vessel related charges and container related charges for coastal vessels and coastal containers should take into account the exchange rate fluctuation of Indian Rupee vis-à-vis the US \$ so that vessel related charges for all coastal vessels and the container related charges for all coastal containers should not exceed 60% of the corresponding charges. This direction of the MOS was communicated by this Authority by an Order dated 5 October 2015. However, the MOS vide its recent letter dated 11 May 2016 has directed to keep its earlier direction dated 17 September 2015 in abeyance. Therefore, this Authority has passed an Order dated 19 May 2016 to keep its Order dated 5 October 2015 also in abeyance. In the circumstance, the MBPT has furnished revised Form-III, withdrawing the higher coastal revenue arising out of the MOS letter dated 17 September 2015 vide its email dated 23 May 2016.

10. 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 made available at our website <http://tariffauthority.gov.in>

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

- (i). The existing Scale of Rates of Mumbai Port Trust (MBPT) was last revised by this Authority in January 2015. The Scale of Rates of MBPT approved by this Authority vide its Order dated 2 January 2015 is valid till 31 March 2017. Vide the said Order, an increase of 23% was granted on all the cargo related charges including the stevedoring charges. No increase was granted in the Vessel related charges.
- (ii). As stated earlier, the existing Scale of Rates of MBPT is valid till 31 March 2017. However, the MBPT has chosen to file a proposal for review of its Scale of Rates to be effective for a period of three years from the date of effect of the Order passed by this Authority. According to MBPT, in the last revision in 2015, this Authority has not increased the vessel related charges by 23% as proposed by the Port owing to the surplus position reflected by the Vessel related activity. Also, the increase of 70% in License (Storage) Fees and Warehousing Charges has not been approved on the ground that MBPT has not determined these charges based on stipulation contained in Land Policy Guidelines of 2014. Further, the MBPT has stated that in para 11 (xvi) (m) of the Order of January 2015, an option has been made available to MBPT to seek a higher quantum of increase beyond 23%.

In this connection, it may be recalled that as recorded at para 11(xvi)(m) of the MBPT Order of January 2015, though the port had sought an increase of 23% with effect from 01 April 2014, the 23% increase was granted with effect from February 2015. To make good for the time gap, the option then available was to grant a quantum of increase higher than 23% for the remaining tariff cycle of 26 months i.e. February 2015 to March 2017. However, this Authority was not in a position to grant increase *suo moto* more than 23%, considering that the port itself had sought an increase of only 23%, though, as per its deficit position, it could have sought a higher percentage of increase. In view of this position, this Authority had indicated its openness to consider a proposal from MBPT in this regard, if the port so desires, to grant a higher quantum of increase beyond 23%, to be effective prospectively, to make good the revenue for the loss of time.

- (iii). In the meantime, the Ministry of Shipping (MOS), vide its letter No. 8(1)/2014 TAMP dated 13 January 2015 has issued the new "Policy for determination of Tariff for Major Port Trusts, 2015" which was notified in the Gazette of India vide Gazette No. 30 dated 27 January 2015 by this Authority. The new "Policy for determination of Tariff for Major Port Trusts, 2015" has come into effect from 13 January 2015. Thereafter, as stipulated in Clause 1.5. of the Tariff Policy, 2015, the Working Guidelines was issued by this Authority in consultation with all the Major Port Trusts

to operationalize the Tariff Policy. The Working Guidelines was notified on 4 June 2015 vide Gazette no.207.

- (iv). Thus, on the ground that the Tariff Policy, 2015 allows the Port to decide Scale of Rates in such a way that estimated revenue generation from the proposed increase in SOR is within the ceiling Annual Revenue Requirement and given that some quantum of deficit was left uncovered as opted by MBPT during the last revision of tariff of MBPT, the MBPT is reported to have come up with a proposal for review of its Scale of Rates, based on the stipulations contained in the Tariff Policy, 2015 as well as the Working Guidelines, for a three year Tariff Cycle ending 31 March 2019.
- (v). The general revision proposal has been filed by the MBPT in December 2015. Subsequently, the MBPT has furnished the information/ clarification sought by us vide its letter dated 05 May 2016. Thereafter, the MBPT proposal for general revision of its Scale of Rates has been taken up for finalization. For the purpose, the proposal filed by MBPT in December 2015 along with submissions made and additional information / clarification furnished by the port during the processing of the case are considered in this analysis.
- (vi).
 - (a). Clause 2.1 of the Tariff Policy 2015 requires each Major Port Trust to assess the Annual Revenue Requirement (ARR) which is the average of the sum of Actual Expenditure as per the final Audited Accounts of the three years 2011-12 (Y1), 2012-13 (Y2) and 2013-14 (Y3) subject to certain exclusions as prescribed the Clause 2.2. of the Tariff Policy 2015 and the Working Guidelines issued by this Authority plus Return at 16% on Capital Employed including capital work-in-progress obtaining as on 31st March 2014, duly certified by a practicing Chartered Accountant/ Cost and Management Accountant.
 - (b). The MBPT has assessed the Annual Revenue Requirement (ARR) based on Audited Annual Accounts for three years i.e. 2011-12 (Y1), 2012-13 (Y2) and 2013-14 (Y3) duly certified by a practicing Chartered Accountant. The MBPT has excluded the expenses not admissible in ARR computation for arriving at the Average annual expenses for the year 2011-12, 2012-13 and 2013-14. The following adjustment done by MBPT in line with provisions prescribed in Clause 2.2. of Tariff Policy 2015 and Clause 2.2. of Working Guidelines are brought out for specific mention:
 - (i). The MBPT has excluded expenses related to estate activity. Interest on loans is reported to be NIL.
 - (ii). As per Clause 2.2(iii) of Tariff Policy, 2015, and the Working Guidelines, 1/5 of one-time expenses like arrears of wages, pension/ gratuity, ex-gratia payments arising out of wage revision etc. are to be included in the Annual Revenue Requirement (ARR). Likewise, 1/5th of the Contribution to Pension Fund are to be included for the calculation of ARR. This means 4/5th of the above mentioned expenses are to be excluded in the ARR computation.

MBPT has excluded ₹ 1.97 crores, ₹ 5.13 crores and ₹ 23.52 crores towards 4/5th of the arrears of wages during the years 2011-12 to 2013-14, as reflected in the Annual accounts of the respective years for the Port as well as the erstwhile Bombay Dock Labour Board (BDLB), and hence considered in the analysis. Similarly, MBPT has excluded ₹ 0.80 crores, ₹ 0.80 crores and ₹ 49.30 crores towards 4/5th of the compensation towards Special Voluntary Retirement Scheme (SVRS) during the years 2011-12 to 2013-14, as reflected in the Annual accounts for the Port as well as the erstwhile BDLB of the respective years, and hence considered in the analysis.

Further, the MBPT has excluded ₹372.74 crores, ₹453.68 crores and ₹565.98 crores in the years 2011-12, 2012-13 and 2013-14 respectively being the aggregate of 4/5th of the contribution to the pension fund reported in the Annual Accounts of the Port as well as the erstwhile BDLB for the corresponding years. The above adjustment done by MBPT is in line with Tariff Policy, 2015 and hence considered.

- (iii). As per Clause 2.2. (iv) of Tariff Policy 2015 and Clause 2.2. (iv) of the Working Guidelines, Management and General Administration Overheads subject to a cap of 25% of aggregate of the operating expenditure and depreciation is only to be considered in the ARR calculation.

The Management and General Administration Overheads reported in the Audited Annual Accounts is ₹ 217.60 crores, ₹ 253.69 crores and ₹ 255.35 crores for years 2011-12, 2012-13 and 2013-14 respectively. Thereafter, the MBPT has assessed 25% of the Operating Expenses (including depreciation but excluding operating expenses relating to Estate) as per Audited Annual Accounts at ₹134.25 crores, ₹154.17 crores and ₹159.76 crores. The overheads over and above the 25% of operating expenses have been excluded from ARR in the years 2011-12, 2012-13 and 2013-14 respectively complying with the provisions of Tariff Policy, 2015.

- (iv). As per Clause 2.2(v) of the Working Guidelines notified by this Authority all expenses relevant for captive berths are to be excluded from the computation of ARR. The MBPT has not indicated any existence of Captive berths and has, therefore, not estimated any expenditure under this head.

- (vii). Following the provisions prescribed at Clause 2.3. of the Tariff Policy, 2015 and Clause 2.3. of the Working Guidelines, the MBPT has arrived at average expenses for the years 2011-12, 2012-13 and 2013-14 at ₹1209.92 crores.

- (viii). (a). The MBPT has arrived at capital employed in line with provision prescribed in Clause 2.4. of the Working Guidelines. The MBPT has considered the net fixed assets plus capital work-in-progress as on 31 March 2014 reported in the Audited Annual Accounts. As stated earlier, the MBPT has stated that there are no expenditure incurred by port relating to captive berth.

- (b). Working capital comprises of Inventory, Sundry debtors and Cash balances. The Inventory and Sundry Debtors is seen to be computed as per norms prescribed in clause 2.5. of Working Guidelines. The cash balance is seen to have been calculated by MBPT by taking into account the monthly cash expenses, excluding depreciation, but including the cash expenses of the Estate activity. Since the Estate activity has been excluded from the purview of the Tariff Policy, 2015, the cash balance is reworked to consider one month cash expenses excluding the expenses related to the Estate activity.

- (c). The total capital employed including the revised working capital works out to ₹1366.87 crores as against ₹1372.71 crores arrived by MBPT.

- (d). Return on Capital Employed at 16% is worked out on the revised Capital Employed at ₹218.70 crores which is considered in the ARR computation.

- (ix). The ARR is the average of the expenditure for the three financial years 2011-12 to 2013-14 at ₹1209.92 crores plus 16% Return on Capital Employed at ₹ 218.70 crores aggregating to ₹1428.62 crores as on 31 March 2014. Further, as per Clause 2.7. of Working Guidelines, the said ARR has been indexed @ 100% of the Wholesale Price Index (WPI) applicable for the year 2014-15 and 2015-16 at 6% and 3.82% respectively. The ceiling indexed ARR works out to ₹1572.19 crores for the year 2015-16, as against the ceiling indexed ARR worked out by MBPT at ₹1573.22 crores.

Clause 2.1 of the Tariff Policy requires each Major Port Trust to assess the Annual Revenue Requirement (ARR) which is the average of the sum of actual expenditure for the three years, 2011-12(Y1), 2012-13(Y2) and 2013-14(Y3) plus return on 16% of Capital Employed. In this regard, we have already requested the Ministry of Shipping (MOS) to amend the said clause in the policy by prescribing the (Y1), (Y2) and (Y3) instead of indicating the specific years 2011-12 (Y1), 2012-13 (Y2) and 2013-14 (Y3) so that the ARR captures the average of the actual expenditure relating to the immediately preceding three years period. Response of the MOS is awaited in this regard. In the meantime, since the years 2014-15 and 2015-16 are already over, the approach adopted by the port to arrive at the ceiling indexed ARR applying 100% of the WPI applicable for the year 2014-15 and 2015-16 at 6% and 3.82% respectively is accepted so that the port is not at a loss in the estimation of ARR to formulate its SOR to achieve the ARR.

The detailed working of ARR calculation given by the port duly certified by Chartered Accountant is relied upon subject to the modification effected to the cash balance under the head of Working Capital as discussed above. A summary of certified ceiling indexation ARR is given below:

(₹ in crores)

Sr. No	Particulars	2011-12	2012-13	2013-14
1	Total Expenditure after all Adjustments	1115.23	1285.95	1228.59
2	Average Expenses [Y1 + Y2 + Y3] / 3	1209.92		
3	Capital employed as on 31.03.2014 including capital work in progress as on 31.03.2014 and working capital as per norms	1366.87		
4	Return on capital employed @ 16%	218.70		
5	ARR as on 31 March 2014 (5=2+4)	1428.62		
6	Indexation in the ARR @ 100% of the WPI applicable for the year 2014-15 (6%)	1514.34		
7	Indexation in the ARR @ 100% of the WPI applicable for the year 2015-16 (3.82%)	1572.19		
8	Ceiling Indexed Annual Revenue Requirement (ARR)	1572.19		

- (x). (a). As per Clause 2.6. of Tariff Policy 2015, the Major Port Trusts have the flexibility to determine the rates to respond to the market forces based on commercial judgment and draw the Scale of Rates within the ceiling of indexed ARR, duly certified by a practising Chartered Accountant. The Port has given detailed working of revenue estimation indicating each of the tariff items in the proposed SOR for corresponding traffic handled in 2014-15 as required as per Clause 2.9. of the Working Guidelines. As per Clause 2.5.

of Tariff Policy 2015, for drawing the SOR, the MBPT has reportedly considered the actual cargo traffic in tonnes and GRT of vessel handled by the port during the year 2014-15, to draw the proposed SOR within the ceiling indexed ARR.

- (b). The MOS has, vide its letter No.8/(15)2015-TAMP dated 17 September 2015, issued a direction to this Authority partially modifying the coastal concession policy issued by the then Ministry of Shipping, Road Transport & Highways (MSRTH) in January 2005. As per the said direction of the MOS, vessel related charges for coastal vessel should take into account the exchange rate fluctuation of the Indian Rupee vs the US\$ so that vessel related charges for all coastal vessels do not exceed 60% of the corresponding charges for other vessels and these charges will be collected in Indian Rupees at the applicable exchange rate. Also, as regards container related charges denominated in US\$ for foreign containers, the tariff for coastal container shall not exceed 60% of the corresponding charges applicable for other foreign containers and these charges will be collected in Indian Rupees at the applicable exchange rate. Based on the direction of the MOS for immediate prescription of rates for coastal vessel and coastal container, this Authority has passed an Order No. TAMP/4/2004-Genl. dated 5 October 2015 incorporating suitable notes in the Scale of Rates of Major Ports and private terminal operating thereat and communicated to all the Major Port Trusts including MBPT and concerned BOT operators for implementation. Accordingly, the MBPT had estimated the higher coastal revenue arising out of the above policy of the Government. However, the MOS vide its subsequent letter dated 11 May 2016 has directed to keep its earlier direction dated 17 September 2015 in abeyance. Therefore, this Authority has passed an Order dated 19 May 2016 to keep the Order of 5 October 2015 in abeyance. In this situation, the MBPT has furnished a revised Form-3 withdrawing the higher coastal revenue arising out of the MOS letter dated 17 September 2015.
- (c). The actual cargo traffic reported to have been handled by MBPT in the year 2014-15 is 616.60 lakh tonnes. Considering the proposed increase of 13% in the cargo related charges including demurrage and stevedoring charges, 70% increase in the licence fees and 10% increase in the vessel related charges and the income with regard to the new tariff item viz., Slip way charges, the MBPT has arrived at the Revenue Estimation at the proposed level of tariff at ₹1306.64 crores.
- (d). With regard to the 70% increase in the licence fees, it may be recalled that during the last general revision of tariff of MBPT in 2015, though the MBPT had reported that the License (storage) Fees and warehousing charges are to be fixed following the Land Policy Guidelines, the MBPT had sought an increase of 70% in the License (Storage) Fees and Warehousing Charges, based on the cost position and without following the methodology prescribed in the Land Policy Guidelines. The MBPT had then compared the Ready Reckoner Rates to the then existing Licence (storage) Fees and had stated that increasing the licence fee as per Ready reckoner Rates will have adverse impact on cargo traffic of the Port. In this connection, since this Authority is mandated to follow the Land Policy Guidelines issued by the Government from time to time for the purpose of determining estate related charges for the estates of Port Trusts and since the MBPT has not determined the License (Storage) Fees and Warehousing Charges based on the stipulation contained in the Land Policy Guidelines of 2014, this Authority in its Order of January 2015 has prescribed the License (Storage) Fees and Warehousing Charges at the then existing level only and advised the MBPT to formulate a well analysed proposal to prescribe License (Storage) Fees, Warehousing Charges and Slipway charges in line with the stipulations contained in the Land Policy Guidelines of 2014. It was also

brought to the notice of MBPT that if the rates reflecting the market condition are quite high, Land Policy Guidelines of 2014 provides for moderation of Rates backed by reasons.

In this backdrop, even in the current proposal, the MBPT on the ground that increase of the storage charges on the basis of Land Policy is detrimental to the Port as even after considering the lowest rate i.e. Ready Reckoner rate, the increase in storage fees works out to 400% which will result in loss of cargo of the port and, and since Clause 2.7 of the Tariff Policy 2015 stipulates that, while going for a change in SOR, the Major Port Trusts will have to ensure that, as a result of the changes in SOR there will not be a loss of traffic to the port, the MBPT has proposed increase of 70% in License (Storage) Fees and Warehousing Charges which is within the ceiling of ARR. Further, the MBPT has stated that the License (storage) charges are not estate related charges and that these charges are for use of area inside dock on common user basis. The MBPT has also stated that the said area is not allotted for longer period or for exclusive use and is used for temporary storage of EXIM cargo. In view of this position, the MBPT has stated that the charges for use of said area cannot be compared with Estate related use.

With regard to the submissions made by MBPT, reference is drawn to Section 3.3 under Chapter – III of the existing Scale of Rates of MBPT, which prescribes Licence (Storage) Fees and Warehousing charges, to be levied on per sq.mtr per month basis. Though the charges are levied towards the temporary storage of EXIM cargo, as reported by MBPT, the rates are prescribed on 'area occupied' basis for a specified time period and not on 'tonnage' basis. When the rates are prescribed on 'area occupied' basis, for a specified time period prescription of rentals as per the Land Policy Guidelines is inevitable.

Paragraphs 10 and 11 of the Revised Land Policy Guidelines of Government, issued in the year 2014 stipulate allotment of land inside and outside Custom Bond area taking into account the Reserve Price notified by this Authority. Therefore, the MBPT is advised to formulate a well analysed proposal following the stipulations contained in the Land Policy Guidelines of 2014 and file the proposal within 3 months from the date of notification of the Order in the Gazette of India. While doing so, the MBPT may take note of Para 13 of the said policy which gives flexibility to the Port Trust to prescribe rentals based on the market value of the land which is not the highest of the factors listed under para 13 of the Land Policy Guidelines, with reasons. In the meanwhile, the proposed increase of 70% in License (storage) fees and warehousing charges is approved on Ad hoc basis keeping in view that the MBPT has invited tenders for engagement of valuers to determine the market value of land.

- (e). With regard to the slipway charges proposed by the port at ₹1150/- per slipway, it may be recalled that during the last review of tariff of MBPT in 2015, the MBPT had stated that the Slipway charges are to be fixed following the Land Policy Guidelines. In this context, from the workings furnished by the MBPT, it is seen that to arrive at the proposed slipway charge of ₹1150/- per slipway, the MBPT is seen to have taken into account the market value of land as per the Ready Reckoner of 2015 and considered 6% of the said market value.

However, as per clause 11.2(e) of the Land Policy Guidelines, 2014, a Land Allotment Committee (LAC) shall be constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic. The MBPT has not indicated about constituting of a LAC. Further, as per Clause 13(a) of the land policy guidelines of 2014,

the LAC shall determine the market value of land taking into account highest of the five factors like (i) State Government's ready reckoner value if available for similar classification/ activities, (ii) Highest rate of actual relevant transactions registered in last three years in the Port's vicinity (the vicinity of the Port is to be decided by the respective Port Trust Boards), with an appropriate annual escalation rate to be approved by the Port Trust Board (iii) Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board., (iv) rate arrived at by an approved valuer and (v) any other relevant factors as it is identified by the port. Also, as per clause 13 (c) read with clause 13(a) and (b) of the land policy guidelines of 2014, the port shall file a proposal to this Authority for fixation of latest SOR of the land based on the market value of land recommended by the LAC which will normally take into account the highest of the five factors for market value of land stipulated in Para 13 (a) of the land policy guidelines of 2014. In case if the LAC is not choosing the highest factor, the guidelines requires the LAC to record the reasons for the same in writing.

With regard to the slipway charges, the MBPT is neither seen to have constituted a LAC nor is seen to have followed the stipulations of the Land Policy Guidelines of 2014 in toto. Therefore, the MBPT is advised to formulate a well analysed proposal following the Land Policy Guidelines, 2014 for fixation of Slip Way Charges and file the proposal within 3 months of date of notification of the Order in the Gazette of India. In the meantime, the proposed Rate of ₹1150/- per slip-way is approved on Ad hoc basis.

- (f). Thus, considering the proposed increase of 13% in the cargo related charges including demurrage and stevedoring charges and 10% increase in the vessel related charges and by including the income from the proposed slipway charges, the Revenue Estimation at the proposed level of tariff works out to ₹1306.64 crores as worked out by MBPT. As can be seen, the Revenue Estimation at the proposed level of tariff at ₹1306.64 crores is lower than the Ceiling Indexed Annual Revenue Requirement (ARR) of ₹1572.19 crores, as calculated earlier, thereby leaving a gap of ₹265.55 crores, which has been left uncovered by the Port. In other words, with the increase in tariff accorded, the income at the proposed level of tariff is not sufficient even to meet the operating costs and the return of 16% on the capital employed which is ₹ 218.90 crores. It is the conscious decision of the MBPT not to hike the tariff to the extent warranted by the ARR.
- (g). Considering the position that the increase in the cargo related charges including demurrage and stevedoring charges and the vessel related charges, as sought by the MBPT is well within the ceiling indexed Annual Revenue Requirement and based on the judgment of the Port, this Authority is inclined to grant an increase of 13% in the cargo related charges including demurrage and stevedoring charges and an increase of 10% in the vessel related charges, as proposed by the port.
- (h). **During the proceedings relating to the case in reference as well as during the joint hearing, the users/ user associations have raised serious concern about the condition of the infrastructure facilities and the problems encountered by concerned stakeholders at the Port on account of the status of infrastructure facilities. Majority of the users have also objected to the increase in the rates proposed by the MBPT considering the reported poor infrastructure of MBPT. However, in this connection, it is to be noted that the increase in the tariff, as sought by the MBPT, is well within the ceiling indexed Annual Revenue Requirement. Since the increase sought by the MBPT is within the purview of the stipulations of the Tariff Policy, 2015, the grant of increase in the tariff is inevitable. In this regard, it is relevant**

here to mention that as per clause 8.1. of the Tariff Policy, 2015, the rates prescribed in the Scale of Rates are ceiling levels; rebates and discounts are floor levels. The MBPT may exercise the flexibility to charge lower rates and/or allow higher rebates and discounts. Further, as per Clause 2.7. the Tariff Policy 2015, the MBPT is requested to ensure that as a result of revision in the SOR there will not be loss of traffic to the port.

At the same time, Infrastructure plays a significant role in provision of quality services and the MBPT as a service provider should endeavor to provide quality services by improving its infrastructure facilities. Accordingly, the MBPT is advised to have a serious look into its infrastructure facilities to adequately address the concerns of the users while rendering the port services.

- (xi). As stated earlier, based on the direction of the MOS with regard to the restatement of the coastal rates, the MBPT in its proposed Scale of Rates, as against the rate prescribed for coastal vessel in the existing SOR, has prescribed a note stating that the rate for coastal vessel will be collected in Indian Rupees upto 60% for foreign going vessel calculated by taking into account the exchange rate fluctuation. The revenue impact on account of this is reported to have been captured in the Form-3. However, subsequently, this Authority has passed an Order dated 19 May 2016 based on a direction dated 11 May 2016 issued by the MOS to keep its earlier direction dated 17 September 2016 temporarily in abeyance. Accordingly, the existing concessional coastal vessel rates may continue subject to 13% upward revision.
- (xii). In the proposed Scale of Rates at Section 2.1 A – Composite Pilotage & Towage charges, the MBPT has introduced a footnote stating that shifting charges is without tugs and if tugs are used, then dock charges will be applicable. In this regard, the MBPT is of the view that there is no clarity as to whether 'shifting' means berth to berth with mooring lines i.e. 'warping'; or berth to berth with the help of tugs. According to MBPT, there is no difference between nature of pilotage while docking/ undocking vessel, and hence the 'shifting with tugs' is to be treated as docking charges. Given that the proposed foot note gives more clarity and would reduce ambiguity, the proposed foot note is approved.
- (xiii). The existing description of Section 2.2 – Charges on vessel/ barges/ boats for arranging alongside other vessel for working of cargo in mid-stream and Port Lighterage Anchorage Area (Double Banking) is proposed to be modified to include Pass pilot vessels and barges. Since almost all the barges/ tugs/ vessels engaged in loading/ discharging of cargo in midstream and Port Lighterage Anchorage Area are having Pass Pilot Permission, which allows the barges to perform 'n' number of movements without taking MBPT pilot, the Pass Pilot vessels/ barges pay only the Water Conveyance charge and not the Double Banking Charge. Since most of the mid-stream operation is done by pass pilot barges / vessels, the MBPT has proposed the said note, which is approved.
- (xiv). Under the Wharfage Schedule, the MBPT has introduced wharfage rate for Rail cars at ₹180000/- per wagon. The said rate is reported to be derived from the ad-valorem rate of 0.24% at Kandla Port Trust, which works out to ₹173,627/- per wagon. Since the proposed wharfage rate for Rail cars is derived from an existing rate prevailing in other port and since there is no pointed objection from the users, to the said levy and since the Board of Trustees of MBPT have specifically approved the proposed rate, the proposed wharfage rate for Rail cars at ₹180000/- per wagon is approved.

Since there is no certainty about revenue generation from this item during the next tariff cycle, revenue on account of wharfage from railcars has not been captured by MBPT in its workings. Considering the revenue gap between the ceiling indexed

ARR and the income estimated by the MBPT at the proposed level of tariff, which is ₹.265.55 crores the income arising on account of the said levy would get subsumed in the revenue deficit.

- (xv). Under the Wharfage Schedule, the Wharfage in respect of Motor vehicles and cars, including bull dozers, forklifts, tractors, cranes and military tanks (Import and Export) continue to be prescribed in advalorem basis. Clause 2.10 of the Working Guidelines requires the Port Trust to do away with advalorem wharfage rate in the existing SOR and determine specific wharfage rate taking into consideration special case to be taken for handling such cargo or a market determined tariff. Accordingly, the MBPT has been specifically requested to prescribe wharfage on per unit basis for all cargo items. In this connection, the MBPT has stated that it is in the process of formulating a proposal for 'per unit rate for Automobile cargo' and that on approval of its Board of Trustees, it will file a separate proposal. Till such time, the MBPT has proposed levy of the proposed increased advalorem charges. As far as project cargo is concerned, since it consumes space, take more time for movement and gives lower productivity, the MBPT has proposed to continue with ad-valorem rate.

In the absence of any proposal to prescribe wharfage on per unit basis at present, the advalorem rates are allowed to continue at the existing level without any increase to incentivise the port to work on prescription of unit based rate. The reasoning of MBPT that project cargo consumes space and takes more time for movement and gives lower productivity, to continue with ad-valorem rate, is not tenable. There are many major ports, who prescribe per unit wharfage rates for Project cargo also. In view of the above position, the MBPT is advised to formulate a well analysed proposal to prescribe the Wharfage in respect of Motor vehicles and cars, including bull dozers, forklifts, tractors, cranes and military tanks and Project cargo on per unit basis and file within a period of three months from the date of notification of the Order passed in the Gazette of India.

- (xvi). Based on a communication from the Ministry of Shipping (MOS), the MBPT was requested to prescribe a suitable note in the SOR regarding applicability of wharfage rates for Defense Stores in such a way that there is no ambiguity in mind of users on the application of the prescribed rates. In this regard, MBPT has prescribed a note at Sr.No.13 of General Notes to Section 3.1(A) to the effect that "Defence stores" would include 'Bombs, grenades, torpedoes, mines, missiles, and similar munitions of war and parts thereof: cartridges and other ammunition and projectiles and parts thereof, including shot and cartridges wads' coming under Arms, Ammunition, parts and accessories thereof but the reference to "parts thereof does not include radio or radar apparatus as per note no. 2 of Chapter no. 93 of Customs Tariff of India. The proposed note is approved.
- (xvii). Based on a communication from the Ministry of Shipping (MOS), the MBPT was requested to prescribe a suitable note in the SOR regarding wharfage charges on vessel manifested as cargo in the Import General Manifest (IGM) or Export General Manifest (EGM). In this regard, MBPT has prescribed a note at Sr.No.14 of General Notes to Section 3.1(A) to the effect that Vessels calling the Port on her first voyage, which are declared as cargo in the Import General Manifest or Export General Manifest for the purposes of Customs Act, 1962, shall not be treated as cargo and no wharfage shall be levied on such vessels, if the vessels come into the port on their own steam and sail out of the port limits on their own steam. However, when loading or unloading of vessels takes place within the Port limits, wharfage as per 3.1(A) above shall be payable on such vessels. The proposed note is approved.
- (xviii). During the joint hearing, one of the users viz., Sea Master Shipping Private Limited (SMSPL) submitted that as per existing SOR, Inland vessels are treated like Coastal vessels and that with the new policy on coastal concession and with MBPT proposing the note as per the new policy, it was amounting to a steep increase in tariff for coastal vessels including Inland Vessels which earn and pay in INR only. Accordingly, it was proposed by SMSPL that the Inland Vessels should be classified

and charged separately. In this connection, the MBPT has stated that since berth hire charges for Barges is already at discounted rate compared to Coastal vessel, existing parity between Coastal vessel and Barges needs to be maintained and hence, there is no case for further concession to Barges. The judgment and the reasoning of the port in this regard, is relied upon.

- (xix). During the proceedings relating to the case in reference, the Mumbai and Nhava-Sheva Ship Agents Association (MANSA) has pointed out regarding levy of ousting priority charges on cruise vessel by MBPT. According to MANSA, since the voyages of the cruise vessels are declared 2 years in advance of their expected date of arrival (ETA), all are aware of its arrival and that the passenger berth should be kept ready as per prior intimation. However, at times, some other category of the vessel is permitted to berth on the passenger berth on the condition that, the vessel would vacate the berth for providing room on arrival of the passenger/ cruise vessels. In such cases, MANSA has stated that ousting charges are levied by MBPT for berthing of cruise / passenger vessels on account of ousting the vessel berthed at passenger terminal. There are no dedicated berths at the MBPT for 'Cruise Vessels'. The berths cannot be kept vacant/ idle/ reserved for cruise vessels. To have a faster turnaround of the vessels, other deep drafted cargo vessels are accommodated at these berths. These arguments of the MBPT cannot be brushed aside considering the revenue gap of ₹.265.55 crores. Therefore, it does not appear to be unreasonable to levy ousting priority charges on the cruise vessels when the working cargo vessel is to be removed from the relevant vessel.
- (xx). As per the scale of rates of MBPT prevailing prior to February 2015 (when the General Revision Order of January 2015 came into effect), the demurrage on 'per vehicle per day' basis at section 3.1 (b) was applicable only for import vehicles. Demurrage on export vehicles was recovered on 'per tonne per day' basis as per section 3.1 (a). In the Scale of Rates effective from February 2015, based on the proposal of MBPT then, demurrage charges on 'per vehicle per day' basis applicable for import vehicle was made applicable on export vehicles also without distinction between import and export. However, in view of the concern expressed by the exporters of automobiles and since automobile export generated substantial revenue to the Port, the MBPT with the approval of its Board of Trustees have restored levy of demurrage on export vehicles on 'per tonne per day basis' as prevailed earlier, to be effective from 30 January 2016. Though the car manufacturers have endorsed this restoration, the Maruti Suzuki India Limited (MSIL) and TATA Motors Ltd. (TML) have requested for retrospective application of the amendment with effect from February 2015 onwards.

Since the amendment proposed by the port is based on the request of the users itself, the proposal of the port to restore levy of demurrage on export vehicles on 'per tonne per day basis' as prevailed earlier, is approved. The moot question is, however, the effective date of implementation of the said amendment. According to MBPT, since the Board of Trustees of MBPT has approved the amendment to be effective from 30 January 2016, the amendment should come into effect from 30 January 2016 and according to MSIL and TSL, the amendment should come into effect from February 2015. From the copy of the Minutes of the Board Meeting furnished by the MBPT, it is seen that the Board in its meeting held on 30 January 2016 have resolved to implement the amendment with immediate effect. In view of the specific approval of the Board, this Authority is inclined to approve the levy of demurrage charges on export vehicles on 'per tonne per day basis' with effect from 30 January 2016 only.

- (xxi). As per clause 4.1. of the Tariff Policy, 2015, (i). the additional surplus assessed by TAMP in earlier tariff Orders which remain unadjusted has to be transferred by Major Port Trusts to any fund as desired by the Port Trust, and, further (ii). additional surplus, if any, accruing to the Major Port Trusts during the period of application of existing Scale of Rates till the effective date of implementation of the new Scale of Rates fixed under Tariff Policy, 2015, should be assessed and transferred to the

General Reserve and use the funds for the purpose of development, creation and / or modernization of the port infrastructure facilities.

As brought out in para 11(xvi)(m) of the last general revision Order of January 2015, the increase of 23% effected then in the cargo related charges would not fully meet the deficit of MBPT prevalent then. Therefore, question of any additional surplus of earlier tariff Orders remaining unadjusted does not arise.

For the years, 2011-12 to 2014-15, it is relevant here to mention that the profit & loss account of MBPT shows a deficit position before tax for all the years under consideration. Therefore, question of treatment of transfer of surplus as per clause 4.1. of the Tariff Policy 2015 does not arise.

The MBPT may after finalising the accounts for the financial year 2015-16, assess the actual surplus / deficit and in case of surplus, if any, comply with provision prescribed in Clause 4.1. of the Tariff Policy 2015 and also report the position to this Authority.

- (xxii). As per Clause 3.1. of the Tariff Policy 2015, the Major Port Trusts shall also commit Performance Standards for cargo related services in terms of average ship berth day output, average moves per hour in case of container handling. For vessel side services, the port shall prescribe Performance Standards in terms of average turnaround time of vessels and average pre-berthing time of vessels and any other parameter which is found relevant by the Port. The MBPT has committed Performance Standards for cargo related services in terms of average ship berth day output in tonnes / day including major cargo groups. The MBPT has also proposed Performance Standards in terms of average turnaround time of vessels and average pre-berthing time of vessels. The Tariff Policy, 2015, does not prescribe any method or basis for proposing performance standards. The performance standards as proposed by the MBPT are prescribed along with SOR.
- (xxiii). As per Clause 2.8. of the Tariff Policy, 2015, SOR will be indexed annually to the inflation to the extent of 100% variation in Wholesale Price Indexed (WPI) announced by the Government of India occurring between 1 January 2014 and 1 January of the relevant year and the adjusted indexed SOR will come into force from 1 April of the relevant year to 31 March of the following year. Further, as per clause 3.2 of the Tariff Policy, 2015 to be read with clause 2.8 of the Tariff Policy 2015, annual indexation in SOR at 100% of the WPI is applicable subject to achievement of Performance Standards committed by Major Port Trusts. If a particular port does not fulfil the Performance Standard, no indexation would be allowed during the next year. It is relevant to state that in the instant case indexation for the year 2015-16 is already considered in the ARR computation and for drawing the SOR. The next annual indexation in SOR will thus be applicable from 1 April 2017 subject to increase in inflation index and achievement of Performance Standards in the year 2016-17. That being so, a note is inserted in the SOR to the effect that the SOR approved by this Authority is subject to automatic annual indexation at 100% of the WPI to be announced by this Authority. The annual indexation will be from 1 April 2017 subject to increase in inflation index announced by us and the MBPT achieving the Performance Standards notified alongwith the SOR. If Performance Standards prescribed in the SOR are not achieved, there will be no indexation in SOR for that particular year. The Tariff Policy, 2015 stipulates that annual indexation in the SOR will be automatic subject to achievement of Performance Standards. It does not require the Major Port Trusts to approach this Authority for the same. In Order to have transparency, the port is advised to declare the Performance Standards achieved for the period 1 January to 31 December vis-à-vis the Performance Standards notified by this Authority at the level committed by the port within one month of end of the calendar year to the concerned users as well as to this Authority. If the Performance Standards as notified by this Authority are achieved by the port, then the port can automatically index the rates prescribed in this SOR at 100% of WPI announced by this Authority and apply the indexed SOR

w.e.f.. 1 April of the relevant year. The indexed SOR of the MBPT should be intimated by the port to the concerned users and to this Authority.

- (xxiv). The existing SOR of the MBPT has a validity upto 31 March 2017. However, for the reasons brought out earlier, the MBPT has chosen to file a proposal for review of its Scale of Rates to be effective for a period of three years from the date of effect of the Order passed by this Authority. As per Clause 3.8. of Working Guidelines, the SOR notified shall remain valid for 3 years after expiry of 30 days from the date of notification of the Order in the Gazette of India. Therefore and since the Tariff Policy, 2015 requires computation of tariff based on ARR on the actuals reported in the Audited Accounts for three years, the validity of the revised SOR is prescribed till 31 March 2019.
- (xxv). As per clause 8.1. of the Tariff Policy 2015, the rates prescribed in the Scale of Rates are ceiling levels; rebates and discounts are floor levels. The MBPT may exercise the flexibility to charge lower rates and/or allow higher rebates and discounts.
- (xxvi). Further, as per Clause 2.7. of the Tariff Policy 2015, it is for the MBPT to ensure that as a result of revision in the SOR, there will not be any loss of traffic to the port.

12.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the revised SOR and the Performance Standards of the MBPT.

12.2. **The effective date of the implementation of the revised Scale of Rates and conditionalities governing the application of revised Scale of Rates will remain the same as already indicated in the separate Order dated 21 June 2016 and shall be in force till 31 March 2019. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.**

12.3. The MBPT has committed Performance Standards for cargo related services in terms of average ship berth day output in tonnes / day including major cargo groups. The MBPT has also proposed Performance Standards in terms of average turnaround time of vessels and average pre-berthing time of vessels.

12.4. The indexation of SOR as provided in Clause 2.8 of the Tariff Policy, 2015 is to be read with Clause 3.2. of Tariff Policy 2015. If MBPT does not fulfil the Performance Standard, no indexation is eligible for the next year.

12.5 As per Clause 7.1. of the Tariff Policy 2015, the MBPT shall furnish to this Authority annual reports on cargo traffic, ship berth day output, average turnaround time of ships, average pre-berthing waiting time as well as the tariff realized for each of its berth. The annual reports shall be submitted by the Port within 60 days following the end of each of the year. Any other information which is required by this Authority shall also be furnished to this Authority from time to time.

12.6. As per Clause 4 of the Working Guidelines, this Authority shall publish all the information received by it from Major Port Trusts under clause 7.1. of the Tariff Policy, 2015 on its website. However, this Authority shall consider a request from MBPT about not publishing certain data/information furnished which may be commercially sensitive. Such requests should be accompanied by detailed justification regarding the commercial sensitiveness of the data / information in question and the likely adverse impact on their revenue/ operation upon such publication. TAMP's decision in this regard would be final.

(T.S. Balasubramanian)
Member (Finance)

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.

TAMP/78/2015-MBPT	:	Proposal received from the Mumbai Port Trust (MBPT) for General Revision of its Scale of Rates (SOR).
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A summary of the comments received from users/ user organisations and response of Mumbai Port Trust (MBPT) thereon is tabulated below:

Sl. No.	Comments of users / user organisations	Comments of MBPT
1.	Mumbai and Nhava-Sheva ship Agents Association (MANSA)	
(i).	The Tariff were sanctioned by TAMP for the period w.e.f. 01-02-2015 till 31-03-2017. MBPT has already hiked the Tariff to the extent of 23% or more. With this steep increase, the Shipping Trade is already subjected to heavy stress and difficulty. Whatever changes that are proposed now should not be made applicable till expiry of the effectiveness of the existing SOR i.e. till 31-03-2017. We are shocked with another steep increase in tariff so soon.	With respect to the submission of revision proposal before expiry of tariff validity period, it is stated that the Scale of Rates approved by TAMP & made effective from 18.2.2015 were based on the Tariff Guidelines of 2005 and the present tariff revision proposal is framed in accordance with Tariff Policy 2015 which do not restrict the port to submit the proposal before expiry of the tariff validity period i.e. upto 31.3.2017. Further, the rates are prescribed on the basis of Annual Revenue Requirement (ARR) which ensures that there is no undue benefit to the Port Trust. MBPT has proposed 13% increase in cargo related charges to cover the loss of revenue for the period from the revision sought i.e. 1.4.2014 till the actual revision became effective i.e. upto 18.2.2015 which is in line with Para 11(xvi)(m) of Tariff Order dated 2.1.2015 which clearly states that Authority is open to consider a proposal from MBPT to grant a higher quantum of increase beyond 23% to be effective prospectively, to make good the revenue for the loss of time.
(ii)	During the revision of Tariff w.e.f. 01-02-2015 quite a number of upward revisions were made especially in the stevedoring SOR that too retrospectively. We have still not yet recovered from this sudden imposition of rates as we are reeling under heavy burden. It is strongly felt that no increase of Tariff should be hurried at this stage since the existing rates are already highest compared to all nearby Domestic or International Ports.	As regards retrospective implementation of stevedoring rates, TAMP's letter No. TAMP/23/2013-MBPT dated 15.6.2015 addressed to MANSA is self-explanatory. Therefore, contention of MANSA that the rates were retrospectively effected by MBPT is not correct. Further MANSA has already consented to the same by letter No.MANSA/MBPT/508/09-2015 dated 5.9.2015.
(iii)	Since validity of the existing Tariff has already been communicated to their Principals, no revision should be sought till end of the period upto March 2017. Numerous points are also observed in the current Proposal such as increase of Tariff to the extent of 13% without any assurances about improvement in the performance	MANSA's statement that increase of tariff to the extent of 13% in cargo related charges without any assurance about improvement in the performance parameters is incorrect. MBPT has submitted Performance Standards alongwith the Tariff revision proposal in accordance with Tariff Policy 2015.

	parameters (levels). At present it is to be accentuated that the vessels performance is dismally pathetic and the ships are suffering.	
(iv)	There is heavy shortage of labour supply from Mb.P.T thus affecting the vessel operation. There was heavy shortage of labour supply from MBPT affecting vessel operation. Basis tonnage to discharge and with a full Quota of Gangs, the actual Berth day for one of the vessels should have been 4-5 days and for another vessel should have been 2 days. But, due to incessant labour shortage, the vessels are at berth for approximately 11 days and 5 days respectively. It is also observed that recently six vessels with pulses per force have to discharge the full quantity of cargo onto barges in stream. For a parcel of 60,000 MT it took 45 days for completion of discharge since the vessel remained more than 30 days in the Harbour and penal anchorage charges which are more than double as per SOR have been paid to the Port rendering the operation highly expensive. Even there is issue about the Berthing of vessel, for e.g Berthing time is given at 14.00 hours but vessel comes at Berth by 15.00 hours or later because of shortage of Pilot. The above scenario was from 24/12 till 31/12, where it was envisaged that shortage of labour would ease from 1st January 2016. In view of what is stated above there is no justification for any upward revision of tariff are in the near future unless the facilities are guaranteed and services are substantially improved.	As regards the example quoted by MANSA, it is an aberration and not the norm. Further, the MANSA itself in its concluding para has stated that position would be eased from 1.1.2016
2.	Indian Barge Owners Association (IBOA)	
(i).	The barge owners/ barge operators, are utterly shocked and dismayed that MBPT is proposing to raise the coastal rates, once again, through an inclusion of a provision in the SOR. While we have no issue with the insertion of the said provision, which we, too, feel is necessary, it is the wording of the provision we have serious objections for it will lead to exorbitant increase of the coastal rates. This fresh bout of increase comes on top of an increase the Port inflicted on us just a year ago through the periodic once-in-three year revision of SOR. We, therefore, take strong exception to this repeat, steep and unreasonable hike and register our objections as follows:	

(ii)	The new provision, the Port is proposing to introduce has, we understand, arisen out of the policy amendment issued recently by the Ministry vide its reference no.8/(15)2015-TAMP dated 17 Sep 2015 with regard to the concessional rates levied for various coastal operations/activities conducted in government ports and government-approved private terminals. From the Ministry's direction, it is very clear that, the intent of the Ministry is to rationalise the coastal rates so as to ensure coastal services in the ports are not deprived of the <u>minimum</u> benefit of 40% of the foreign trade rates. Thus, the Ministry's objective is <u>not</u> to increase the coastal rates from the existing levels but only to put in place a mechanism that automatically assures coastal trade get not less than 40% concession on the foreign trade rates.	Para 5.2(iii) of TAMP's Order dated 5.10.2015 states that Ministry has accepted the suggestion made at para 5.2(ii) by some of the ports, in order to keep coastal vessel related charges at 60% of the foreign vessel related charges at all times and to account for the exchange rate fluctuation of the INR (₹) vs US (\$), condition of non-restatement of coastal rates with reference to prevailing exchange rate at the time of each general revision of SOR be modified. Further, Para 6.1 of the said Order states that since cargo related charges for eligible coastal cargo are prescribed in INR (₹) terms at 60% of the corresponding rate applicable for foreign cargo in the existing SOR and there is no involvement of restatement on account of exchange rate variation, no modification is required in tariff. Thus, it is clear from the above paragraphs of the TAMP's Order dated 5.10.2015 that the coastal rates can be restated in 60% of the corresponding rate applicable for foreign cargo.
(iii)	The reason for the Ministry to come out with the above policy amendment direction is that as of now, coastal rates are fixed in rupee terms with no reference to rates determined for foreign trade, which are denoted in \$ terms. That is, in the SORs, there is no link-up between foreign rates denoted in \$ terms and coastal rates denoted in rupee terms. As a result, a situation may arise, though rare, that coastal services may get less than the mandated 40% discount on the foreign rates. For example, if dollar becomes substantially weak against rupee, the coastal rate not linked to foreign trade rate may derive less than 40% concession. To illustrate, let us say a coastal rate was fixed at Rs 30 per unit and the corresponding foreign trade rate was fixed at 1\$ per unit. When the foreign exchange rate was Rs 50 to a dollar, the coastal rate would be 60 % of the foreign rate, which means the coastal trade had received the mandatory minimum 40% concession of the foreign trade rate. However, if dollar becomes weak and regresses to Rs 40 per dollar, the Rs 30 coastal rate will be 75% of the foreign rate, which means coastal trade is getting less than 40 % mandatory minimum concession of the foreign rate. Therefore, in order to prevent such a situation from developing and harming coastal interests the Ministry has directed that the ports and private terminals explicitly relate coastal rates to foreign rates in their SORs. For this link-up, the Ministry has directed the ports to include a provision in appropriate areas in the SOR saying the coastal trade rates are "up to 60%" of the	It is relevant to mention here that approximate exchange rate prevailing in February 2005 (Coastal Concession Policy Order effective from 1.2.2005) was Rs.44/\$ as against the exchange rate in January 2016 approx. Rs.66/\$ showing increase of 150% in coastal rates due to reinstatement of coastal rate on account of exchange rate variation. In order to keep all the coastal charges at 60% of the corresponding dollar denominated foreign charges at all times, so as to have a uniformity in prescription of all the coastal rates, restatement of coastal rates at 60% of foreign rate after considering exchange rate variation is proposed by the port. It is stated that the minimum concessions as envisaged by the coastal concession policy are ensured in the proposed SOR. The migration to the new policy is a one-time adjustment. The trade would also benefit when the rupee strengthens which was not the case in the earlier scenario.

	foreign trade rates and as per the day-to-day foreign exchange rate. This is the express reason for the Ministry's said policy modification direction and not for giving a handle to the ports to increase the coastal rates.	
(iv)	The key word in the Ministry's clarified policy direction is 'up to'. The Ministry's implicit meaning of 'up to' is, the 40% concession is the minimum threshold level and individual ports can exceed this level if they choose to do so. Had the Ministry wanted the concession to be restricted to the upper limit of 40% it would not have used the term 'up to'. It is the port that has turned the term 'up to' into 'of' for its benefit.	
(v)	The Ministry in its general policy notification on determination of tariff for major port trusts, 2015 vide its communication No. 8(1)/2014-TAMP dated 13 Jan'15 has issued, among other things, the following directions. <u>"Item 2.6: Based on the ARR and taking into account the traffic estimated, the Major Port Trusts have the flexibility to determine the rates to respond to the market forces based on its commercial judgment....."</u> Item 2.7: While going for a change in SOR the Major Port Trusts have to ensure that as a result of change in SOR there will not be loss of traffic....." The above directions of the Ministry shows: a) ports are at liberty to reduce a rate or increase the quantum of concession, and b) Ministry used the term 'up to' only to facilitate ports to exercise this liberty.	
(vi)	If MBPT makes coastal rates full 60% of the foreign trade rates by using the wording 'of' prefixed to 60%, the coastal vessels at Mumbai Port will have to pay more than double the existing rates. For example, the current berth hire charge for coastal vessel in Indira Dock is Rs 0.146 per GRT per hour. If the rate is made 60% of the foreign going vessel's rate, the coastal rate will increase to Rs 0.36 per GRT per hour or 2.5 times more.	
(vii)	The barge industry is a low-revenue, support industry operated by small-time Indian operators. It cannot absorb the shock of repeated steep rises at short intervals. The port has quite recently, just a year ago, increased the coastal vessel's rates by an average of 23 %. Soon after, it is trying to increase them by a whopping 250% by means of the latest proposal. It is ironic that, the Ministry is amending its policy to protect the coastal trade whereas the Port is using	

	the same modification to whip the coastal trade.	
(viii)	The barge industry adds immense value to the Port because ships using the Port use the barges for lightening, handling hazardous cargo, etc. As a result, not only the vessels are able to quickly come to berths but also the barges themselves give additional revenue to the Port through various charges including berth hire, port dues, etc.	
(ix)	Thus, there is not even an iota of justification for the Port to now increase the coastal rates to 60% of the foreign trade rate, using the Ministry's tariff policy modification. However, since the Ministry has directed that the SOR should show the linkage between foreign rate and coastal rate, the Port may incorporate such a provision but via specifying the current percentage of coastal trade rate on the foreign trade rate. As per our calculation the berth hire charges for coastal vessels as per the running SOR is about 24% (at Rs 65 to a \$.) of the foreign trade rate. So, the SOR may reflect this percentage in the new provision with the wording, 'rate for coastal vessel is 24% (of the rate for foreign going vessel juxtaposed) calculated by taking into account the exchange rate fluctuation.'	
(x)	In view of above we request to withdraw from the proposed draft scale of rates the expression, 'of 60% (of the foreign going vessel juxtaposed)' and replace it with the expression, 'of 24% (of the foreign going vessel juxtaposed)' wherever appropriate. Concomitantly, the corresponding definition in SOR at (xii) (a) may be changed to, 'the vessel related charges for coastal ships will be up to 60% of the charges levied for other vessels.'	
3.	All India Liquid Bulk Importers & Exporters Association (AILBIEA)	
(i)	Mumbai Port Trust had already increased its wharfage charges during 2014 by 23 %. Now within a span of two years again MBPT is proposing increase in charges which will have negative impact on trade.	Scale of Rates approved by TAMP & made effective from 18.2.2015 were based on the Tariff Guidelines of 2005 and the present tariff revision proposal is framed in accordance with Tariff Policy 2015 which do not restrict the port to submit the proposal before expiry of the tariff validity period i.e. upto 31.3.2017. Further, the rates are prescribed on the basis of Annual Revenue Requirement (ARR) which ensures that there is no undue benefit to the Port Trust. MBPT has proposed 13% increase in cargo related charges to cover the loss of revenue for the period from the revision sought i.e. 1.4.2014 till the actual revision became effective i.e. upto 18.2.2015 which is in line with Para 11(xvi)(m) of Tariff Order dated 2.1.2015

		which clearly states that Authority is open to consider a proposal from MBPT to grant a higher quantum of increase beyond 23% to be effective prospectively, to make good the revenue for the loss of time. As regards proposed increase in vessel related charges, it is stated that this Authority has not approved the proposed increase of 23% in vessel related charges in the earlier tariff revision proposal effective from 18.2.2015, keeping vessel related charges same as was approved by TAMP vide Order dated 11.10.2011. In view of that, MBPT Board approved a nominal increase of 10% in vessel related charges which is within ceiling ARR and in accordance with Tariff Policy 2015. In view of (ii) & (iii) above, the statement made by AILBIEA that there is no justification for MBPT to increase the rates is not correct.																																																
(ii)	We feel there is no justification for MBPT to ask for increase in rate, which is already highest among the Ports in the Country. The cost per ton of bulk chemicals handling based on present charges (vessel. and cargo related) levied by MBPT as compared to other ports are shown in the following Table : Cost of handling per MT for Bulk Liquid Chemicals based on existing MBPT charges :- <table> <tr> <th>Port</th><th>Cost ₹. per Ton</th><th>% high (vis-à-vis other ports)</th></tr> <tr> <td>Mumbai Port</td><td>520/-</td><td></td></tr> <tr> <td>JNPT</td><td>323/-</td><td>61%</td></tr> <tr> <td>Kandla</td><td>335/-</td><td>55%</td></tr> <tr> <td>Mangalore</td><td>206/-</td><td>153%</td></tr> <tr> <td>Kochi</td><td>434/-</td><td>20%</td></tr> <tr> <td>Mundra</td><td>236/-</td><td>120%</td></tr> <tr> <td>Hazira</td><td>366/-</td><td>42%</td></tr> </table> Cost of handling per MT for Bulk Liquid Chemicals based on proposed MBPT charges :- <table> <tr> <th>Port</th><th>Cost ₹. per Ton</th><th>% high (vis-à-vis other ports)</th></tr> <tr> <td>Mumbai Port</td><td>574/-</td><td></td></tr> <tr> <td>JNPT</td><td>323/-</td><td>78%</td></tr> <tr> <td>Kandla</td><td>335/-</td><td>71%</td></tr> <tr> <td>Mangalore</td><td>206/-</td><td>179%</td></tr> <tr> <td>Kochi</td><td>434/-</td><td>32%</td></tr> <tr> <td>Mundra</td><td>236/-</td><td>143%</td></tr> <tr> <td>Hazira</td><td>366/-</td><td>57%</td></tr> </table>	Port	Cost ₹. per Ton	% high (vis-à-vis other ports)	Mumbai Port	520/-		JNPT	323/-	61%	Kandla	335/-	55%	Mangalore	206/-	153%	Kochi	434/-	20%	Mundra	236/-	120%	Hazira	366/-	42%	Port	Cost ₹. per Ton	% high (vis-à-vis other ports)	Mumbai Port	574/-		JNPT	323/-	78%	Kandla	335/-	71%	Mangalore	206/-	179%	Kochi	434/-	32%	Mundra	236/-	143%	Hazira	366/-	57%	AILBIEA has furnished comparative position of cost of handling bulk liquid chemicals at existing and proposed MBPT charges with various other ports. It can be seen from the data furnished by AILBIEA that MBPT has proposed only 10% increase in the rates i.e. from Rs.520/- to Rs.574/- as per ton (as worked out by AILBIEA). Further, due to lot of variation in topographical conditions and the availability of required infrastructure at various ports, it will not be correct to compare MBPT rates with charges at other ports.
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	This shows that at present, cost of import / export of bulk liquid in Mumbai port on per ton basis is highest. Any upward revision will only divert cargo from Mumbai to other private ports in Gujarat Viz. Hazira, Dahej, Mundra, Pipava, etc.	
(iii)	Further, since last 3 years our Rupee has depreciated by 26%, which has already given Mumbai Port the additional increase in the charges. This has contributed towards additional revenue to MBPT in the form of foreign exchange.	As regards depreciation in INR (₹), it is stated that it is a common phenomenon for all the ports. Therefore, no extra ordinary benefit is availed by MBPT.
(iv)	In fact, increasing the rate in such arbitrarily manner as proposed at present will help private ports of Gujarat viz. Hazira, Dahej, Mundra, Pipavav etc., who are trying their level best to snatch liquid cargo from Mumbai Port. This will also discourage traffic through MBPT and compel existing customers to divert to adjacent major and non-major ports (who offer much lower rates). This will be highly detrimental to MBPT itself.	No specific comments furnished by MBPT.
(v)	As represented, Mumbai Port's present charges are highest in comparison with other Ports. After modernization and increase in capacity, port should target increasing its revenue by handling additional traffic not by increasing its rate of existing traffic. In fact charges at other newly developed modern private ports of Gujarat are almost 50% of Mumbai Port charges.	No specific comments furnished by MBPT.
(vi)	The Mumbai Port has following limitation for handling of Bulk Liquid cargoes due to following reasons 1. Additional cost of n-form for octroi formalities. 2. Road tanker more than eight years are not allowed in city, this increase transportation cost to importers/exporters. 3. Restricted timings for tankers for entry in Murnbai City leading to delay in cargo despatches. 4. Although Liquid cargo is a major revenue source for MBPT, but MBPT is having limitation w.r.t. availability of tugs & pilots, which in turns leads to berthing delays.	The limitations for handling of Bulk Liquid cargoes mentioned by AILBIEA such as n-form for octroi, non-plying of road tankers more than 8 years and restricted timings for entry in Mumbai city are beyond the control of MBPT. As regards berthing delays mentioned by AILBIEA, it is stated that MBPT has submitted Performance Standards along with the proposed SOR.
(vii)	As it is due to high volatility in product prices, exchange rate of rupee and low demand, the trade is passing through a rough patch and importers/exporters are incurring huge losses. In present scenario they will not be able to absorb any further cost. This increase in charges, will force them to look out for other alternatives resulting in major loss to MBPT's share of cargo.	No specific comments furnished by MBPT.

(viii)	Due to major global downturn, commodity prices have substantially reduced and are further reducing. Hence, wharfage as a percentage (%) of commodity price is already on higher side and any upward revision of it will further increase this ratio.	No specific comments furnished by MBPT.
(ix)	Bulk liquid cargoes are the major source of revenue for Mumbai Port and we request MBPT and Tariff Authority of Major Port (TAMP) to please take note of what is stated above and appreciate that MBPT's overall charges to customers/users is already 50 to 100% higher than other ports. Accordingly, MBPT should be dissuaded from raising any vessel and cargo related charges for POL and bulk liquid cargo.	No specific comments furnished by MBPT.
(x)	In interest of Mumbai Port and in order to increase the volumes and revenue of MBPT we request MBPT and TAMP to reduce and make the charges attractive and comparable to other competing ports. We also request MBPT and TAMP to organize a joint meeting with the Port users and various associations to discuss this issue when comments from all organizations are received by them.	No specific comments furnished by MBPT.

2. A joint hearing on the case in reference was held on 10 March 2016 at the Office of this Authority. At the joint hearing, the MBPT made a brief power point presentation on the proposal. At the joint hearing, the users/ user organisations and the MBPT have made the following submissions:

Mumbai Port Trust (MBPT):

- (i). The proposal in reference was submitted in December 2015 following the ARR model as per the 2015 Tariff Policy for Major Ports. The proposed rates are within the ceiling of ARR.
- (i) As can be seen from the financials submitted by us, even after the proposed increase of 10% in Vessel Related Charges, 13% in Cargo Related Charges and 70% in storage (license) fees, there is a gap of about ₹266 crores in the port's annual revenue requirement. This shows that we do not want to burden the users.
- (iii). It has to be appreciated that the port has huge legacy cost which is inherent to its operations.
- (iv). The increase in tariff is not to impose any extra burden on the users but only to enable us sustain our operations. By doing so, we have ensured that our rates are competitive as compared to neighbouring ports.
- (v). The marginal increase in tariff sought is strictly as per ARR.
- (vi). We seek a validity for a period of 3 years from the date of effect, for the increased tariff.

Mumbai & Nhava-Sheva Ships Agent's Association (MANSA)

- (i). The existing SOR fixed in 2015 is already valid upto 2017. Now, just because of the new guidelines, Port is seeking an increase in tariff to meet its expenses. There is no rationale for seeking the increase when the services offered by MBPT are not at all satisfactory and not upto the mark and is deteriorating.
- (ii). The quality and level of service should improve drastically and the Scale of Rates should be linked to the productivity and performance standards.
- (iii). There is acute labour problem in MBPT. No sufficient gangs are available. The crane operator is either absent or does not report on time. Similarly, there is a shortage of pilots, due to which there is more waiting time and vessels are delayed. The entire planning of vessel schedule gets affected and the corresponding expenses shoot up.
- (iv). Even if the vessel completes operation and intimates 4-5 hours in advance, the calling out is purposely delayed to match berthing of next incoming vessel to ensure that berth remains occupied and berth is charged for optimum period.

All India Liquid Bulk Importers and Exporters Association (ALBIEA)

- (i). The scale of rates at MBPT are already higher than Hazira, Kandla and other ports in western region. The increase in tariff by MBPT will lead to moving out of chemical cargo traffic from MBPT.
- (ii). Vessels are kept waiting due to lack of infrastructure.
- (iii). Port should take steps to increase revenue by increasing cargo volume and not the tariff at every instance.

Sea Master Shipping Private Ltd

- (i). MBPT should take steps to retain the cargo. Ports like Adani and Hazira have already taken away cargo from MBPT.
- (ii). As per existing SOR, Inland vessels are treated like Coastal vessels. With the new policy on coastal concession and with MBPT proposing the note as per the new policy, it is amounting to a tremendous increase in tariff for coastal vessels. At the same time Inland Vessels are also subjected to this steep increase, whereas the Inland Vessels earn and pay in INR only. Also, we do not have a coastal license issued by DG Shipping but are registered under Maharashtra Maritime Board. Hence, we should be classified and charged separately.
(MBPT FA& CAO : This issue has cropped up due to the policy. We will look into it.)

Indian Barge Owners Association (IBOA)

- (i). The scale of rates for coastal vessels are linked to exchange rate of USD (\$) to INR (₹). The new coastal policy has resulted in substantial increase in the rates for coastal vessels. The Guidelines mention a minimum discount of 40% on rates for foreign vessel, it does not indicate upper limit for offering discount. TAMP is requested to specifically put a note while issuing the order that the minimum discount for coastal vessels in Scale of Rates would be 40% and that however, port can offer higher discount based on their own judgement.

Indian National Ship-owners Association (INSA)

- (i). The general increase in tariff proposed by the Port alongwith the effect of the coastal concession policy issued by the Government, has resulted in a dramatic increase in the rates of coastal vessels.
- (ii). We know that the policy has been issued by the Government and that TAMP has no role to play on the matter.
- (iii). Yet we request TAMP to incorporate the position that 40% discount is not a ceiling as indicated by Indian Barge Owners Association.
- (iv). There has been a push to promote coastal trade and this cannot be achieved with the steep increase in rates of coastal vessels. The cost of coastal vessels should be kept low and it should not be passed on to the users. The Enterprise should bear the cost.
- (v). INSA is representing to the MOS, about implications of linking exchange rate of USD to INR, which has impacted the trade adversely. We will forward a copy of the said representation to TAMP also.

Mumbai & Nhava-Sheva Ships Agent's Association (MANSA)

- (i). The coastal trade can be patronized only if the rates for movement by sea are lower than roads. Internationally, movement by sea is cheaper.
- (II). Increase in rates should commensurate with increase in productivity.

Maruti Suzuki India Ltd.

- (i). The change in the levy of demurrage rates on per ton per day basis to per vehicle per day alongwith the 23% increase in scale of rates actually resulted in aprox. 1300% hike in cost to the company.
- (ii). When this position was brought to the notice of the port, the port has now proposed to levy demurrage rates on per ton per day basis.
- (iii). We request that the change be made effective from February 2015 as the amendment was effected with effect from February 2015.
- (iv). Now the proposal of the port to further increase the tariff will lead to increase in the cost of cars, which would make it non-competitive. The car handling facilities at Mundra are way better and different from MBPT.

VolksWagan

- (i). Enough parking facility is not available at MBPT. There is no proper infrastructure.
- (ii). We request that no increase be accorded to MBPT.

Indian Pulses and Grain Association

- (i). The infrastructure at MBPT is very poor. The storage facility is depleted. There is no justification for the increase sought by port. In case of increase in tariff, cargo will move away from MBPT.
- (ii). We are paying for all services, even when port is not rendering any service. Since Pulses and Grains are priority cargo, we have to pay priority berthing charges for all vessels visiting MBPT. All this adds to the cost of food grains.

- (iii). The port should reconsider the proposal and try giving volume discount scheme. The MBPT may also look into making cost of inside berths cheaper.

Mumbai Port Trust (MBPT)

- (i). Infrastructure is being created to ease the problems at various operational levels. Pilots are being recruited / hired. On an average it takes 3 to 4 years of training for a pilot to take charge. Docking / Undocking of vessels are given priority and vessels are not kept waiting.
- (ii). The tug availability problem is observed when there is bunching of vessels at the same time. It is not commercially viable to hire tugs and keep them idle. When new infrastructure is created, more tugs will be deployed. We are in the process of hiring new tugs.

Mumbai & Nhava-Sheva Ships Agent's Association (MANSA)

- (i). There is a delay for sailing / berthing of vessels due to lack of pilot availability.
- (ii). The facilities at the port should be to meet the peak requirement of the port. (MBPT : Pilotage is arranged in optimized manner and the vessels are delayed seldom in deep sea for this reason.)

Mumbai Port Trust (MBPT)

- (i). It is true that there was shortage of labour in December 2015. This was due to bunching of vessels at the same time and rush at year end closing. The issue aggravated due to series of holidays falling at the end of December 2015. But now the situation is normal

Mumbai & Nhava-Sheva Ships Agent's Association (MANSA)

- (i). Labour gangs are not available as and when required. A job of 1 day takes 3 days. The vessels berthed at inside berths are suffering. (MBPT : Due to berthing constraints and labour issues, vessels at inside berths get delayed.)
- (ii). Shortage of labour is mainly due to no recruitment since past 3 decades and retirement of existing labour.

All India Liquid Bulk Importers and Exporters Association (AILBIEA)

- (i). At old Pirpau, we are not able to sail even after completing the operations due to the restrictions imposed by the port.
- (ii). The quantum of liquid cargo is bound to go up. But if the costs are not cut down, the users will go to other ports.
- (iii). The port should try introducing Volume Discount Scheme. (MBPT : We will look into this to facilitate operations).

Mumbai & Nhava-Sheva Ships Agent's Association (MANSA)

- (i). The quality of berth structure or support at the berth base has deteriorated substantially.
- (ii). MBPT levies berth hire for double / triple banked vessels even when no facility of MBPT is used.

Federation of Indian Export Organisation (FIEO)

- (i). TAMP is requested to intimate in advance its stand on hike in the scale of rates. Also, TAMP may please intimate in advance, the areas in which it has considered for increase in scale of rates so that the concerned stake holders may be informed accordingly and we can give a holistic view of all our members.

3. Some of the users / user organisations have furnished their comments on the MBPT proposal dated 16 December 2015 and 02 March 2016 after the joint hearing. These comments were forwarded to MBPT as feedback information. The MBPT has responded. The comments received from users/ user organisations and response of MBPT are tabulated below:

Sl. No.	Comments of users / user organisations	Response of MBPT
1.	Maruti Suzuki India Limited (MSIL) & TATA Motors Ltd. (TML)	
(i).	As per TAMP Order no. TAMP/23/2013-MBPT dated 2 January 2015, new SOR was implemented w.e.f. 1 February 2015 to 31 March 2017 with an increase of 23% in all the charges except vessel related charges & license fees and warehousing charges.	Vide TR No. 154 of 30.01.2016, Board of Trustees have approved to carry out the necessary amendments in the section 3.1 (B) (b) of SOR by inserting the word "import" from the date of TR i.e. 30.01.2016. Demurrage collected during the period February 2015 to January 2016 is as per notified SOR. Thus, an amendment in levy of demurrage on export of vehicles can only be prospective and not retrospective.
(ii)	Accordingly the earlier demurrage rates (on per ton per day basis slab wise) of ₹48.75, ₹73.10, ₹97.50 etc. are revised to ₹59.96, ₹89.91, ₹119.93 respectively, i.e. an increase of 23% in line with TAMP order. MBPT has started charging the port demurrage on export vehicles on these new rates w.e.f. 1 February 2015, but from August 2015 it was observed that port has started charging the demurrage on per vehicles per day basis i.e. @ of ₹640/ ₹1599/ & ₹3198/ slab wise which was only applicable for import of vehicles (as per earlier SOR). Copy of earlier and latest TAMP order is furnished.	
(iii)	This increase in port demurrage charges is approx. 1312% against TAMP order of 23% increase in port related charges. Due to this change in method of calculation of port demurrage, in some cases the demurrage charges on export vehicle is exceeding even the cost of vehicle. It is also pertinent to mention here that MSIL has paid excess demurrage to the tune of ₹37,89,607/- and TML has paid excess demurrage to the tune of ₹2,13,321/- to MBPT due to this provision for couple of vessels.	
(iv)	This anomaly was brought to the notice of MBPT and MBPT was regularly requested for restoring port demurrage on <u>per ton per day basis</u> , as it was prevailing, along with other port users to facilitate export from Mumbai Port.	
(v)	Finally MBPT Board has approved the proposal of charging the port demurrage on per ton per day basis, as done earlier, instead of per vehicle per day basis as was applicable on import of vehicles. This was decided in the board meeting held on 30 January 2016 with	

	no mention of implementation date. Hence it implies that the change is w.e.f. February 2015 as the approval was to amend the section 3.1(B)(b) of existing SOR effective from February 2015.	
(vi)	The concerned authorities at MBPT have interpreted the Board's approval for charging the port demurrage on per ton per day basis w.e.f. 30 January 2016 and prior to that it was on per vehicle per day basis, although there is an approval for amending SOR applicable from February 2015. Moreover port is charging two different rates of demurrage on same vehicle i.e. per vehicle per day basis before 30 January 2016 and per vehicle per ton basis after 30 January 2016 for vehicles exported after 30 January 2016. This has resulted in application of two demurrage rates in a year and also two demurrage rates for the same vehicle.	
(vii)	TAMP is requested to review the matter and pass on suitable instruction to port authorities for restoration of demurrage on per ton per day basis on export vehicles effective from February 2015 in line with Board's approval of the MBPT proposal, and to refund or adjust the excess demurrage paid to MBPT.	
(viii)	Further, in the joint meeting held on 10 March 2016, MBPT has proposed increase of Cargo related charges by 13%, vessel charges by 10% & License fees by 70%. Such huge increase in the port charges will affect the export vehicles costing and thereby adversely impact the business of export cargo which is generating substantial revenue. Therefore, TAMP is requested to advise MBPT to reconsider the proposal and not propose such huge hike in port charges in the interest of Trade, that too in the middle of the new SOR, which is valid up to 31 March 2017.	
2.	Mumbai and Nhava-Sheva Ship Agents Association	
(i)	The voyages of the cruise vessels are declared with their firm expected date of arrival (ETA) more than 2 years in advance and maintained impeccably. Due to this announcement all are aware of tourism season and their arrivals with the requirement of passenger berth at BPX / 18 ID or any other berth provided to them on priority. Time and again it has been pointed out that since the passenger terminal is exclusively built for tourist / cruise vessels, it should be kept ready during the season for the vessels voyages as per prior intimation. However, at times, some other category of the vessel is permitted to berth at BPX on the condition that, the vessel would vacate the berth for providing room on arrival of the passenger / cruise vessels. No ousting charges should be levied for berthing	As regards MANSA's contention for levy of ousting priority charges on cruise vessel, this is to state that the vessel related charges levied to the cruise vessels are @60% of the vessel related charges levied to other vessels. Further, BPX/BPS/18 ID are not the dedicated berths for 'Cruise Vessels' and MBPT has to accommodate other deep drafted cargo vessels at these berths and the berths cannot be kept vacant for faster turnaround of the vessels and the berths cannot be kept idle/ reserved for cruise vessels. Thus, when the working cargo vessel is to be removed from these berths, ousting priority charges are to be levied on the cruise vessels.

	of cruise / passenger vessels on account of ousting the vessel berthed at passenger terminal. Such practice is not adopted anywhere in the world.	
(ii)	TAMP is requested to give clear instructions in the proposed Scale of Rates, while considering amendments for docking of cruise / passenger vessels on their arrival at the nominated terminal without levy of any ousting charges as per international practice. This would help attracting tourism and passenger traffic to Mumbai Port in future.	
3.	India Pulses and Grains Association (IPGA)	
(i).	The Proposed Revision of the Scale of Rates is as follows: ➤ Port dues to be increased by 10% ➤ Pilotage to be increased by 10% ➤ Berth hire charges to be increased by 10% ➤ Wharfage to be increased by 12% ➤ Stevedoring rates of dry bulk to be increased by 13% ➤ Storage rates to be increased by 70%.	(i). At present, the vessels having maximum 656' length can be berthed at BPX and 868' length of vessel can be berthed at BPX/BPX berths jointly. Recently, 32 fenders have been fixed at various berths in Indira Dock for safe berthing of vessels. (ii). The Port has 3 x 16 tonnes and 8 x 10 capacity wharf cranes for loading / unloading cargo.
(ii)	IPGA wants to place on record the trade's strong objection to the proposed increase on the above mentioned tariff heads and would like to present the trade's point of view for consideration. (a). TAMP passed an order on 02.01.2015 on the proposal of Mumbai Port Trust for general revision of its Scale of Rates which has also been published in the Gazette of India extraordinary (Part III Section 4) on 19.01.2015 vide Gazette No.19. As per the said Order, the revision of rates was to remain in effect from February 01, 2015 upto March 31st, 2017. (b). As per TAMP guidelines, all tariffs charged to Port users should commensurate with the infrastructure made available and services provided. (c) Over the last 10 years, tariffs have been increased by close to 125% across various services offered and available infrastructure. (d). Despite this humungous increase in tariff, services have ONLY deteriorated. Here below are a few deteriorations: ▪ Non-availability of draft for vessels at berth ▪ Lengths of berths have not changed for the last 30 years despite vessel sizes having changed over these years. ▪ Non-availability of shore cranes and gears to facilitate cargo operations. ▪ Transit shed spaces have decreased and the ones remaining are completely dilapidated. Human consumption cargo	(iii). Port provides maximum covered space for transit storage of pulses at various sheds like, 15ID, 13BID, 12AID, 6ID in Indira Dock. For long term storage of pulses, sheds in Sewree Timber Pond (STP), Manganese Ore Deport (MOD) and sheds like A,K,L,N, T & H in Grain Depot are provided to trade, where concessional rates are levied. Further, to facilitate storage of pulses, recently the Port users have been permitted to construct one temporary shed admeasuring about 10,000 sq.mtrs, in Indira Dock and one temporary shed admeasuring 10,000 – 15,000 sq.mtrs. at STP for storage and bagging of pulses brought in bulk. (iv). Though no. of gangs has reduced over the years, the required no. of gangs as decided in the OG meeting are supplied and in the exigencies of the work, the gangs are also called on overtime. (v). For Barge Operations, Supervisory Staff is invariably posted. When the cargo is discharged using excavator, since there is no space available for gangs on Board the Barge, they are not posted. However, if cargo is discharged using mobile crane using net sling, the gangs are posted.

	like grains, pulses, etc are being stored in open areas/ plots exposing them to the vagaries of the nature leading to damage. ▪ Number of Gangs, Administrative Staff, Crane Drivers, etc. has only reduced over the years by 60% to 70% and putting the entire burden on the trade to manage and ensure timely turnaround of vessels. ▪ The overall number of gates available for entry and exit are reduced to just two gates despite over a 100% increase in cargo volumes. (e). Levies on Barges and Barge Discharges: • Close to 60% of the pulses cargo arriving at MBPT is discharged through barging operations due to non-availability of draft as well as berths. • Entire cost of the barge discharging operations including manpower and equipment is borne by the trade and yet the trade is paying full stevedoring and berth-hire charges to MBPT. • Due to shortage of transit sheds, a large number of barges end up being used as storage and therefore have to double bank at berth and are being unfairly charged for the same. Since the MBPT cannot provide appropriate storage space, such double banking should not be charged to the trade.	(vi). Efforts are being made to implement National Tribunal Award on Manning scale which will reduce manning per hook / gang and increase the availability of number of gangs / hooks. (vii). Allotment of berths in Indira Dock is made on 'first-come-first served basis'. Priority berthing is granted on request depending on the availability of berth and on payment of priority berthing charges as per SOR approved by TAMP. (viii). The No. of gates made available for entry and exist of cargo are in accordance with the Government directives to ensures safety and security of the port. Further, MBPT has appointed a Consultant to carry out traffic study and suggest measure and the Consultant has started the work.
(iii)	Point 2.17 of SOR - Composite berth hire charges -sub-point 8: - Priority / Ousting priority charges :- This needs to be removed from the overall proposal as the same is being grossly misused giving unfair advantage to a certain section of port users and delaying essential commodities like pulses from reaching consumers cost-effectively. Mumbai is the import gateway for pulses with close to 50% of all imports come to MBPT and JNPT. Out of this close to 1 million tons of cargo comes to MBPT. Over the last few years, given the low domestic production and increased demand of consumers, the overall import of pulses in India has gone up from around 3 million tons to over 5 million tons with Mumbai accounting for around 2.5 million tons. The trade, despite all the hardships faced at MBPT, has managed to handle this load, but the fact remains that atleast 450,000 tons of additional cargo which could have come to MBPT has been diverted to other private ports on West coast where cargo discharge is	

	managed more efficiently and cost-effectively due to excellent infrastructure and services. We would like to forewarn that if this rate revision is implemented WITHOUT immediate improvement in infrastructure and services, more cargo could get diverted to neighbouring private ports leading to loss of revenue to MBPT which will defeat the very purpose of covering the deficit position of MBPT for which this revision is being proposed. The Ministry of Health and Family Welfare have categorized Pulses as an ESSENTIAL COMMODITY. Therefore, as a default, all vessels carrying Pulses Cargo should be given the highest priority for berthing and discharge. However, vessels are either discharged by barging or forced to wait for over two to three weeks for a berth, thereby incurring high costs for barging or for detention and demurrage. In the current crop year, apart 40% cargo discharged at stream, five additional vessels, each bearing 50,000 to 60,000 tons discharged their entire cargo through barges at huge cost to trade.	
(iv).	The domestic production of pulses has been low and consumers were faced with high retail prices. If the trade is faced with increased Port charges as well as detention and demurrage charges due to inordinate delays at the Port, it adds to the cost of import leading to increase in cost along the value chain and ultimately high retail prices. In the interest of the trade and more importantly, the consumer, we sincerely request TAMP to: a. Not implement any rate revision Improve available infrastructure and services.	
