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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 61 **New Delhi,** **21 February 2017**

NOTIFICATION

In exercise of the powers conferred by Sections 48, 49 and 50 of the Major Port Trusts Act, 1963, (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Paradip Port Trust for development of New Coal Berth for handling of Coal imports at Paradip Port on BOT Basis, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/68/2016-PPT

Paradip Port Trust --- **Applicant**

QUORUM

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

O R D E R

(Passed on this 2nd day of January 2017)

This Authority had passed an Order no. TAMP/18/2008-PPT dated 14 July 2008, interalia, fixing upfront tariff for handling Thermal coal and Coal other than Thermal coal at deep draught coal berth at Paradip Port Trust (PPT), in pursuance of the 2008 guidelines for upfront tariff setting for PPP projects at Major Ports. This Order was notified in the Gazette of India on 16 August 2008 vide Gazette no. 133.

1.2. Subsequently, based on the proposal filed by PPT, this Authority had passed an Order no. TAMP/44/2015-PPT dated 4 September 2015 fixing Reference tariff for Mechanization of CQ-1 and 2 Berths at the PPT on BOT basis, by adopting the upfront tariff fixed for the Deep Draught Coal Berth in July 2008, in pursuance of the Reference Tariff Guidelines of 2013 as then proposed by PPT. This Order was notified in the Gazette of India on 29 September 2015 vide Gazette no. 335. On the ground that the handling rates and performance standards in respect of Dolomite and Limestone would be same as that of Coal and that Dolomite and Limestone constitute only about about 10% of the Capacity utilisation, the rate in respect of coal was adopted in respect of Limestone and Dolomite in the said Order dated 4 September 2015.

2.1. In this backdrop, the PPT under cover of its letter No. CE/DC/ACCTS/4/16(Pt.I)/1075 dated 3 November 2016 has filed a proposal for development of New Coal Berth for handling of Coal imports at Paradip Port on BOT Basis, with an optimum capacity of 10 Million Tonnes per annum at an estimated capital cost of ₹. 655.56 crores by adopting the Reference tariff of coal fixed for "Mechanization of CQ-1 & 2 berths on BOT basis at PPT. The PPT in its proposal has also stated that, due to unavoidable reasons, the Concession Agreement signed for "Development of Deep Draft Coal Berth on BOT basis" was required to be terminated and the project has been put to retender after updating the cost estimate.

2.2. The tariff proposed by the PPT is as follows:

(a). Cargo Handling Charges:

(Rate in ₹ Per Metric Tonne)

Sr. no.	Commodity	Foreign	Coastal
a.	Coal handling charges (Thermal Coal)	175.60	175.60
b.	Coal handling charges (for other than Thermal coal)	175.60	105.36

(b). Berth Hire Charges:

Rate per GRT per hour or part thereof (₹.)

Sr. no.	Vessels	Foreign Going Vessel	Coastal Vessel
1.	All Vessels	1.00	0.59

(c). Storage charges:

Sr. no.	Commodity	Rate for first 10 days for the balance cargo remaining after the free period	Rate for 26th day onwards for the balance cargo
1.	Coal (all types)	₹. 16.21 per MT per day	₹. 32.42 per MT per day

2.3. The PPT had also proposed the Performance Standards.

3.1. The Tariff Order of September 2015 as proposed to be adopted by PPT, as brought out earlier, prescribes Reference tariff in respect of handling of Coal, Limestone and Dolomite, whereas, in the proposed new berth, handling of only thermal coal and coal other than thermal coal is envisaged. Given that an approved upfront tariff for handling of Thermal coal and Coal other than Thermal coal at a deep draught coal berth is available, it was felt appropriate to adopt the said upfront tariff with appropriate indexation to arrive at the Reference tariff for the proposed new coal berth.

3.2. In this context, the PPT was requested to furnish some information/ clarification vide our letter dated 22 November 2016. The PPT has responded vide its letter dated 02 December 2016. The information sought by us and the response of PPT thereon are tabulated below:

Sl. No.	Information/ clarification sought by us	Response of PPT
(i).	From the aforesaid proposal of PPT, it is seen that the PPT has proposed to adopt the reference tariff fixed in respect of the 'Mechanization of Berths nos. CQ-1 and 2' vide order no. TAMP/44/2015-PPT dated 04 September 2015, for the proposed new berth for handling Thermal Coal and other than Thermal Coal. In this regard, it is to state that the Order of September 2015 as referred above prescribes Reference tariff in respect of Coal, Limestone and Dolomite, whereas, in the proposed new berth, handling of only thermal coal and other than thermal coal is envisaged. The PPT is aware that an upfront tariff for handling of thermal coal and other than thermal coal at a deep draught coal berth has already been approved for PPT vide Order no. TAMP/18/2008-PPT dated July 2008. That being so, the reason for not proposing to adopt the said upfront tariff with appropriate indexation to arrive at the Reference tariff for the proposed new deep draft coal berth to be clarified.	It may be recalled that the reference tariffs for the project "Mechanization of CQ-1 and 2 Berths at Paradip Port on BOT basis" were determined and notified vide order no. TAMP/44/2015-PPT dated 04 September 2015 based on the earlier approved tariffs for the import coal berth notified by the TAMP vide Order no. TAMP/18/2008-PPT dated July 2008 after indexisation. Further, the indexation factor for FY 2016-17 has been notified by TAMP as **"NIL"** vide letter no. TAMP/12/2009-Misc dated. 11th April, 2016. Hence, the reference tariff calculated for the present proposal shall be the same in both cases viz. (1) if calculated considering the tariffs notified vide Order no. TAMP/18/2008-PPT dated July 2008 **OR** (ii) considering the tariffs notified vide order no. TAMP/44/2015-PPT dated 04 September 2015 for the coal component, as it is, considering 'NIL' indexation factor for FY 2016-17.
(ii).	When the Concession Agreement signed for "Development of Deep Draft Berth on BOT basis" has been terminated, the proposal of the PPT to adopt the Reference tariff fixed for a combination of cargo (Thermal coal, Coal other than thermal Coal, Limestone and Dolomite) in the Order dated 4 September 2015 for mechanization of CQ- 1 and 2 berths when a specific tariff is already available for the deep draft coal berth to thermal coal and coal other than thermal coal, needs full justification.	As brought out above, the reference tariffs proposed for the present project will be the same in both scenarios. There will be no mention of lime stone and dolomite in the reference tariff order for the present proposal.
(iii).	Further, from the information of the project details furnished by the PPT now, it is seen that the Capital Cost of the Project is estimated at ₹655.56 Crores. In this connection, by adoption of the upfront	The RFP for the proposed project "**Development of New Coal Berth for handling of Coal imports at Paradip Port on BOT basis"** will be in line with the new Revised Guidelines for determination of Tariff for

	tariff prescribed vide Order no. TAMP/18/2008-PPT dated 14 July 2008 or by the adoption of the upfront tariff prescribed vide Order no. TAMP/44/2015-PPT dated 04 September 2015, it is not clear whether PPT has satisfied itself that by adoption of the rates proposed by it, the prospective operator: (a). Would be in a position to recover the operating cost and 16% return on the capital investment to the tune of ₹ 655.56 Crores. (b).Would not recover more than the operating cost and 16% return on the capital investment, resulting in windfall gains.	projects at Major Ports, 2013 ("new Guidelines") which have been effective from July 31, 2013. Hence, the tariff proposal for the proposed project comprising of relevant "Reference Tariff" and "Performance Standards" was submitted for approval. However, in view of the observations of TAMP, the calculation of handling charges considering Revised estimated cost and assuming 16 % ROCE is prepared and furnished. As can be seen, this works out to ₹ 184.05/- per tonne vis-a vis the Reference tariff of ₹ 175.60- per tonne proposed for the present proposal. As new guidelines allow Port Trusts to adopt reference tariff fixed for particular commodity under same port trust, PPT proposes to adopt notified reference tariff (for Coal) in respect of the project "Mechanization of CQ-1,2 on BOT basis" notified vide order no. TAMP/44/2015-PPT dated 04 September 2015 and indexise the same as per TAMP norms to current level (with 'NIL' indexisation factor for 2016, this remains the same).
(iv).	In addition, it is also noticed that the storage slabs proposed by PPT in its proposed Scale of Rates are not in line either with the storage slabs prescribed in the Upfront Order of 2008 or with the storage slabs prescribed in the September 2015 order.	The dwell time in the earlier notified tariff circular was 10 days and different slab rates were for payment of storage charges beyond 10 days free period. In the meantime, the terminals that got commissioned in different ports experienced serious operational issues and disputes with such provisions. Ministry of Shipping/ Indian Ports Association in their report have also indicated that the dwell time for import cargo in the current scenario exceeds 30 days.(Copy enclosed) The present proposal for tariffs, while retaining the essential features of cargo handling charges and berth hire charges at the same level as approved earlier, is only modified to the extent of increasing the free period from 10 days to 15 days and changes in the slab rates for storage beyond the free period. The calculation of capacity considering the free storage of 15 days is furnished.

3.3. It was seen that some clarification arising out of response of PPT was required from PPT. Accordingly, we have vide our letter dated 13 December 2016 requested the PPT to furnish some information/ clarification arising out of its response. The PPT has responded vide its letter dated 13 December 2016. The information sought by us and the response of PPT thereon are tabulated below:

Sl. No.	**Information/ clarification sought by us**	**Response of PPT**
1	With regard to a specific clarification sought from the port as to whether it has satisfied itself to ensure that the prospective BOT operator would be in a position to recover the admissible operating cost and permissible return on capital employed at 16% by way of	Paradip Port Trust (PPT) has satisfied itself to keep the cargo handling charges at the same levels as approved for similar cargo handling arrangement for the "Mechanization of CQ-1 and 2 Berths on BOT basis", which would be tendered in due course.

<table>
<tr>
<td></td>
<td>adoption of the rates proposed by PPT, the PPT has furnished calculation showing that by considering the capital cost of 504.96 crores and the operating cost and with the 16% Return on capital cost, the handling rate works out to ₹ 184.05 per tonne as against the indexed Reference tariff of ₹175.60 per tonne proposed to be adopted by the PPT for the proposed facility. In this backdrop, the PPT is requested to examine whether by levy of lower rate, the prospective BOT operator would not be put into disadvantageous position.</td>
<td>The reference tariff earlier notified vide order no. TAMP/44/2015-PPT dated 04 September 2015 for the project “Mechanization of CQ-1 and 2 Berths at Paradip Port on BOT basis” is the base document on which the present proposal is formulated. Accordingly, the Cargo handling charges @ ₹ 175.60 per ton (based on indexation to current levels vis- a- vis 2015) have been proposed.</td>
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<tr>
<td>2</td>
<td>With regard to the position that the storage slabs proposed by PPT are not in line either with the storage slabs prescribed in the Upfront Order of 2008 or with the storage slabs prescribed in the September 2015 order, the PPT has annexed a copy of the Report of Ministry of Shipping, Indian Ports Association, which indicates that the dwell time for import cargo in the current scenario exceed 30 days. A comparative position of the free days and storage slabs as approved in the July 2008 Order and that proposed by the port is given below.
<table>
<tr><th>Sl N o.</th><th>Particulars</th><th>As in July 2008 Upfront Tariff Order</th><th>As proposed by PPT for the new Coal Berth</th></tr>
<tr><td>1.</td><td>Free days</td><td>10</td><td>15</td></tr>
<tr><td>2.</td><td>Storage slab</td><td>1st 5 days after free period
6th-10th days after free period
11th day onwards.</td><td>1st 10 days after free period
From 26th day onwards.</td></tr>
</table>
In view of the substantial changes in the free period and storage slabs, the PPT is requested to furnish detailed workings to establish that based on the free days and storage slab as proposed by it now, the operator would be in a position to meet the annual revenue requirement of the storage activity, amounting to ₹ 131 lakhs (as relied upon in the July 2008 Order of PPT).</td>
<td>The slabs for storage charges have been kept in the following manner as in PPT’s view the same is reasonable :-
<table>
<tr><th>Sl. No.</th><th>Commodity</th><th>Rate for first 10 days for the balance cargo remaining after the free period of 15 days</th><th>Rate for 26th day onwards</th></tr>
<tr><td>1.</td><td>Coal (all types)</td><td>₹ 16.21 per MT per day</td><td>₹ 32.42 per MT per day</td></tr>
</table>
It is to reiterate that the dwell time in the earlier notified tariff circular was 10 days and different slab rates were for payment of storage charges beyond 10 days free period. In the meantime, the terminals that got commissioned in different ports experienced serious operational issues and disputes with such provisions. Ministry of Shipping/ Indian Ports Association in their reports have also indicated that the dwell time for import cargo in the current scenario exceeds 30 days. Though it is not in conformity either with 2008 or 2015 notified tariffs, PPT has proposed as above in view of the reports of IPA/ MoS.

By changing the norms it is expected that there may not be any revenue loss as it will attract additional cargo due to overall cost of handling.</td>
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<tr>
<td>3</td>
<td>Based on the average output of the capsize Vessel (50000 tonnes) and panamax vessels (35000 tonnes) and based on the share of capsize vessel and panamax vessel at 80:20, as relied upon in the optimal capacity calculation of deep draught coal berth at PPT, the Gross berth Output works Out to 47000 tonnes per day. As against this, the PPT is seen to have proposed a Gross Berth</td>
<td>It is a typographical error and the Gross berth Output shall be retained as 48,000 tonnes per day.

A copy of the proposed Performance Standard marked as Appendix B is enclosed herewith for your reference.</td>
</tr>
</table>

	Output at reduce level of 30000 tonnes per day, in the Performance Standard Schedule. The PPT is requested to propose reasonable and achievable Performance Standards which should not be lower than the output (handling) rate considered in the optimal quay capacity calculation of the PPP project, being relied upon for the purpose of adoption on tariff.	

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

(i) This Authority had passed an Order no. TAMP/18/2008-PPT dated 14 July 2008, interalia, fixing upfront tariff for handling Thermal coal and Coal other than Thermal coal at deep draught coal berth at Paradip Port Trust (PPT), in pursuance of the 2008 guidelines for upfront tariff setting for PPP projects at Major Ports.

(ii). Subsequently, based on a proposal filed by the PPT in pursuance of Clause 2.2. of the Revised Tariff Guidelines of 2013, which interalia, stipulate that the Reference Tariff will be the highest tariff fixed for that commodity in the concerned Major Port Trust under the 2008 Tariff Guidelines, this Authority had passed an Order no. TAMP/44/2015-PPT dated 4 September 2015 fixing Reference tariff for Mechanization of CQ-1 and 2 Berths at the PPT on BOT basis, as then proposed by PPT. The Reference tariff so fixed was adoption of the upfront tariff fixed for the Deep Draught Coal Berth in July 2008. In the said Order dated 4 September 2015 on the ground that the handling rates and performance standards in respect of Dolomite and Limestone would be same as that of Coal and that Dolomite and Limestone constitutes only about 10% of the Capacity utilisation, the rate in respect of coal was adopted in respect of Limestone and Dolomite also. Thus, common rates were prescribed for Coal, Limestone and Dolomite.

(iii). In the case in reference, the PPT envisages to develop New Coal Berth for handling of Thermal coal and Coal other than Thermal coal. For the purpose, the PPT had initially proposed to adopt the tariff of coal fixed for Mechanization of CQ-1 & 2 berths in September 2015. The Order of September 2015 as adopted by PPT as brought out earlier, prescribes Reference tariff in respect of handling of Coal, Limestone and Dolomite, whereas, in the proposed new berth, handling of only thermal coal and coal other than thermal coal is envisaged. Handling of lime stone and dolomite is not envisaged at the proposed facility by PPT. Given that an upfront tariff for handling of Thermal coal and Coal other than Thermal coal for a deep draught coal berth has already been approved for PPT vide Order no. TAMP/18/2008-PPT dated 14 July 2008, this Authority prefers to allow the PPT to adopt the said upfront tariff of July 2008 with appropriate indexation to arrive at the Reference tariff for the proposed new coal berth, rather than partially adopting the rate of Coal prescribed in the September 2015 Order.

(iv). The Revised Guidelines of 2013 stipulate that while adopting the Reference tariff, the tariff set under the Tariff Guidelines of 2008 shall be escalated to the extent of 60% of WPI per annum, as provided in the said guidelines for the period between 1st January of the year as prescribed in the relevant tariff order of this Authority under 2008 guidelines and 1st January of the subsequent relevant year when the Reference Tariff for the particular project in question is being notified.

The upfront tariff for the deep draught coal berth at the PPT was notified in July 2008. The Upfront Tariff Schedule of PPT specifically states that the base year of Wholesale Price Index (WPI) for indexation in the tariff rates approved in the said Order will be 1 January 2008. Accordingly, the PPT has applied the indexation factor of 35.08% on the tariff caps approved for the deep draught coal berth at PPT vide

Order of July 2008. This indexation factor is the indexation factor applicable for reference tariff being fixed in the year 2015 as well as in the year 2016 (since NIL escalation factor has been prescribed for the year 2016) with base WPI as on 1 January 2008.

Thus, the indexed reference tariff for handling Thermal coal and Coal other than Thermal coal at the proposed facility as derived by the PPT based on the indexation factor, is found to be in order.

(v). The July 2008 Upfront tariff Order had prescribed 10 free days; and, the chargeable slab periods were 1st 5 days after free period, 6th – 10th days after free period and 11th day onwards. In the proposed Reference Tariff Schedule for the new Coal berth, the PPT has proposed a free period of 15 days and the chargeable slab periods as 1st 10 days after free period and from 26th day onwards. In support of the changes proposed in the free days and storage structure, the PPT has reasoned that the terminals that got commissioned in different ports have experienced serious operational issues and disputes with regard to the free days and storage slabs. In this connection, the Ministry of Shipping (MOS)/ Indian Ports Association (IPA) in their reports have indicated that the dwell time for import cargo in the current scenario exceeds 30 days. In view of this position, the PPT has proposed more number of free days and extended chargeable storage slab structure, as compared to the July 2008 Upfront tariff Order, keeping in view the report of IPA/ MOS. It is noteworthy that even with the proposed changes, the port does not expect any revenue loss, as additional cargo will be attracted due to overall cost of handling. Given that the change in the free days and storage slab structure is in view of the report of IPA/ MOS, as reported by the Port and since the port has also confirmed that there will not be any loss of revenue on account of the proposed changes in the storage slab structure, the proposal of the port in this regard, is approved by this Authority.

(vi). The Reference Tariff Guidelines of 2013 allow the Port Trusts to adopt Reference Tariff fixed for a particular commodity under same port Trust. The PPT is satisfied itself to keep the cargo handling charge at ₹ 175.60 per tonne as approved for the similar cargo. The judgment of the port in this regard is relied upon.

(vii). In the proposed reference tariff schedule, the PPT has proposed definitions and the general terms and conditions forming part of the PPT Reference tariff Schedule. In this regard, it is relevant here to mention that the upfront tariff schedule for the deep draught coal berth at PPT approved in July 2008 did not prescribe the definitions, general terms and conditions and the various conditionalities governing the levy of cargo handling charges, storage charges and berth hire charges, which are generally prescribed in the Upfront tariff Schedule of the various major port trusts. However, subsequently while notifying reference tariff for mechnisation of CQ-1 and 2 at PPT which was based on the adoption of upfront tariff for handling coal fixed for PPT in the year 2008, definitions, general terms and conditions and all other conditionalities governing the levy of all charges were prescribed in the Reference Tariff Schedule forming part of the PPT Order no. TAMP/44/2015-PPT dated 4 September 2015. The PPT is also seen to have proposed the same definitions, general terms and conditions and all other conditionalities governing the levy of cargo handling charges, storage charges and berth hire charges forming part of the Reference tariff Schedule of the PPT (Order no. TAMP/44/2015-PPT dated 4 September 2015) in the current Reference tariff Schedule. The definitions and conditionalities as proposed by the PPT in its Scale of Rates are approved.

Further, in the note proposed in Section 3 – Cargo handling charges of the proposed Reference Tariff Schedule, the PPT has incorporated the sentence ‘after the time of unloading the cargo from railway wagons’. This sentence does not form part of the Reference tariff Schedule approved either in July 2008 or in September 2015. Further, the sentence is not found to be relevant for an import terminal. But, as per July 2008 Order, the free period would commence after the time of completion of ship. Therefore, this provision is added in the note. In view of this position, the said sentence in the proposed Scale of Rates is deleted.

Also, the conditionalities governing System of classification of vessel for levy of Vessel Related Charges, Criteria for levy of Vessel Related Charges and Cargo Related Charges at Concessional Coastal rate, have been prescribed in the Reference Tariff Schedule in line with the common Order no. TAMP/53/2015-VOCPT dated 26 November 2015 and 10 June 2016.

(viii). The rate and conditions for granting ousting priority berthing / priority berthing will be governed by extant Government guidelines/ orders in the matter and the provisions prescribed in the Scale of Rates of PPT. Accordingly, a note to the effect that for providing 'priority' berthing to any vessel, the Port shall collect fee equivalent to berth hire charges for a single day or 75% of the berth hire charges calculated for the total period of actual stay at the berth, whichever is higher, and for providing 'Ousting priority' to any vessel, the port shall collect a fee equivalent to berth hire charges for a single day or 100% of the berth hire charges calculated for the actual period of stay at the berth, whichever is higher, as prescribed in the existing scale of Rates of PPT is also prescribed in the Reference Tariff Schedule.

(ix). Clause 2.2 of the revised tariff guidelines of 2013 requires this Authority to prescribe the Reference Tariff along with the Performance Standards. Though the revised guidelines of 2013 do not require the Authority to go into the Performance Standards proposed by the port it may not be unreasonable to assume that the ports would propose reasonable and achievable Performance Standard.

With regard to the performance standards, the PPT has proposed the gross berth output per berth at 48000 tonne per day. The PPT has also stated that the Gross Berth Output shall be calculated as the total cargo handled from the ship during a month divided by the time spent by the ship at the terminal multiplied by number of working days of ships in that month at that terminal. While determining the number of working days from the ship hours, the berth allowance of 4 hours shall be subtracted from the total hours. The Gross Berth Output of 48000 tonnes per day is seen to be based on the average output of the capesize vessels (50000 tonnes) and panamax vessels (35000 tonnes) and based on the share of capesize vessels and panamax vessels at 80:20, as relied upon in the optimal capacity calculation of deep draught coal berth at PPT. The Performance Standards as proposed by PPT with regard to Gross Berth Output is relied upon.

(x). With regard to prescription of Performance Standard for 'Transit Storage Dwell', the PPT has indicated that the transit dwell time for all types of coal will be 15 days upto commencement of wagon loading operation. The PPT has also prescribed the turnaround time for receipt / delivery operation for a single operation at 10 hours as well as the double operation at 18 hours. The performance norms as proposed by the PPT are prescribed.

(xi). In the schedule of performance standards, the PPT has prescribed conditionalities relating to Performance Evaluation and calculation of liquidated damages which state that Performance evaluation shall be made on a quarterly review of the reports furnished by the Concessionaire and/ or the records of the Concessionaire and/or by an enquiry by the Concessioning Authority. The Concessionaire shall be liable to pay liquidated damages determined at the rate of 1% (one per cent) of the Gross Revenue of the respective quarter for every shortfall of 10% (ten per cent) in the average performance.

The said conditionality is seen to be relevant between the parties entering into a Concession Agreement. The Performance Standard Schedule notified by this Authority need not prescribe conditionalities governing review of reports of the Concessionaire by the Concessioning Authority and payment of liquidated damages. These conditionalities may form part of the Concession Agreement to be entered by the parties, if PPT so desires, and hence not incorporated in the Performance Standard Schedule notified by this Authority.

5.1. Subject to above, the Reference Tariff Schedule along with conditionalities governing the Reference Tariff has been modified.

5.2. The modified Reference Tariff Schedule is attached as **Annex – I** and the Performance Standards for the new Coal Berth, is attached as **Annex – II**.

5.3. In the result, and for the reasons given above, and based on a collective application of mind, the modified Reference Tariff Schedule for the new Coal Berth at PPT is approved and notified along with the Performance Standards.

5.4. As per clause 2.5 of the Revised Tariff Guidelines 2013, the Reference Tariff and Performance Standards notified by this Authority shall be mentioned in the bid document and subsequently in the Concession Agreement in respect of PPP Projects. Accordingly, the PPT is advised to incorporate the Reference Tariff and Performance Standards, in the bid document and subsequently in the Concession Agreement in respect of PPP Projects.

6.1. From the date of Commercial Operation (CoD) till 31st March of the same financial year, the tariff would be limited to the indexed Reference Tariff relevant to that year, which would be the ceiling. The aforesaid Reference Tariff shall be automatically revised every year based on an indexation as provided in para 2.2 of the tariff guidelines of 2013 which will be applicable for the entire concession period.

However, the PPP operator would be free to propose a tariff along with Performance Standards (the "Performance Linked Tariff") from the second year of operation onwards, over and above the indexed Reference Tariff for the relevant financial year, at least 90 days before the 1st April of the ensuing financial year. Such Performance Linked Tariff shall not be higher than 15% over and above the indexed Reference Tariff for that relevant financial year (and this will be the Tariff Cap). The Performance Linked Tariff would come into force from the first day of the following financial year and would be applicable for the entire financial year.

6.2. The proposal shall be submitted to TAMP along with a certificate from the independent engineer appointed under the Concession Agreement of the Project indicating the achievement of Performance Standards in the previous 12 months as incorporated in the Concession Agreement or for the actual number of months of operation in the first year of operation as the case may be.

6.3. On receipt of the proposal, TAMP will seek the views of the PPT on the achievement of Performance Standards as outlined in para 5 of the tariff guidelines of 2013, within 7 days of receipt.

6.4. In the event of Operator not achieving the Performance Standards as incorporated in the Concession Agreement in previous 12 months, TAMP will not consider the proposal for notifying the Performance Linked Tariff for the ensuing financial year and the Operator shall be entitled to only the indexed Reference Tariff applicable for the ensuing financial year.

6.5. After considering the views of the PPT, if TAMP is satisfied that the Performance Standards as incorporated in the Concession Agreement have been achieved, it shall notify the performance linked tariff by 15th of March to be effective from 1st of April of the ensuing financial year.

6.6. While considering the proposal for Performance Linked Tariff, TAMP will look into the Performance Standards and its adherence by the Operator. TAMP will decide on the acceptance or rejection of the Performance Linked Tariff proposal based on the achievement or otherwise of the Performance Standards by the operator. Determination of indexed Reference Tariff and Performance Linked Tariff will follow the illustration shown in the Appendix attached to the tariff guidelines of 2013.

6.7. From the third year of operation, the Performance Linked Tariff proposal from the PPP operator shall be automatically notified by TAMP subject to the achievement of Performance

Standards in the previous 12 months period as certified by the Independent Engineer. The PPP operator, for the Performance Linked Tariff from the third year onwards, will submit the Performance Linked Tariff proposal along with the achievement certificate from the independent engineer by 1st March and TAMP shall notify by 20th March, the Performance Linked Tariff to be effective from the ensuing financial year.

6.8. In the event any user has any grievance regarding non-achievement by the PPP operator of the Performance Standards as notified by the TAMP, he may prefer a representation to TAMP which, thereafter, shall conduct an inquiry into the representation and give its finding PPT. The PPT will be bound to take necessary action on the findings as per the provisions of the respective Concession Agreement.

6.9. Within 15 (fifteen) days of the signing of the Concession Agreement, the concerned operator will forward the Concession Agreement to TAMP which will host it on its website.

6.10. The PPP operator shall furnish to TAMP quarterly 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 berth. The quarterly reports shall be submitted by the PPP operator within a month following the end of each quarter. Any other information which may be required by TAMP shall also be furnished to them from time to time.

6.11. TAMP shall publish on its website all such information received from PPP operator. However, TAMP shall consider a request from any PPP operator 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 of upon publication. TAMP's decision in this regard would be final.

(T.S. Balasubramanian)
Member (Finance)

<u>Annex – I</u>

REFERENCE TARIFF SCHEDULE

<u>"Development of new Coal Berth for handling of Coal Imports at Paradip Port Trust on BOT basis.</u>

1.1. DEFINITIONS

In this Scale of Rates unless the context otherwise requires, the following definitions shall apply:

(i). **"Coastal vessel"** shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal licence issued by the Competent Authority / Director General of Shipping.

(ii). **"Foreign-going vessel"** shall mean any vessel other than Coastal vessel.

(iii). **"Day"** shall mean the period starting from 6.00 A.M. of a day and ending at 6.00 A.M. on the next day.

1.2. GENERAL TERMS & CONDITIONS

(i). The status of the vessel, as borne out by its certification by the Customs or the Director General of Shipping, shall be the deciding factor for its classification as 'coastal' or 'foreign-going' for the purpose of levying vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.

(ii) (a). System of classification of vessel for levy of Vessel Related Charges (VRC)

(i). A foreign going vessel of Indian Flag having a General Trading Licence can convert to Coastal run on the basis of a Customs Conversion Order. Such vessel that converts into coastal run based on the Customs Conversion Order at her first port of call in Indian Port, no further custom conversion is required, so long as it moves on the Indian Coast.

(ii). A foreign going vessel of foreign flag can convert to coastal run on the basis of a Licence for Specified period or voyage issued by the Director General of Shipping and a custom conversion order.

(b). Criteria for levy of Vessel Related Charges (VRC) at Concessional Coastal rate and foreign rate.

(i). In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.

(ii). In cases of such conversion coastal rates shall be chargeable till the vessel completes discharging operations at the last call of Indian Port; immediately thereafter, foreign-going rates shall be chargeable by the discharge ports.

(iii). For dedicated Indian coastal vessels having a Coastal Licence from the Director General of Shipping, no other document will be required to be entitled to coastal rates.

(iii) Criteria for levy of Cargo Related Charges (CRC) at Concessional Coastal Rate

(a). Foreign going Indian vessel having General Trading License issued for 'worldwide and coastal' operation should be accorded applicable coastal rates with respect to Handling Charges (HC) i.e. ship to shore transfer and transfer from/ to quay to/ from storage yard including wharfage in the following scenario:

(i). Converted to coastal run and carrying coastal cargo from any Indian Port and destined for any other Indian port.

(ii). Not converted* to costal run but carrying coastal cargo from any Indian Port and destined for any other Indian Port.

*The Central Board of Excise and Customs Circular no.15/2002-Cus. dated 25 February 2002 allows carriage of coastal cargo from one Indian Port to another port in India, in Indian flag foreign going vessels without any custom conversion.

(b) In case of a Foreign flag vessel converted to coastal run on the basis of a License for Specified period or voyage issued by the Director General of Shipping, and a Custom Conversion Order, the coastal cargo/ container loaded from any Indian Port and destined for any other Indian Port should be levied at the rate applicable for coastal cargo/container.

(iv). (a) The berth hire charges for all coastal vessels should not exceed 60% of the corresponding charges for other vessels.

(b) The cargo related charges for all coastal cargo other than thermal coal should not exceed 60% of the normal cargo related charges.

(c) In case of cargo related charges, the concessional rates should be levied on all the relevant handling charges for ship shore transfer and transfer from/to quay to/from storage yard including wharfage.

(d) Cargo from a foreign port which reaches an Indian Port "A" for subsequent transhipment to Indian Port "B" will be levied the concession charges relevant for its coastal voyage. In other words, cargo from/to Indian Ports carried by vessels permitted to undertake coastal voyage will qualify for the concession.

(v). Interest on delayed payments / refunds.

(a) The user shall pay penal interest on delayed payments under this Scale of Rates. Likewise, the terminal operator shall pay penal interest on delayed refunds.

(b) The rate of penal interest will be 2% above the prime lending rate of the State Bank of India.

(c) The delay on refunds will be counted only 20 days from the day of completion of services or on production of all the documents required from the users, whichever is later.

(d) The delay in payments by the users will be counted only 10 days after the date of raising the bills by the terminal operator. This provision shall, however, not apply to the cases where payment is to be made before availing the services where payment of charges in advance is prescribed as a condition in the scale of rates.

(vi). In calculating the gross weight or measurement by volume or capacity of any individual item, fractions upto and inclusive 0.5 shall be taken as 0.5 unit and fractions of above 0.5 shall be treated as one unit, except where otherwise specified.

(vii). All charges worked out shall be rounded off to the next higher rupee on the grand total of the bill.

(viii). (a). The rates prescribed in the Scale of Rates are ceiling levels: likewise, rebates and discounts are floor levels. The terminal operator may, if they so desire, charge lower rates and / or allow higher rebates and discounts.

(b). The terminal operator may also, if they so desire, rationalise the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalisation gives relief to the user in rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling levels.

(c). The terminal operator should notify the public such lower rates and/ or rationalisation of the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP.

(ix). Users will not be required to pay charges for delays beyond reasonable level attributable to terminal operator.

2. BERTH HIRE CHARGES:

The Berth Hire charges payable by masters/owners/agents for the vessel shall be as per rates below:

Sl. No.	**Vessels**	**Rate per GRT per hour or part thereof (₹)**	
		Foreign Going Vessel	**Coastal Vessel**
1.	All Vessels	1.00	0.59

Notes:

(i). The period of berth hire shall be calculated from the time vessel occupied the berth till she vacates the berth.

(ii). Berth hire includes charges for services rendered at the berth, such as occupation of berth, rubbish removal, cleaning of berths, fire watch etc.

(iii). No berth hire shall be levied for the period when the vessel idles at its berth for continuous one hour or more due to non-availability / break down of terminal operator's equipment or power failure or any reasons attributable to the terminal operator.

(iv). (a). Berth hire shall stop four hours after the time of the vessel signaling its readiness to sail.

(b). The time limit of 4 hours prescribed for the cessation of the berth hire shall exclude the ship's waiting time for want of favorable tide conditions, inclement weather and due to lack of night navigation.

(c). The Master/ agent of the vessel shall signal readiness to sail only in accordance with favorable tidal and weather conditions.

(v). The Penal berth hire shall be equal to one-day's (24 hours) berth hire charges for a false signal.

"**False Signal**" would be when the vessel signals readiness and asks for a pilot in anticipation even when she is not ready for un-berthing due to engine not being ready or cargo operation not completed or such other reasons attributable to the vessels. This excludes signaling readiness when a vessel is not able to sail due to unfavorable tide, lack of night navigation or adverse weather conditions."

(vi). Priority and Ousting Priority charges:-

(a). Priority Berthing:

For providing ‘priority’ berthing to any vessel, the Port shall collect fee equivalent to berth hire charges for a single day or 75% of the berth hire charges calculated for the total period of actual stay at the berth, whichever is higher.

(b). Ousting Priority:
For providing ‘Ousting priority’ to any vessel, the port shall collect a fee equivalent to berth hire charges for a single day or 100% of the berth hire charges calculated for the actual period of stay at the berth, whichever is higher.

3. CARGO HANDLING CHARGES:

The cargo handling charges at the new Coal berth at Paradip Port shall be payable on the manifested cargo directly by the importer of cargo at the rates specified below:

Sl. No.	Commodity	Unit	Rate in Rupees	
			Foreign	Coastal
a.	Coal handling charges (Thermal coal)	Per Metric Tonne	175.60	175.60
b.	Coal handling charges (for other than Thermal coal)	Per Metric Tonne	175.60	105.36

Note:

The above rate is the composite rate for unloading of all the cargo from the ship, conveying to stack yard, storage at the stack yard upto free period of 15 days after the time of completion of ship, reclaiming from stack yard and loading on to the railway wagons and all other miscellaneous services provided.

4. STORAGE CHARGES:

The Storage charges for the cargo stored in the stack yard beyond the free period shall be as below:

Sl. No.	Commodity	Rate for first 10 days for the balance cargo remaining after the free period	Rate for 26th day onwards for the balance cargo
1.	Coal (all types)	₹ 16.21 per MT per day	₹ 32.42 per MT per day

Notes:

(i). 15 free days shall be allowed. Free period for import cargo shall commence from the actual date of the receipt of goods in the Port premises. For the purpose of calculation of free period, Custom notified holidays and Terminal’s non-working days shall be excluded.

(ii). Storage charges shall be payable for all days including Terminal’s non-working days and Customs notified holidays for stay of cargo beyond the prescribed free days.

(iii). Storage charges on cargo shall not accrue for the period when the terminal operator is not in a position to deliver / ship the cargo when requested by the user due to reasons attributable to the Terminal operator

5. General Note to Sl no. 2 to 4 above:

(i). The Reference Tariffs will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2016 and 1 January of the relevant year. Such automatic adjustment of Reference

Tariffs will be made every year and the adjusted tariff caps will come into force from 1 April of the relevant year to 31 March of the following year.

(ii). From the date of Commercial Operation (CoD) till 31st March of the same financial year, the tariff would be limited to the indexed Reference Tariff relevant to that year, which would be the ceiling. The aforesaid Reference Tariff shall be automatically revised every year based on an indexation as provided in para 2.2 of the tariff guidelines of 2013 which will be applicable for the entire licence period.

However, the Licensee would be free to propose a tariff along with Performance Standard (the "Performance Linked Tariff") from the second year of operation onwards, over and above the indexed Reference Tariff for the relevant financial year, at least 90 days before the 1st April of the ensuing financial year. Such Performance Linked Tariff shall not be higher than 15% over and above the indexed Reference Tariff for that relevant financial year (and this will be the Tariff Cap). The Performance Linked Tariff would come into force from the first day of the following financial year and would be applicable for the entire financial year.

(iii). The proposal shall be submitted to TAMP along with a certificate from the independent engineer appointed under the Concession Agreement of the Project indicating the achievement of Performance Standard in the previous 12 months as incorporated in the Licence Agreement or for the actual number of months of operation in the first year of operation as the case may be.

(iv). On receipt of the proposal, TAMP will seek the views of the Major Port Trust on the achievement of Performance Standard as outlined in para 5 of the tariff guidelines of 2013, within 7 days of receipt.

(v). In the event of Licensee not achieving the Performance Standard as incorporated in the Licence Agreement in previous 12 months, TAMP will not consider the proposal for notifying the Performance Linked Tariff for the ensuing financial year and the Licensee shall be entitled to only the indexed Reference Tariff applicable for the ensuing financial year.

(vi). After considering the views of the Major Port Trust, if TAMP is satisfied that the Performance Standard as incorporated in the Concession Agreement have been achieved, it shall notify the performance linked tariff by 15th of March to be effective from 1st of April of the ensuing financial year.

(vii). While considering the proposal for Performance Linked Tariff, TAMP will look into the Performance Standard and its adherence by the Licensee. TAMP will decide on the acceptance or rejection of the Performance Linked Tariff proposal based on the achievement or otherwise of the Performance Standard by the Licensee. Determination of indexed Reference Tariff and Performance Linked Tariff will follow the illustration shown in the Appendix attached to the tariff guidelines of 2013.

(viii). From the third year of operation, the Performance Linked Tariff proposal from the Licensee shall be automatically notified by TAMP subject to the achievement of Performance Standard in the previous 12 months period as certified by the Independent Engineer. The Licensee, for the Performance Linked Tariff from the third year onwards, will submit the Performance Linked Tariff proposal along with the achievement certificate from the independent engineer by 1st March and TAMP shall notify by 20th March, the Performance Linked Tariff to be effective from the ensuing financial year.

Annex-II

PERFORMANCE STANDARDS

Schedule of Performance Standards for "New Coal Berth at Paradip Port on BOT Basis"

1. Gross Berth Output

The parameter deals with the productivity of the terminal (Gross Berth Output) for different types of cargo. In case of coal the capability of the terminal (mechanization, method of handling) and parcel size will determine the Gross Berth Output. Higher terminal capability and greater parcel size will lead to high productivity. The Gross Berth Output shall be calculated as the total cargo handled from the ship during a month divided by the time spent by the ship at the terminal multiplied by number of working days of ships in that month at that terminal. While determining the number of working days from the ship hours, the berth allowance of 4 hours shall be subtracted from the total hours.

The norm for Gross Berth Output for all cargo will be 48,000 tonnes / Day.

Weightage in case of a shortfall in meeting the prescribed performance standard - 70%.

2. Transit Storage Dwell

(i) Bulk Cargo:

The Transit Storage Dwell Time for coal cargo and other cargo shall be calculated, as half of average parcel size of above cargo vessels in a month divided by average disposal of cargo from the port per day as per the following methodology:

$$\text{Average disposal of Cargo per day (A)} = \frac{\text{OB + Received / Dispatched - CB}}{\text{No. of days}}$$

OB = Opening Balance, CB = Closing Balance.

$$\text{Average Parcel Sizes (B)} = \frac{P1+P2+ \ldots \ldots\ldots + Pn}{\text{n (no. of parcels)}}$$

P1, P2 ………Pn are parcel size of each vessel in a month.

Transit Storage Time for Bulk Cargo = 0.5 (B/A)

The transit dwell time for all type of coal will be 15 days up to commencement of wagon loading operation.

Weightage in case of a shortfall in meeting the prescribed performance standard - 20%

3. Turn around Time for receipt/ delivery operation:

The Turnaround Time for receipt/delivery operation shall be the sum of time taken for loading of cargo divided by the number of rakes deployed, as the case may be, in a month. Further, in case the rake does both unloading and loading operations on a single entry into the terminal, the time allocated shall be doubled for those rakes.

The Norms will be as follows:

Rake for all cargo (Single Operation): 10 Hours

Rake for all cargo (Double Operation): 18 Hours

58 BOXN wagon per rake.

Weightage in case of a shortfall in meeting the prescribed performance standard - 10%

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