

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

TARIFF AUTHORITY FOR MAJOR PORTS

G No. 116

New Delhi, 25th May 2011

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal of the TM International Logistics Limited for general revision of its Scale of Rates for the services rendered at Berth No. 12 of the Kolkata Port Trust at the Haldia Dock Complex as in the Order appended hereto.

(Rani Jadhav)
Chairperson

TARIFF AUTHORITY FOR MAJOR PORTS
Case No. TAMP/24/2009-TMILL

M/s. TM International Logistics Limited

- - -

Applicant

O R D E R

(Passed on this 25th day of March 2011)

This case relates to a proposal received from the TM International Logistics Limited (TMILL) for general revision of its Scale of Rates.

2.1. This Authority had passed an Order on 12 October 2007 fixing tariff for the TMILL for the first time for the services rendered by TMILL at Berth no. 12 of Haldia Dock Complex (HDC) of the Kolkata Port Trust (KOPT). The TMILL was operating the Berth no. 12 applying the (then) existing Scale of Rates of KOPT. The estimated financial/ cost position showed a surplus position at the level of tariff approved for KOPT for the period of 2½ years from October 2007 to March 2010. The surplus position had emerged due to set off of the past surplus in the future tariff over a period of 2½ years. Hence, the tariff for TMILL was fixed by reducing tariff of KOPT by 20% with a validity period till 31 March 2010.

2.2. The TMILL filed an application for review of the tariff Order dated 12 October 2007. This Authority disposed of the review application by Order dated 17 March 2008 directing TMILL to refund the past surplus to the tune of ₹1775.14 lakhs being the excess accrued to TMILL during the period from 2002-03 to first half of 2007-08 alongwith an interest at 12% compounded annually to the concerned persons. As such, there was no adjustment of past surplus in the future tariff. The tariff of TMILL was refixed by effecting an increase of 18% over the (then) existing KOPT level of cargo related charges except demurrage rates, equipment hire charges and charges for supply of unskilled labour.

2.3. The TMILL challenged the tariff Order dated 17 March 2008 before the Hon'ble High Court of Calcutta in W.P. No. 10094(W) of 2008 mainly the issue of refunding the past surplus to the users, disallowance of royalty/ revenue share as cost for the years 2002-03 to 2004-05 in assessing the past surplus accrual to the operator and inclusion of the amount of ₹1.14 crores in the income estimation arising on account of steel and iron ore handling.

2.4. The Hon'ble Calcutta High Court by its Order dated 15 May 2009 rejected the main contention raised by TMILL against Authority's Order dated 17 March 2008 and directed TMILL to pay ₹51000/- to TAMP as cost. The High Court, however, directed this Authority to correct the tariff of TMILL by accounting for the royalty/ revenue share payment for the period prior to 31 March 2005 and revisit the decision of not allowing the estimated sum of ₹1.14 crores on account of shore handling charges. The directions of the Hon'ble High Court to this Authority are reproduced below as contained in the last paragraph at page No.48 of the High Court Order:

"To sum up, the Authority was neither in error of jurisdiction nor unreasonable by any yardstick of reasonableness in requiring

prospective rates to be adjusted by the amount of excess charges that had unlawfully been levied on its clients by the Petitioner Company. The Authority can only be faulted for not allowing royalty for the period upto 31 March 2005 to pass through and for not clearly explaining why the amount of ₹1.14 Crore was to be added to the Petitioner company's income out of the sum of ₹6.86 Crores that it claimed on account of adjustments for shore handling charges. The Authority is directed to correct the tariff by accounting for the amount paid by the Petitioner company by way of royalty for the period prior upto March 31, 2005; revisit its decision to not allow the further sum of ₹1.14 Crore on account of shore handling charges – and, specify how the recalculated excess charges should be adjusted in the tariff already fixed or the future tariff to be fixed for the petitioner company. The Authority should communicate its decision to the Petitioner company within 10 weeks from the date hereof and will not be obliged to hear the petitioner company any further”.

“ W.P. No.10094 (W) of 2008 is allowed in part. However, since the major plank the petitioners' challenge has failed and the several other heads of tariff have been upheld, the petitioners will bear a part of the Authority's express in these proceeding and pay costs at 3000 GMs.

2.5. Based on the advice received from the Government vide Government's letter No. PR-14019/11/2009-PG, dated 16 October 2009, in response to a reference made by us in this regard vide our letter No. TAMP/32/2008-TMILL, dated 23 July 2009, this Authority has filed an appeal before the Division Bench of the Calcutta High Court on 11 November 2009 against the Order dated 15 May 2009 passed by the Hon'ble Single Judge on royalty / revenue share.

2.6. The TMILL has filed a stay petition and memorandum of appeal before the Division Bench, challenging the judgement and Order dated 15 May 2009 passed by the Hon'ble Single Judge.

2.7. The stay petition & Memorandum of Appeal filed by TMILL and the Appeal filed by this Authority are yet to be disposed off by the Hon'ble High Court of Calcutta.

3. Since the tariff fixed for TMILL in October 2007 was valid till 31 March 2010, the tariff fell due for review in the financial year 2009-10.

4.1. In this backdrop, the TMILL has filed its tariff proposal dated 30 June 2009 requesting for a revised tariff to be effective from 1 April 2010 to 31 March 2013. The main points made by the TMILL are summarised below:

- (i). The estimates for the year 2009-10 are framed based on the projected volumes and projected cost estimates.

- (ii). To cite certain recent developments at Haldia, there is extraordinary demand from labour and intermittent stoppage of operation at HDC by the labour. Channel draft is declining causing reduced parcel size and increased congestion at HDC causing diversion of cargo to alternate ports.
 - (iii). Projection for future three years (2010-11 to 2012-13) are made in the light of estimates for 2009-10. Inflation factor of 5.40% is considered for projecting expenditure for future three years.
 - (iv). The traffic projection has been made on most likely basis of import and export patterns in the eastern coast of India.
 - (v).
 - (a). The actual financial figures for the years 2007-08 and 2008-09 submitted in May 2009 are prior to completion of audit of segregated accounts.
 - (b). The segregated accounts for the financial year 2007-08 has since been completed and the changes have been incorporated in the present filing. A reconciliation sheet is provided.
 - (c). The preliminary checking of segregated accounts of the financial year 2008-09 has also been done and the changes have been incorporated in the present filing. A reconciliation sheet is provided.
 - (vi).
 - (a). The royalty/ revenue share is computed based on the revised tariff of KOPT as per the provisions of the Licence Agreement.
 - (b). Since the License Agreement was signed before July 2003, royalty / revenue share is considered as an item of admissible expenditure as per the revised tariff guidelines.
- 4.2. The proposal of the TMILL is summarised in the following paragraphs:
- (i). The existing Scale of Rates of TMILL prescribes charges towards Wharfage, On-board Charges, On-board Supervision, Loading/ unloading/ re-stacking, Demurrage, Transportation, License fees and Miscellaneous services
 - (ii). The TMILL has proposed the following:
 - (a). To increase the existing charges by 10% except demurrage and some items listed under license fees and miscellaneous services.
 - (b). To reduce the existing rate prescribed for on-board supervision of export cargo by around 22%.
 - (c). To increase the existing rate prescribed for loading/ unloading/ re-stacking of containers by about 162%.(from ₹191.16 per TEU to ₹500.00 per TEU).
 - (d). TMILL has proposed to introduce a new tariff item called “all other cargo” under the following tariff items with the following proposed rates:
 - (i). On-board charges ₹65.00 per MT

- (ii). On-board supervision ₹194.70 per MT
- (iii). Loading/ unloading/ restacking ₹.58.41 per MT
- (iv). Transportation ₹.100.00 per MT

(e). It has proposed to introduce the following new items of cargo under loading / unloading / re-stacking and transportation:

- (i). Article weighing above 20 tonnes and upto 35 tonnes.
- (ii). Article weighing above 35 tonnes.

(f). The existing hire charges of equipments of different capacities listed under the tariff item “license fees and miscellaneous services” are proposed to be hiked by 30%.

(g). New rates have been proposed under the tariff item “license fees and miscellaneous services” towards equipment hire charges for forklifts and harbour mobile crane.

4.3. No major modifications to the existing conditionalities governing the application of rates have been proposed.

4.4. The estimated financial / cost position at the existing level of tariff as shown in the consolidated income and cost statement furnished by the TMILL are summarised below:

(₹ in lakhs)

Sl. No.	particulars	Estimate 2009-10	Estimates at existing level of tariff		
			2010-11	2011-12	2012-13
(i).	Traffic (in MTs)	900000	900000	900000	900000
(ii).	Operating income	2018	2862	2934	2934
(iii).	Net surplus / deficit after return	-797	-123	-128	-182
(iv).	Net deficit as a percentage of operating income	-40%	-4%	-4%	-6%
(v).	Average net deficit as a percentage of operating income	--	-4.66%		

4.5. The recovery of past deficit apart from recovery of operating cost and return on investment for future years is cited by the operator as the reason for proposed increase of 10% as against the average net deficit of 4.66%.

4.6. As seen from the cost statement furnished by TMILL, an additional income to the tune of ₹6.11 crores for the years 2010-11 to 2012-13 is anticipated on account of the proposed revision.

5. As stated earlier, the validity of the existing Scale of Rates of TMILL notified was to expire on 31 March 2010. The TMILL vide its letter dated 16 March 2010 inter alia, requested this Authority to extend the validity of the existing tariff. Recognizing that the validity of the existing SOR expires on 31 March 2010 and also since it will take time for the proposal to mature for final consideration, this Authority vide its Order dated 31 March 2010 has extended the validity of the Scale of Rates of TMILL upto 30 September 2010, subject to fully adjusting the

additional surplus, if any, over and above the admissible cost and permissible return for the period post 1 April 2010 in the tariff to be determined.

6. In accordance with the consultative procedure prescribed, the proposal dated 30 June 2010 from the TMILL was forwarded to KOPT and to the concerned users/ user organisations for their comments. The comments received from some of the users and KOPT were forwarded to the TMILL as feedback information. The TMILL has not responded to either the comments of the users or to the comments of the KOPT.

7. Based on a preliminary scrutiny of the proposal, the TMILL was requested to furnish additional information / clarifications on various issues. The TMILL has responded. The queries raised by us and the replies furnished by TMILL thereon are tabulated below:

Sr. No.	Queries raised by us	Reply furnished by TMILL
A.	<u>General:</u>	
(i).	The Cost statements furnished by TMILL reflect an average deficit to the tune of around 5% at the existing level of tariff for the years 2010-11 to 2012-12. TMILL has sought an increase of 10% over its existing tariff on the ground of recovery of past deficit, apart from recovery of cost of operation and return on capital employed. Recovery of past deficit in future tariff may be justified with workings keeping in view clause 2.13 of the tariff guidelines of March 2005.	The proposal has been revised wherein the question of past deficit adjustment does not arise. Furthermore, as about 6 months have already elapsed and existing SOR has been applied by TMILL, hence, the actual surplus/ (deficit) for FY'11 will be a mix of surplus/ (deficit) at existing SOR and that at finally approved SOR.
(ii).	The revised tariff guidelines stipulate that tariff should be linked to benchmark of the levels of productivity. The TMILL at Sl. No. 6 of its Form – 1 has indicated that it targets to achieve a ship day output of 4000 MT. This benchmark level of productivity may be included in the Scale of Rates as a conditionality governing the respective tariff items.	The rates for Harbour Mobile Crane have been linked to the productivity levels. All other rates cannot be linked, as the productivity levels are dependent on external factors like stowage, vessel type and crane qualities/ capacities etc. which are beyond TMILL's control.
(iii).	TMILL has stated that its pricing strategy is cost based. Please bring out the impact of the anticipated improvement in the productivity on the unit price.	(a). The productivity levels with the usage of harbour mobile crane has been taken at a higher level than the present levels and included in the conditionalities under Sec.10. (b). Also, cost of double stacking of iron ore to the user has been avoided under Sec.10/ Sec.7. (c). Optional rate on per metric tonne basis has been proposed for usage of equipment on-board and usage of harbor mobile crane to provide simplicity to the users commercially.
(iv).	In respect of Sl. No. 4 of Form-1, TMILL has furnished only a comparative position of existing rates and proposed rates. Please furnish comparative position of existing conditionalities and proposed conditionalities to govern the proposed rates highlighting the changes, in	In the revised proposal, the changes in conditionalities have been highlighted, wherever applicable. (The TMILL has not furnished a comparative position of existing conditionalities and proposed conditionalities. It has, instead shown the changes proposed by it in the

	conditionalities proposed, if any with justification.	conditionalities in <i>italics</i> , in the proposed draft Scale of Rates. The reasons for effecting change in the conditionalities have not been furnished.)																								
(v).	TMILL has not filled up the table at Sl. No. 5 of Form-1. The TMILL is requested to provide details of the change in the average cost for a typical port user before and after the tariff change.	The revised Form -1 furnished by TMILL shows the change in the per tonne rate of cargo related charges and miscellaneous charges incase of, and. The position as furnished by TMILL is summarised and tabulated below: (₹ Per MT) <table><tr><th rowspan="2">Particulars</th><th colspan="2">Handling cost</th><th colspan="2">HMC Charges</th></tr><tr><th>Before</th><th>After</th><th>Before</th><th>After</th></tr><tr><td>Iron ore exporters</td><td>176.46</td><td>182.73</td><td>49.12</td><td>56.25</td></tr><tr><td>Steel importers</td><td>451.53</td><td>504.92</td><td>82.48</td><td>90.00</td></tr><tr><td>Fertiliser importers</td><td>106.20</td><td>127.44</td><td>89.87</td><td>100.00</td></tr></table>	Particulars	Handling cost		HMC Charges		Before	After	Before	After	Iron ore exporters	176.46	182.73	49.12	56.25	Steel importers	451.53	504.92	82.48	90.00	Fertiliser importers	106.20	127.44	89.87	100.00
Particulars	Handling cost			HMC Charges																						
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Iron ore exporters	176.46	182.73	49.12	56.25																						
Steel importers	451.53	504.92	82.48	90.00																						
Fertiliser importers	106.20	127.44	89.87	100.00																						
(vi).	TMILL has not furnished the financial implication i.e. change in the revenue anticipated on account of the proposed increase, as required at Sl. No. 7 of Form-1.	The revised Form -1 furnished by TMILL shows the annual financial implication on account of the proposed increase in the cargo related charges at ₹376.19 lakhs, ₹364.07 lakhs and ₹412.36 lakhs.																								
(vii).	TMILL has not filled up the table at Sl. No. 8 of Form-1. Deviation from the tariff guidelines of March 2005 in framing the current tariff proposal in reference, if any, may be furnished with reasons therefor.	The revised Form -1 furnished by TMILL states that there are no deviation from the tariff guidelines.																								
(viii).	TMILL to furnish segregated annual accounts for Berth No. 12 in respect of the activities covered under Section 42 of the Major port Trusts Act, 1963, for the financial years 2008-09 and 2009-10 duly certified by the Chartered Accountant. The audited annual accounts for the year 2008-09 furnished by TMILL under cover of its letter dated 30 June 2009 is seen to be for TMILL as a whole.	The TMILL has furnished the segregated accounts for the years 2008-09 and 2009-10 duly audited by the Statutory Auditors of TMILL.																								
(ix).	As the financial year 2009-10 is already completed, the TMILL to update the cost statements with actuals for the year 2009-10. The estimates for the years 2010-11 to 2012-13 may be reviewed based on the actuals for the year 2009-10, if necessary.	The TMILL has stated to have made the necessary updation in its revised tariff proposal.																								
(x).	A detailed income calculation for the years 2007-08 to 2009-10 based on the actual traffic handled and applying the rates approved in the TMILL Scale of Rates (SOR) to be furnished.	The TMILL has furnished the revenue actually earned by it and the revenue calculated by applying the approved rates of TAMP, for the years 2007-08 to 2009-10. The details are summarised below: (₹ In Lakhs) <table><tr><th></th><th>2007-08</th><th>2008-09</th><th>2009-10</th><th>Total</th></tr><tr><td>Actual revenue earned</td><td>2129</td><td>1798</td><td>2752</td><td>6679</td></tr><tr><td>Revenue as per approved SOR</td><td>3132</td><td>2349</td><td>3496</td><td>8977</td></tr><tr><td>Difference</td><td>-1003</td><td>-551</td><td>-744</td><td>-2298</td></tr></table>		2007-08	2008-09	2009-10	Total	Actual revenue earned	2129	1798	2752	6679	Revenue as per approved SOR	3132	2349	3496	8977	Difference	-1003	-551	-744	-2298				
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(B).	Comparison of Actuals vis a vis estimates provided earlier	
	Clause 2.13 of the tariff guidelines of 2005 requires this Authority to review the actual physical and financial performance at the end of the prescribed tariff validity period with reference to the projections relied upon at the time of fixing the prevailing tariff. In this context and with reference to Form – 7 of the tariff proposal filed by TMILL, the TMILL to clarify/ furnish the following:	
(i).	In the Form-7, the TMILL has compared the estimates of the years 2006-07 to 2008-09 with the actuals for the said period, whereas the estimates considered in the last tariff Order was for the years 2007-08 to 2009-10. Moreover, some of the figures furnished by TMILL in the estimates column do not match with the figures relied upon by this Authority in the TMILL review Order dated 17 March 2008. The TMILL to revise the Form-7 so as to enable comparison of the estimates for the years 2007-08, 2008-09 and 2009-10 as considered by this Authority in Order dated 17 March 2008 with the actuals for the said period.	The income estimates are considered at 118% of the amount mentioned in Annexure 1 to the order of March 2008 in view of TAMP's approval being 18% higher. Few cost items for FY'08 has been corrected. FY'10 review is included.
(ii).	Though the TMILL has updated the estimated income to give effect to the 18% increase, it does not appear to have carried out the updation correctly. The TMILL, therefore, to update the estimated income for the years 2007-08, 2008-09 and 2009-10 to give effect to the 18% increase effected from 12 October 2007 in the cargo related charges except demurrage, equipment hire charges and charges for supply of unskilled labour.	Factor of 118% has been applied to the amount mentioned in TAMP's Order of March 2008. (The TMILL appears to have increased the entire estimated income for the year 2007-08 by 18%, whereas the rates were increased by 18%, only after expiry of 30 days from the date of notification in the official gazette)
(iii).	This Authority vide paragraph No. 13(xxiii)(g)(iv)(c) of its Order dated 12 October 2007 has considered the cost towards intraport transportation for the estimated traffic of iron ore at ₹75/- per tonne for the years 2007-08 to 2009-10 subject to verification with reference to actuals. The TMILL, therefore, to furnish documentary evidence in support of the rate of ₹75/- per tonne incurred towards intraport transportation of iron ore.	While budgeting during 2007, ₹75 per tonne for iron ore comprised of intraport transportation, loading at plot and heaping at jetty. The sub-contracted rate as finalized with the sub-contractor for this activity was ₹32 per MT plus equipment hire cost which amounted to ₹43 lakhs during 2009-10 (iron ore volume of 7.33 lakhs MT). The Authority may note that, considering this reduction in cost as one of the factor, the actual rate charged to the customer for iron ore handling was very less as compared to the amount approved by TAMP. (The TMILL has furnished a copy of the Service Contract dated 16.3.09 with a private party. The contract copy prescribes a rate of ₹20 per MT for intraport transportation and ₹12 per MT for stacking of Iron ore cargo. The contract is valid from May 2008 to March 2010.)

(iv).	This Authority vide paragraph No. 13(xxiii)(g)(v) of its Order dated 12 October 2007 has considered survey expenses estimated at the rate of ₹2/- per MT and ₹3/- per MT to other cargo for the years 2007-08 to 2009-10 as adopted by TMILL subject to verification of actuals during the next review of tariff of TMILL. The TMILL to furnish documentary evidence in support of the rate of ₹2/- per MT and ₹3/- per MT incurred towards survey expenses of other cargo.	The survey rate for iron ore was ₹0.40 per MT till Jan'10 and ₹. 0.85 per MT thereafter. The same for steel import was ₹3 per MT till June'09 and thereafter ₹2.25 per MT. (The TMILL has furnished a copy each of the Service Contract dated 20.2.09 and 31.1.10 with a private party. The contract copy prescribes a rate of ₹0.40 per MT for trip survey and ₹0.85 per MT for tally survey of iron ore. The contracts are valid for the period from February 2009 to January 2010) (The TMILL has also furnished a copy each of the Service Contract dated 1.4.08 and 11.6.09. The contract copy prescribes a rate of ₹3 per MT for surveyor and ₹2.25 per MT for tally survey of break bulk cargo.)
(v).	This Authority vide paragraph NO. 13(xxiii)(i)(ii) of its Order dated 12 October 2007 has considered the estimated expenditure towards unloading of steel cargo at siding and transportation to plot/hook point at the rate of ₹110/- per tonne of rail bound steel cargo for the years 2008-09 and 2009-10 as adopted by TMILL subject to verification with actuals during the next review of tariff of TMILL. The TMILL to furnish documentary evidence to support the rate of ₹110/- per tonne incurred towards unloading of steel cargo at siding and transportation to plot/hook point of rail bound steel cargo.	The rate with the party was ₹110.66 per MT during FY'10. However, in view of steep cost hike in labour wages at Haldia during July'09, the fresh rate negotiation with the contractor is under process and the rate is likely to be about ₹134 per MT since 1st April 2010. The contractor has quoted ₹135 per MT. (The TMILL has furnished a copy of the Service Contract dated 29.8.08 with a private party. The contract copy prescribes a rate of ₹110.66 per MT for unloading and transportation. The contract is valid from June 2008 to June 2010)
(vi).	As advised by this Authority vide paragraph NO. 13(xxiii)(j)(ii) of its Order dated 12 October 2007, the TMILL to furnish documentary evidence in support of the security charges to the extent of ₹9.72 lakhs incurred during the year 2007-08.	The investment in LL6 plot got delayed and became operational during FY'09. The security expenses for Berth no.12 comprises of security at 14000 SQM plot, 63000 SQM plot and shared security expenses for office / workshop. The latest bill of security deployed at 63000 SQM plot and 14000 SQM plot is enclosed in support of the expenditure projected. TAMP to note that since railway siding and covered shed at LL6 plot is yet to be constructed as the railway link is yet to come at LL6 plot; the actual security deployment was less than the projected costs during last tariff fixation. (The TMILL has furnished a copy of the bill for the month of August 2010. The bill month of August 2010 is for an amount of ₹144672/- for providing security guards at Berth no. 12 and LL-6.)
(vii).	This Authority vide paragraph NO. 13(xLiii) of its Order dated 12 October 2007 has advised TMILL to draw up its proposal supported by cost details for individual activities. TMILL to furnish	Many tariff items in the tariff proposals are based on the sub-contracted rate of TMILL viz. loading/unloading, transportation, equipment assistance services. Other major items are having reference to the KOPT's

	detailed working with cost elements considered to arrive at the charges proposed towards wharfage, on-board charges, on-board supervision, loading/unloading/ restacking, demurrage, transportation and miscellaneous charges.	proposed rates. The higher/ lower rates are proposed to cover overall costs and permissible return of TMILL's Berth no.12. As major cost items are fixed in nature viz. labour costs, overhead expenses, depreciation and amortisation, plot rent, equipment maintenance etc. the detailing as sought by TAMP is very difficult and practically impossible to provide.
(viii).	As mentioned by this Authority at paragraph NO. 13(xLiv) of its Order dated 12 October 2007, TMILL during the last revision had given an assurance that it will propose unit rate based on weight or volume towards levy of wharfage on unspecified cargo instead of an advalorem rate. However, TMILL proposes to continue to levy wharfage on unspecified cargo at advalorem rate. The TMILL, therefore, to propose unit rate based on weight or volume towards levy of wharfage on unspecified cargo as assured by it during last fixation of its tariff in October 2007.	The same has been complied with in the revised tariff proposal. (The TMILL has now proposed a rate of ₹236 per MT each for unspecified Import and Export cargo, in its revised draft Scale of Rates)
(ix).	In line with the observation made by this Authority vide paragraph NO. 13(L) of its Order dated 12 October 2007, TMILL to propose differential 'On-board charges' depending upon the modes of service rendered.	The mode of cargo loading/ unloading operation depends upon the nature of cargo being handled. Accordingly, and following the classification and rate differentiation as proposed by KOPT in their latest proposal for General revision of SOR has been followed.
(x).	TMILL proposes to continue with the existing services listed under on-board supervision, which includes water sprinkling at berth and cleaning of berth. The TMILL to review and revise the list of services rendered under on-board supervision by excluding the service of water sprinkling at berth and cleaning of berth from on-board supervision service and consider these tariff items in appropriate tariff item with adjustment in rates in line with the observation made by this Authority vide paragraph NO. 13(Li)(i) of its Order dated 12 October 2007. Similarly, in line with the observation made by this Authority vide paragraph No. 13(Li)(ii) and 13(Liii)(ii), TMILL is requested to review and reclassify the tariff item "Loading/ Unloading/ Restacking" in connection with use of hoppers for unloading and loading of dumpers using hoppers and propose suitable modifications in its proposed draft Scale of Rates.	The TMILL has incorporated the necessary changes in the revised proposal. (The TMILL has excluded the charges for cleaning of jetty, water sprinkling and hatch/ deck cleaning charges from the scope of On-board supervision and included it as Miscellaneous charges. However, necessary adjustment in the unit rates for the relevant services listed under "Onboard supervision" is not made) (Similarly, the TMILL has excluded the charges for use of hoppers from the scope of "Loading/ Unloading/ Restacking" and included it as Miscellaneous charges. But adjustment in the unit rate is not made)
(C).	Financial/Cost Statement:	
(1).	Capacity:	
(i).	The TMILL to furnish workings to arrive at the assessed capacity of the berth No. 12	The quay capacity has been calculated as per TAMP's advise following the pattern of

	at 10 lakh MT per annum for the years 2009-10 to 2012-13.	planned cargo mix and average ship day output rate of 4400 MT/day (target rate) the terminal annual capacity works out at 11.24 lakhs per annum as follows:																		
(ii).	The TMILL to determine and furnish with workings its quay side capacity at 70% utilization, taking into account percentage share of various sizes of vessels and ship day output of such vessels. Likewise, the yard capacity may be determined and furnished at 70% storage capacity taking into account the area of the yard, percentage of total area that could be used for stacking, quantity that could be stacked for per sq.mtr. of area and turnover ratio of the storage plot in a year.	4400 MT/day x 365 days x 70% = 11.24 lakhs metric tonnes. The yard capacity could not be determined as the method suggested is not clear to us.																		
(iii).	TMILL proposes to replace its existing loader with new payloaders during the year 2010-11. TMILL has also indicated that it targets to achieve a shipday output of 4000 MT. TMILL to intimate how the replacement of loaders and improvement in productivity has been factored into determination of the assessed capacity.	The replacement of loader has been deferred to FY'11. The replacement is proposed in view of the age of the existing equipments which has crossed 15 years plus. This replacement is proposed to maintain the existing level of operation. It may be noted that there will not be any increase in the capacity of the terminal.																		
(2).	Traffic:																			
	With reference to estimation of traffic, TMILL to clarify the following:-																			
(a).	The TMILL to furnish actual traffic handled by it during the 1 st quarter of the financial year 2010-11.	Actual traffic handled from 1 st April '10 till 31 st August 2010 is as follows: <table><tr><th>Cargo item</th><th>Traffic (in MT)</th></tr><tr><td>Iron Ore</td><td>224989</td></tr><tr><td>Limestone</td><td>21887</td></tr><tr><td>Sugar/Cement Clinker</td><td>47540</td></tr><tr><td>Steel import delivery from Jetty</td><td>21910</td></tr><tr><td>Steel import delivery ex-plot</td><td>29199</td></tr><tr><td>Fertiliser</td><td>13300</td></tr><tr><td>Project Cargo (Labour support only for shore handling)</td><td>28716</td></tr><tr><td>Total</td><td>387541</td></tr></table>	Cargo item	Traffic (in MT)	Iron Ore	224989	Limestone	21887	Sugar/Cement Clinker	47540	Steel import delivery from Jetty	21910	Steel import delivery ex-plot	29199	Fertiliser	13300	Project Cargo (Labour support only for shore handling)	28716	Total	387541
Cargo item	Traffic (in MT)																			
Iron Ore	224989																			
Limestone	21887																			
Sugar/Cement Clinker	47540																			
Steel import delivery from Jetty	21910																			
Steel import delivery ex-plot	29199																			
Fertiliser	13300																			
Project Cargo (Labour support only for shore handling)	28716																			
Total	387541																			
(b).	TMILL to explain the reasons for assuming no growth in the traffic during the years 2010-11 to 2012-13.	The traffic projection has been made in line with the volume expected to be handled at berth no.12 in line with actual performance till 31 st Aug'10. The prorated annual volume as per actual throughput in 5 months comes to 9.30 lakhs MT whereas projection made is better than the same. The market condition is unlikely to change favorably. Moreover, with the expected commissioning of HMC at Berth no.2 and 8, the cargo share is expected to reduce in future. Even then the most optimistic cargo projection has been made in the revised proposal.																		
(c).	The reasons for not estimating traffic of SAIL Steel for the years 2009-10 to 2012-13 be explained.	Actual handling during FY'10 was 5272 MT. For future years 10000 MT of projection has been made.																		
(d).	The reason for substantial reduction in the traffic of Fertilisers during the years 2010-11 or 2012-13 to be furnished.	The revised proposal contains projection of 1.50 lakhs MT in FY'11 and 1.25 lakhs MT p.a. thereafter.																		
(e).	Reasons for reduction in estimated project cargo traffic during the years 2009-10 to	The actual volume of project cargo handled at Berth no.12 was 39.5K MT in FY'09 and																		

	2012-13 as compared to the year 2008-09 to be explained.	28.5K MT in FY'10. The projection for FY'11 is 40K MT and 31.5 K MT thereafter. Project cargo is non-recurring in nature and difficult to project. The vessel productivity is very less (about 800 MT per day) and deliveries also take more time. Hence, it is difficult to project and optimistic projection has been made.
(3).	<u>Operating Income:</u>	
(i).	Apart from the general increase in rate proposed, the TMILL has also proposed introduction of some new tariff items. The yearwise additional revenue implication arising from these new tariff items to be quantified itemwise and furnished for all the years under consideration with workings.	The TMILL has proposed the following new items: Clause 4.8 – “Due to some operational reason if any cargo is landed from a vessel for subsequent shipment by the same vessel, wharfage shall be levied @ 118 per MT or part thereof.” This item is not reflecting in the Income calculation as the possibility of occurrence is very remote. The conditionality has been introduced in line with that proposed by the KOPT. 5.1.6 On-Board charges for all other cargo: The possibility of any other cargo type handling is remote and not projected. The item has been proposed with rates equal to that applicable for the project Cargo in view of uncertainty on the occurrence, nature and productivity of such cargo. No income projection has been made. 6.1.8: On-board supervision for all other cargo: Basis and reason same as that for earlier point. 7.7 – Labour support for shore handling: TMILL was currently collecting ₹18 per MT for iron and steel/project cargo wherever equipments were not provided by TMILL instead of full loading/unloading charges which was in line with the SOR of KOPT. This new tariff item has been proposed and the yearly income projection is as follows: 2010-11 = ₹11.70 lakhs; 2011-12 = ₹9.15 lakhs 2012-13 = ₹9.15 lakhs. Under 10.1: 11.b and 12.b: Rate for On-board equipment assistance and HMC usage: Though per shift basis rates were in existence, to simplify the commercial aspect, this new item has been proposed as an option to the users. There will be no change in projected income in view of these items as revenue earning from shift basis usage is expected to generate same amount of revenue. 16: Cleaning of Jetty/hatch/deck and water

		sprinkling for bulk Cargo Handling wherever necessary for bulk cargo handling: This has been proposed as a separate item as the same has been taken out of On-board Supervision service as per TAMP's advice. 17. Use of Hopper for discharge of bulk materials from vessels: This has been proposed as a separate item as per TAMP's advice by way of removing conditionality which existed earlier under Loading/Unloading/re-stacking head. (Except Labour support for shore handling, TMILL has not estimated additional income from any of the new tariff items.)
(ii).	In Form-2A, the TMILL has estimated traffic of steel shipment a/c TATA steel at 1.50 lakh MT each for the years 2010-11 to 2012-13. However, in the income calculations, furnished by TMILL, it is seen that the TMILL has calculated income from 2 lakh MT of steel shipment a/c Tata Steel (i.e. 1.50 lakh MT + 0.750 lakh MT as additional traffic for rail bound cargo) during the years 2011-12 and 2012-13. In this context, the TMILL to confirm / clarify the following:	
	(a). The estimated traffic of rail bound cargo for the years 2010-11, 2011-12 and 2012-13 at 50000 tonnes, 75000 tonnes and 75000 tonnes respectively is inclusive of estimated traffic on account of TATA steel estimated at 150000 tonnes each for the years 2010-11 to 2012-13.	This understanding is correct. After the construction of railway siding, income from related additional handling activities has been calculated.
	(b). The rate of ₹53.10 per tonne has been considered in income estimation for transportation of rail bound TATA Steel cargo to plot. It is seen that no such rate has been approved in the existing Scale of Rates of TMILL. TMILL to furnish the basis for adopting the rate of ₹53.10 per tonne for estimating income from transportation. It may be noted that only a rate of ₹37.17 per tonne has been approved for undertaking transportation of steel cargo by TMILL.	The same has been rectified in the revised proposal.
(iii).	In the income computation furnished by TMILL, while calculating operating income at the existing level of tariff from steel shipment a/c Tata Steel, raw sugar/ cement clinker imports, steel/ logs discharge – delivery from jetty, steel/ logs discharge – delivery from plot, the TMILL has considered the proposed wharfage rate of ₹70.09 per MT instead of considering the existing wharfage rate of ₹63.72 per MT. TMILL to rectify the error.	The TMILL has rectified the same in the revised proposal.
(iv).	While calculating operating income at the	The TMILL has rectified the same in the

	existing level of tariff from fertilizers (delivered from wharf), the TMILL has added Re. 1 per MT towards cleaning charge in the on-board charges of ₹31.86 per MT. The existing Scale of Rates of TMILL does not include any specific rate of Re. 1 per MT as cleaning charges. Therefore, income on this account to be estimated strictly as per the existing rates.	revised proposal.
(v).	In the calculation of operating income at the existing level of tariff the TMILL has converted the traffic of project cargo of mobile units for delivery from plot from 12500 MT into 833.33 No. of units, while calculating operating income at the existing level of tariff. The reason and the basis adopted for such a conversion to be explained.	The mobile units have now been separately projected. The estimated weight of each mobile unit has been considered at 10 MT. Basis this assumption, the 500 MT of cargo is converted into 50 units for each year.
(vi).	While calculating operating income at the existing level of tariff from project cargo of mobile units for delivery from plot, the TMILL has considered a rate of ₹2655 per unit at on-board supervision charges instead of the existing rate of ₹3540 per unit. The error may be rectified.	The TMILL has rectified the same in the revised proposal.
(vii).	While calculating income from short term allotment of hardstand land and covered sheds, the TMILL has considered the period of allotment incase of limestone as 6 months for the year 2010-11, in case of steel discharge (delivery from plot) as 8 months each for the years 2009-10 to 2012-13 and incase of immobile and mobile project cargo as 3 months each for the years 2009-10 to 2012-13. TMILL to explain as to why the allotment of hardstand land and covered sheds is not considered for the entire period in each of the financial years under consideration.	The plot allotment for each cargo category has been projected on the basis of parcel size for each cargo, area requirement for each parcel, number of parcels expected and time taken for each parcel. The revised calculation has been included in the revised proposal. (The TMILL has revised the basis for calculating plot income. The revised workings are now based on time taken per parcel and area occupied per parcel.)
(viii).	(a). The TMILL has considered an area of 54000 sq. mtrs of bareland, 9000 sq.mtrs of additional bare land and 14000 sq. mtrs of Hardstand land to calculate the lease rentals payable to the KOPT for the years 2009-10 to 2012-13. However, while calculating income from short term allotment of hardstand land and covered sheds, the TMILL has considered an area of 47000 sq. mtrs of Hardstand land and 6000 sq. mtrs of covered sheds. The reasons for estimating income from less area to be explained. The manner of utilization of remaining area to be brought out.	The income estimate is made on the basis explained in the earlier point. Please note that peak requirement is more than the average requirement. Sometimes, situation also arises when the entire available area of 38619 SQM at LL6 plot (out of 63000 SQM taken from port) and 10000 SQM at back – up area (out of 14000 SQM taken from port) is occupied. But 100% occupancy throughout the year is not expected.
	(b) A statement separately showing the total area of land and covered shed allotted to TMILL, actual land area and covered shed utilized during the years 2007-08 to 2009-10 and the actual rental	The actual rental income for the previous 3 years were as follows: 2007- 08 = ₹ 89.52 lakhs. 2008- 09 = ₹ 143.12 lakhs.

	income realized therefrom to be furnished to verify the estimates of the rental income considered by this Authority in the last fixation of tariff of TMILL in October 2007. In this regard, paragraph No. 13(xxii)(b) of tariff Order dated 12 October 2007 may be referred to.	2009-10 = ₹ 260.24 lakhs * (*this substantial increase was on account of increased iron ore volumes).
(ix).	With regard to the workings furnished by TMILL for calculating revenue from the Equipment hire charges, TMILL to clarify furnish the following:	
(a).	The basis for considering the rate of ₹5 per MT incase of iron ore, ₹4 per MT incase of steel shipment TATA steel a/c, ₹5 per MT incase of steel/ logs discharge – delivery from jetty and steel discharge – delivery from plot and ₹8 per MT incase of immobile project cargo in the estimation of income from hire charges of equipments giving reference to the tariff item approved in the existing Scale of Rates of TMILL, to be explained.	The TMILL has explained the basis in the income calculation sheet of the revised proposal. (The TMILL has revised the basis for calculating income from hire charges of equipments. The workings are now based on productivity.)
(b).	The basis for considering the number of shifts per vessel at 12.50 shifts for Limestone and 8 shifts for raw sugar/ cement clinker imports and the number of vessels per annum to be explained.	
(c).	The reason for considering number of vessels in decimal at 6.82 vessels for calculating income from equipment handling incase of Limestone.	
(d).	The TMILL has estimated income arising out of levy of charges for use of Harbour Mobile Crane (HMC) for the years 2009-10 to 2012-13 at the rate of ₹125000/- per shift, the rate of which is yet to be approved by this Authority. The basis for considering number of shifts for various cargo category in estimation of income on this account to be furnished, taking into consideration the estimated throughput of respective cargo item and productivity of the crane to handle such cargo. A detailed working in this regard to be furnished.	
(4).	Operating Cost:	
(i).	TMILL has adopted an escalation factor of 5% in the estimation of operating cost. As already communicated by us vide our letter No. TAMP/27/2005-Misc. dated 18 May 2010, an escalation factor of 3.76% per annum will be considered for the expenditure projections in the cost statement.	As per the clause 2.5.1 of the Guidelines of 2005, the expenditure projections should also be in line with traffic adjusted for price fluctuation with reference to the current movement of Wholesale Price Index for All Commodities announced by the Ministry of Finance, Govt. of India. In this regard please note that as per the Annual Report for 2009-10 of Ministry of Finance, GOI, in Jan-10 the y-o-y inflation was about 8.6%. In the Annual Report of RBI as on Mar'10 it is mentioned as 10+%. Also, with regard to the practical experience as well, 3.76% as notified by TAMP appears to be very low as compared

		to the actual cost increase experienced. Accordingly, going by the Guidelines and as per the latest information available from the Ministry of Finance, we have applied 8.6% of inflation for projection purpose. We request the Authority to allow projection on above basis.
(ii).	It appears that various operations like stevedoring, maintenance labour, lashing/unlashing, intra port transportation, etc., are outsourced. TMILL to furnish copies of the relevant contract agreements in support of the rates considered in the estimations of relevant items of expenditure. Also, it must be certified and confirmed that such outsourcing contractors / suppliers are selected through a competitive bidding and the charges payable to them are fair and reasonable in relation to the market rates. In case of associated entities, if any, it should be certified that arms length relationship is maintained.	The following back-up documents are provided as desired: 1) Stevedoring cost: Contract with M/s Ripley for Fy'10 for an amount of ₹414 lakhs is enclosed (4600001190). (the contract does not show the stevedoring rate per tonne) 2) 11 Operators are engaged at Berth no.12 for operating loaders/forklifts which are outsourced. The work order no. 4600001036 for the period April 2010 to March 2011 is attached for your reference. 3) Trailer Drivers and Helpers: 21 drivers and 21 helpers are deployed on outsourced basis. The relevant work order no. 4600001033 for the period April 2010 to March 2011 is attached for your reference. 4) Maintenance labourers: Maintenance job has been outsourced at a monthly cost of ₹1.31 lakhs per month (refer order no. 4600001034). 5) Equipment hire cost: The cost of hiring a small pay loader of less than 4 cbm bucket is ₹6000 per shift. The work order copy for the same is attached. (4600001170) for the period June 2010 to march 2012. 6) LSD/ Unlashing a) Steel Export: Supply of material at ₹85 per MT (ref work order no.4600001180for the period April 2010 to March 2012) and labour @ ₹15 per MT (ref. work order no. 4600001182 for the period April 2010 to March 2012) b) Steel Import/Project cargo: ₹15 per MT (ref work order no. 4600001187 for the period April 2010 to March 2012). 7) Sticker/ tag writing: A pool of 14 persons are taken on outsourced basis for the purpose of doing the job in relation to the Steel exports cargo only. 50% of these persons i.e. 7 persons are

		allocated to berth no.12 in projections in view of lower export volumes. The work order no. 4600001040 for the period December 2009 to March 2011 is attached which covers cost of 14 persons. 8) Despatch related service: ₹13 per MT (ref work order no. 4600001179) for the period April 2010 to March 2010. ((the work order shows a rate of ₹14 per MT for despatch related services of coking coal and ₹13 per MT for limestone.), 9) Intraport Transportation: - Limestone: ₹35 per MT has been considered as an average of existing rates applicable for Berth no.2 and Berth no.8 which TMILL have with its sub-contractor. In view of increased distance from Berth no.12 to LL6 plot as compared to B#8 and its back-up area the average is taken. (ref work order no. 4600001179) valid for the period April 2010 to March 2013). - Steel export: ₹45 per MT (ref work order no. 4600001184 valid for the period April 2010 to March 2012). - Iron ore: ₹26 per MT (ref work order no. 4600001181 valid for the period September 2010 to March 2011) 10) Survey Expenses: - Limestone: The work order no. 4600001075 for ₹2.62 per MT is attached valid for the period April 2010 to March 2012. - Steel Export: The work order no. 4600001068 valid for the period April 2010 to March 2012 for ₹5.89 per MT for stock accounting plus ₹6.35 per MT for preshipment inspection CR coil totaling to ₹12.24 per MT is attached. - Steel import: Ref work order no. 4600000900 for ₹2.25 per MT for FY'10 (already enclosed with reference to point no. B.4). - Iron Ore: ₹0.85 per MT (ref. order no. 4600001045 which is already enclosed with reference to point no. B.4). 11) Clearing and forwarding: Work order no. 4600001124 (valid for the period April 2010 to March
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		2011) for ₹4.25 per MT for break bulk export cargo. 12) For unloading Steel export cargo at Siding Steel cargo: ₹89 per MT (ref work order no. 4600001184 valid for the period April 2010 to March 2012). 13) Stacking of iron ore: ₹12 per MT for FY'10 (ref work order no. 4600000790 which is already enclosed with reference to point no. B.3).
(iii).	Operating and Direct Labour: With reference to the operating and direct labour, TMILL to clarify/ furnish the following:	
(a).	The basis for considering the per manshift rate of ₹442/- incase of Loaders & Forklifts, ₹398/- incase of Trailer Drivers, ₹350/- incase of Trailer Helpers in the year 2009-10.	The revised calculation is on the basis of number of persons deployed and their monthly CTC to TMILL. The relevant back-up documents is enclosed as per point no. 4(ii) above.
(b).	Justification for the number of shifts of 6570 shifts per annum (6 equipments x 3 shifts x 365 days) considered in the estimation of operating labour cost for operating loaders forklifts and trailers bearing in mind the traffic estimates and the productivity of 4000 MT per shipday output targeted by TMILL for the years 2010-11 to 2012-13. A detailed working in this regard to be furnished. Similar workings for the actuals for the years 2007-08 and 2008-09 to be furnished.	The revised calculation is on the basis of number of persons deployed and their monthly CTC to TMILL. The relevant back-up documents is enclosed as per point no. 4(ii) above.
(c).	Justification for justify the increase of around 17% considered in the estimation of operating and direct labour cost for the year 2009-10 as compared to the actuals of 2008-09. Likewise, 9% increase considered in the estimation of this item of expenditure for the year 2010-11 as compared to the estimate of 2009-10.	There has been steep hike in wage cost at Haldia during last year. The projected cost estimates are based on the agreed upon wage agreement duly signed with the ALC and labour union.
(d).	Detailed working to arrive at the expenditure towards HMC labour and goliath crane operator considered under operating and direct labour for the year 2009-10.	The TMILL has excluded the same in the revised proposal.
(e).	Justification for the increase of around 138% considered in the estimation of maintenance labour cost for the year 2009-10 as compared to the actuals for the year 2008-09. A detailed working for estimation of this expenditure to be furnished supported by contract copy since this activity is outsourced.	The revised calculation is on the basis of number of persons deployed and their monthly CTC to TMILL. The relevant back-up documents is enclosed as per point no. 4(ii) above. There was error in estimates made on last occasion which has been rectified now.
(iv).	Equipment running cost:	
(a).	Oil & Lubricant Cost: Detailed working for the estimated oil and lubricant cost for the year 2009-10 to be	The equipment type wise break-up is included in the revised proposal.

	furnished.	
(b).	<u>Repairs & Maintenance Cost:</u> Detailed detailed working for the estimated repairs and maintenance cost for the year 2009-10 to be furnished.	The equipment type wise break-up is included in the revised proposal.
(c).	<u>Equipment registration cost:</u> Documentary evidence to support the payment of ₹8.87 lakhs towards port permit and road tax during the year 2009-10 to be furnished.	As per the audited segregated accounts the amount is coming to ₹7.06 lakhs and accordingly taken in the proposal. The documentary evidences are attached.
(v).	<u>Royalty:</u> As per the provisions of the Licence Agreement entered by TMILL with KOPT, the TMILL is required to pay royalty on its traffic based on the cargo related charges leviable at KOPT. With reference to the calculation of royalty for the years 2009-10 to 2012-13, TMILL to clarify the following:	
(a).	It appears that the TMILL has erroneously considered the On-board charges of ₹28 per MT for Limestone, Sugar Imports/ Cement Clinker and Fertiliser instead of ₹27 per MT as prescribed in the existing Scale of Rates of KOPT. The error may be rectified.	As per KOPT's existing scale of rates the cleaning charge of Re 1 per MT is applicable on these cargoes as per provision of S.5.3. Accordingly Re 1 per MT was added.
(b).	The existing Scale of Rates of KOPT does not prescribe On-board supervision charges. In this context, the reason for calculating royalty by including On-board supervision charges incase of Limestone, Steel Shipment (TATA Steel), Steel/ Logs discharge from jetty and plot each, Mobile and Immobile Project cargo each to be explained. TMILL has made a mention that it is disputing this payment with KOPT. Please clarify the position.	TMILL has denied the applicability of royalty on on-board supervision charges as the same is not mentioned/ provided for in the scale of rate of KOPT and as per the License Agreement between KOPT and TMILL, the royalty is payable as per SOR of KOPT. However, KOPT had claimed the same from TMILL. This matter has gone for arbitral resolution. The cost projections have been made inclusive of royalty expense on this account. TAMP is requested to take appropriate view in this regard while approving the rates.
(c).	TMILL has claimed the entire amount paid/ payable by it to KOPT towards Royalty/ Revenue share as admissible cost for all the years 2009-10 to 2012-13. In this regard, it may be noted that the maximum admissibility of royalty/ revenue share will be to the extent of the percentage quoted by the second highest bidder as stipulated in clause 2.8.1 of the tariff guidelines of 2005 for the period after 31 March 2005.	The TMILL has rectified the same in the revised proposal.
(d).	The reason for substantial reduction in the estimated revenue share in 2009-10 as compared to the revenue share paid during the year 2008-09, though the difference in traffic is marginal.	On account of additional royalty claim made by Port with retrospective effect during FY'08 and FY'09 on various alleged notional revenue earned by TMILL as well as on on-board supervision services which has been disputed and not paid by TMILL. However, following accounting norms of conservatism, provisions were made in the books of accounts during these years which are

		mentioned in Form 7. The Authority may note that the royalty estimates in the revised proposal is made on the basis of existing scale of rates of KOPT which is under revision. Any change in the rates of KOPT as and when is notified by TAMP will have direct impact on the royalty cost estimates. The Authority is requested to bear this factor in mind while fixation of tariff for TMILL.
(vi)	Equipment Hire Charges: With reference to the estimated hire charges for equipments, the TMILL to clarify the following:	
(a).	Workings for the estimated equipments hire charges for the years 2010-11 to 2012-13.	The working is on the basis of rate of ₹6000 per shift payable to the sub-contractor and the number of shifts used which is in line with income estimate.
(b).	Copies of the relevant contract agreement in support of the rate of hire charges considered in the workings.	Already included in reply to query no. 4(ii) above.
(vii).	Lease rentals:	
(a).	This Authority during the last revision has considered lease rentals in case of 14000 sq. mtrs of hardstand land allotted by KOPT to TMILL at the rate of ₹26.44 per sq. mtr for the year 2007-08. By applying an escalation factor of 5%, the rate that would be leviable during the year 2009-10 works out to ₹29.15 per sq mtr. Instead, the TMILL has considered a rate of ₹33.59 per sq. mtr. Please rectify the error.	KOPT has revised their chargeable rate for land allotted on Feb'09. The calculation made (in the revised proposal) is at rates claimed by KOPT. TMILL had already raised this issue during joint hearing. The higher rates are disputed by TMILL. TAMP is requested to take appropriate view on this matter during tariff fixation. Also TAMP is requested to settle the dispute as already been requested by TMILL.
(b).	The estimate of plot rentals for the year 2009-10 is found to be less by around 20% as compared to the actuals for the year 2008-09. Please clarify the position.	During FY'09, TMILL had also taken various temporary plots from KOPT on short term lease basis for handling of cargo at Berth no.12. The plot rent cost of such plots were not incurred in FY'10.
(viii).	Insurance:	
(a).	The estimates of insurance cost may be justified with reference to actual payment made to insurance company. A copy of the Agreement entered into with insurance company(ies) may be furnished.	The copies of latest major insurance policies for Harbour Mobile Crane, Stevedore Legal Liability and Civil works at Berth no.12 is attached for reference. Various other insurance policies for equipments (loaders, forklifts, goliath cranes, trailers), fire and earthquake insurance policies etc. are taken which can also be produced for verification if needed.
(b).	The estimated insurance cost for the year 2010-11 is found to be higher by around 46% as compared to the estimates for the year 2009-10. Please justify the proposed increase.	This has been revised in view of delay in capital expenditure planned at LL6 due to delay in providing railway connectivity at LL6.
(ix).	Other expenses	
(a).	<u>LSD/ Unloading:</u> While furnishing the LSD/ Unlashing contract as requested in the earlier part of the questionnaire, the individual contract copies in support of rates	The TMILL has provided the necessary documents as per the query no. 4 (ii).

	considered for TATA Steel, Steel/ Logs for delivery from jetty and plot and immobile project cargo to be furnished.	
(b).	<u>Sticker/ Tag writing/ Colour coding services:</u> (i).The TMILL appears to have outsourced this activity. The TMILL to furnish the contract copy in this regard. The relevance of the unit of charge at Rupees per day considered in the estimation of this item of expenditure be explained with justification for considering all 365 days in a year. It is relevant to mention that the unit of charge considered by TMILL in last fixation of its tariff was per metric tonne.	There are dedicated set of employees for this activity. Earlier the outsourcing was on the basis of per MT rate but now the same has been revised on the basis of actual wage cost. The copy of wage agreement and necessary calculation is attached as per reply to query no. 4 (ii).
	(ii).The increase considered in the estimates for the year 2009-10 is found to be higher by around 145% as compared to the actuals for the year 2008-09. The increase considered to be justified.	Due to steep hike in the wage costs at Haldia,the steep increase in overall costs has been considered.
(c).	<u>Despatch related Services:</u> The TMILL appears to have outsourced this service. The TMILL to furnish the contract copy in this regard, in support of the rate considered for estimation of this item of expenditure.	The TMILL has provided the necessary documents as per the query no. 4 (ii).
(d).	<u>Intraport Transportation:</u> (i).The basis for calculation of Intraport Transportation cost to be furnished with reference to the per tonne rate of ₹30/- in case of limestone, ₹40/- incase of steel shipment (TATA steel) and ₹24/- incase of Iron ore considered for the year 2009-10. If this activity is outsourced, the contract copy, in this regard, to be furnished.	The TMILL has provided the necessary documents as per the query no. 4 (ii).
	(ii). The basis for considering 60% of the estimated traffic of TATA Steel for intraport transportation to be furnished.	TMILL owns 6 trailers which is not adequate to handle an export vessel entirely. The outsourced trailer becomes necessary to be deployed. 50% transportation by own trailer in the revised proposal is on the basis of actual performance achieved during FY'10. Out of 62K MT of steel exports a/c Tata Steel, about 31K was transported using own resources during 2009-10 and balance were transported through sub-contracting.
(e).	<u>Survey Expenses:</u> The TMILL appears to have outsourced this activity. The TMILL to furnish the contract copy in this regard in support of the rate considered for limestone, steel shipment of TATA steel, delivery of steel from wharf and project cargo.	The TMILL has provided the necessary documents as per the query no. 4 (ii).
(f).	<u>Clearing and Forwarding:</u> The basis for calculation of Clearing and Forwarding expenses be furnished with reference to the per tonne rate of ₹4.25 considered in case of steel shipment (TATA steel) for the year 2009-10, supported by contract agreement copy, if	The TMILL has provided the necessary documents as per the query no. 4 (ii).

	the activity is outsourced.	
(g).	<u>Miscellaneous Operational Expenses:</u> (i). The nature of the expenditure estimated towards unloading of TATA steel cargo at siding including miscellaneous services considered under this head of expenses. The basis for considering a rate of ₹75/- per tonne for this expenditure to be explained.	The outsourced contract rate for unloading at siding and re-loading at siding for receiving export steel materials is ₹89 per MT. The service contract is already attached with reference to the reply to query no. 4(ii)
	(ii). Actual expenditure incurred during the year 2008-09 under each sub-item considered under Miscellaneous Operational Expenses to be furnished.	It has been included in the proposal form 3B – expenditure working.
(x).	Depreciation:	
(a).	The TMILL has considered a rate of 4.75% to calculate depreciation on plant and machinery and cranes. As per the Companies Act, this is the rate prescribed for calculating depreciation on a Straight Line Method on plant and machinery operating in a single shift. However, in the calculations relating to estimating Operating and Direct Labour cost for operating loaders, forklifts, trailers, the TMILL has based its calculations for 3 shifts. The reason for not considering the applicable rate of depreciation relevant for operating 3 shifts may be explained.	The depreciation rate considered for estimation is based on the rate applied in the books of accounts of TMILL. As the 3 shift operation in Ports is not regular, hence higher rate of depreciation is not applicable even if during part of the year 3 shift operation takes place. The direct labour cost estimate has now been based on actual number of labours deployed and their monthly wages.
(b).	As mentioned in paragraph No. 13(xxiv)(c) of Order dated 12 October 2007 and in paragraph No. 8(ii)(V)(v)(c) of Review Order dated 17 March 2008, the Non-Refundable Non-Adjustable (NRNA) deposit of ₹1922.33 lakhs towards 54000 sq. mtrs of land and additional NRNA deposit of ₹30.07 lakhs towards 9000 sq. mtrs of land was spread over the remaining period of the Licence Agreement. The treatment meted out to the unamortized value of the NRNA deposit in the cost statement furnished by TMILL to be explained.	The NRNA amount is included in the Capital employed calculations under the head "Others".
(5).	Finance & Miscellaneous Income:	
	<u>Terminal Value:</u> The workings for considering ₹0.38 for the year 2007-08 and ₹0.43 lakh each for the years 2008-09 to 2012-13 as discounted terminal value to be furnished. It may be noted that discounted terminal value needs to be arrived at by discounting the terminal value based on the discount factors selected bearing in mind the PLR applicable for the respective years.	Considering PLR rate of 12.75% for the year 2009-10 to 2012-13, the terminal value has been considered in the revised proposal.
(6).	Finance & Miscellaneous Expenses:	
	<u>Contribution to Provident Fund:</u> Detailed workings for the estimated	The projection for FY'11 to FY'13 has been made considering actual of FY'10 with

	contribution to provident fund for all the years under consideration to be furnished.	inflation as per TAMP's guidelines.
(7).	Capital employed:	
	Fixed Assets:	
(a).	In the absence of the segregated annual accounts for the year ended 31 March 2009, the value of the gross block of assets at the beginning of the year 2009-10 could not be verified. While revising the cost statements, the TMILL to consider the opening gross block of assets in the cost statements as that given in the segregated annual accounts for the year 2009-10.	The segregated accounts for the year FY'09 and FY'10 is enclosed and the proposal has been revised in line with the same.
(b).	TMILL has proposed additions to the gross block during the years 2009-10 and 2010-11. The additions to the gross block proposed during for the year 2009-10 towards Rail siding at a cost of ₹340 lakhs, plot development ₹350 lakhs and covered shed ₹210 lakhs, to be supported with documentary proof.	The actual investment for the FY'10 may be verified from the audited segregated accounts submitted. If TAMP further desires to have the documentary evidence in support of the same, it will be provided if requested. The investment in railway siding and covered shed has been delayed on account of delay in provision of railway connectivity to LL6. This has been planned during next couple of years.
(c).	The status of action initiated to procure the pay loaders at the cost of ₹1.40 crores in the year 2010-11 may also be intimated. The present status of procuring pay loaders may also be furnished.	TMILL is planning to replace the old 1991 make pay-loaders at Berth no.12 during FY'12 with the 2006 make second hand pay-loaders which is already operating in other port division of TMILL. The capital cost considered in the cost estimate is the net written down value as on 31 st March 2011.
(d).	It may be noted that only completed and commissioned assets should alone be counted for capital employed. The work-in-progress shall not be taken into account. A confirmation in this regard may be furnished.	It is hereby confirmed that the assets considered for ROCE calculation is on the basis of assumption that these assets will be commissioned during the respective years as projected.
(7).	Working Capital:	
(i).	TMILL has calculated Sundry Debtors at 2 months of the Estate income. The estate income in case of TMILL is the storage income. For the reasons stated by this Authority at para No. 8(ii)(XI)(b) of the Order dated 17 March 2008, Sundry Debtors cannot be considered as part of working capital for all the years under consideration.	Sundry debtors allowable for ROCE is now taken as nil in the revised proposal.
(ii).	TMILL has calculated Inventory at 6 months of the Repairs and maintenance cost. Please confirm as to whether this approach is in line with the prescription made for determination of inventory as given in clause 2.9.9 of the tariff guidelines.	The TMILL has confirmed the same.
(iii).	For the reasons stated by this Authority at para No. 8(ii)(XI)(a) of the Order dated 17 March 2008, payment of Security Deposit cannot be considered as part of working capital for all the years under	Clause 2.9.4 of the 2005 Guidelines defines working capital as current assets (excluding cash/deposit balance of funds) less current liabilities. As per generally accepted principles of accounting and common

	consideration.	understanding, current assets includes security deposits. Clause 2.9.9 provides that TAMP will examine the reasonableness of the various items of Working Capital, <u>like</u> inventory, sundry debtors, cash balances, etc.....It is noteworthy that the list mentioned is not an exhaustive list. As a part of the license for Berth no.12 and plots taken for conducting operation, TMILL is required to invest capital amount in the form of Security Deposit as per License Agreement/plot allotment conditions. Hence, the capital employed calculation as provided includes the amount of security deposit paid by TMILL. TAMP is requested to allow the same.
(D).	Scale of Rates:	
(i).	The TMILL has formulated its proposed Scale of Rates considering an increase of 10% over the existing tariff at TMILL. The additional services / facilities proposed to be provided to the users and the benefit of productivity improvements accruing to users justifying this hike to be listed out.	The proposed scale of rates has been revised. Productivity linked rates are also included and appropriate rebates are proposed. Details are included in Form 1.
(ii).	Detailed working with cost elements considered to arrive at the charges proposed towards wharfage, on-board charges, on-board supervision, loading/unloading/ restacking, transportation and miscellaneous charges for each of the cargo items to be furnished. Such detailed working also to be furnished in respect of tariff for new cargo items proposed to be introduced by TMILL as given in the proposed draft Scale of Rates.	Detailed costing for activity is practically impossible. Many rates proposed in the Scale of Rates are aligned to the actual sub-contracted costs and/or proposal of KOPT for General revision of rate/Schedule of Rent.
(iii).	The proposed note 3(vii)(b) to be modified in line with clause 2.18.2 of the revised tariff guidelines and the rate of interest to be updated with the prevailing Prime Lending Rate of State Bank of India.	The interest rate has been revised from 13% to 12.75%.
(iv).	The TMILL to list out the cargo items which is proposed to be covered under the head of 'All other cargo'. The TMILL to confirm whether such cargo items are permissible cargo at Berth No. 12 as stipulated in the LA entered between TMILL and KOPT.	The rates proposed for all other cargo is to keep a rate provision for handling non-specified cargo. No cargo projection is made. The rates are kept at same levels as applicable for project cargo. TMILL is entitled to handle all types of dry bulk/break bulk/containerized cargo except thermal coal in bulk, coking coal in bulk, various types of coke and other black cargo in bulk and various types of liquid bulk cargo handled through pipelines. Accordingly specific exclusion of such cargo is included in the conditionality of the proposed SOR.
(v).	The reasons for prescribing rates for handling containers when the TMILL does not anticipate any container traffic for the years under consideration to be explained.	Sometimes, as a part of Project cargo consignments, few containers may be needed to be handled at berth no.12. Hence, a specific rate for container handling is proposed.
(vi).	Similarly, the reasons for prescribing rates for article weighing above 20 tonnes and	Only in the case of transportation clause the specific rate for project cargo ranging

	up 35 tonnes and for articles / packages weighing above 35 tonnes, when the TMILL does not anticipate any related traffic for the years under consideration, to be explained.	between 20 MT and 35 MT is proposed. This service is generally not provided by TMILL, nor TMILL has any equipment to provide service to such over dimensional project materials. However, rate is proposed in view of high cost of outsourcing if at all required to be serviced as one of case which is very remote.
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8. The KOPT was requested to furnish its specific comments with reference to some points contained in the TMILL's general revision proposal. The KOPT has responded. The specific points raised by us and response of the KOPT are tabulated below:

Sl. No.	Specific points raised by us	Response of KOPT															
(i).	Traffic forecast made by TMILL for the years 2010-11 to 2012-13.	The cargo handled by TMILL at Berth No. 12 during the past three financial years is as follows: <table border="1"> <thead> <tr> <th>Fiscal</th><th>Cargo handled (in MT)</th><th>%age variation over last fiscal</th></tr> </thead> <tbody> <tr> <td>2007-08</td><td>9,31,710</td><td>(+) 4.4%</td></tr> <tr> <td>2008-09</td><td>9,36,119</td><td>(+) 0.47%</td></tr> <tr> <td>2009-10</td><td>11,90,833</td><td>(+) 27.21%</td></tr> <tr> <td>2010-11 (April-July)</td><td>3,16,804</td><td>(-)13.37% (compared to corresponding period of last year)</td></tr> </tbody> </table> * Total tonnage during the period April'09 to July'09 was 365692 MT. From the above it can be seen that the volumes of overall cargo handled at Berth No. 12 during the last three financial years have shown an increasing trend. Incidentally, in the last fiscal (2009-10) the traffic handled at the berth surpassed 1.1 million tonnes. However, during the last financial year, the component of Iron Ore traffic in the total volume was about 0.73 million tonnes, making an appreciable contribution of approximately 61% to the total traffic during the period. Considering the fact that Iron Ore traffic depends on various policy of the Government of India and also that of China (the destination country), the various restraints put by such Authorities are likely to induce a drop in the overall Iron Ore traffic at HDC, including that at Berth No. 12. In view of the same, projection of overall traffic of 0.9 million tonne by TMILL for the years 2010-11 to 2012-13 seems to be in line with the prevailing trend.	Fiscal	Cargo handled (in MT)	%age variation over last fiscal	2007-08	9,31,710	(+) 4.4%	2008-09	9,36,119	(+) 0.47%	2009-10	11,90,833	(+) 27.21%	2010-11 (April-July)	3,16,804	(-)13.37% (compared to corresponding period of last year)
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(ii).	Utilisation of land allotted by KOPT to TMILL for computing the storage income for all the years under consideration.	As per the License Agreement the land has been allotted to TMILL for undertaking cargo handling activities including storage of cargo. Regarding storage charges to be realized by TMILL, it may be mentioned that TMILL is entitled to levy demurrage in all cases where cargo is stored beyond free period, excepting for the cases where TMILL allots the land to their users on short term basis. In case of allotment of land on short terms basis license fee accrues to TMILL. From the reports submitted by the Independent Auditor so far, it has been observed that TMILL has allotted land to their users under the arrangements of plot rent agreement and realized plot rent from the user concerned. However, the report also reveals that in number of cases, TMILL had allowed usage of land for storage of cargo of users without any such arrangement of plot rent agreement. It is needless to say that demurrage beyond free period is realizable by TMILL on such cargo.															

		In their reports, the Independent Auditors considered all aspects as well as the provisions of the License Agreement and certified the following position in respect of generation of income by TMILL out of utilization of the allotted land for storage of various types of cargo handled at Berth No. 12: <table><tr><th>Period covered under the report of Independent Auditor</th><th>* Plot Rent income considerable for the purpose of royalty</th><th>* Plot Rent income realized by TMILL</th><th>* Demurrage income considerable for the purpose of royalty</th></tr><tr><td>29.01.07 to 28.01.08</td><td>10,712,517</td><td>9,618,093</td><td>3,393,856</td></tr><tr><td>29.01.08 to 28.01.09</td><td>13,076,632</td><td>12,309,715</td><td>372,960</td></tr><tr><td>29.01.09 to 28.01.10</td><td>27,875,914</td><td>23,310,991</td><td>1,219,997</td></tr><tr><td>TOTAL</td><td>51,665,063</td><td>45,238,799</td><td>4,986,813</td></tr></table> <i>* The figures above are as per the reports submitted by the Independent Auditor.</i> Accordingly, KOPT feels that both demurrage income and income from license of plots should appropriately be considered by TMILL while projecting storage income.	Period covered under the report of Independent Auditor	* Plot Rent income considerable for the purpose of royalty	* Plot Rent income realized by TMILL	* Demurrage income considerable for the purpose of royalty	29.01.07 to 28.01.08	10,712,517	9,618,093	3,393,856	29.01.08 to 28.01.09	13,076,632	12,309,715	372,960	29.01.09 to 28.01.10	27,875,914	23,310,991	1,219,997	TOTAL	51,665,063	45,238,799	4,986,813
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TOTAL	51,665,063	45,238,799	4,986,813																			
(iii).	The existing Scale of Rates of KOPT do not prescribe On-board supervision charges. In its calculations showing royalty, the TMILL has included On-board supervision charges incase of Limestone, Steel Shipment (TATA Steel), Steel/ Logs discharge from jetty and plot each, Mobile and Immobile Project cargo each for all the years under consideration. TMILL has made a mention that it is disputing this payment with KOPT. KOPT to clarify the position in this regard.	The License has been awarded in terms of Section 42 of the MPT Act, 1963 and accordingly, TMILL is authorized to undertake services mentioned under Section 42 of the Act. As per the provisions of the Act, TMILL has approached TAMP for approval of their Scale of Rates for the services they are authorized to undertake. The existing Scale of Rates of TMILL notified by TAMP includes rate for 'On-board Supervision charges'. The income earned by TMILL from such services forms a part of actual revenue earned by TMILL for the purpose of determination of Royalty. As per the License Agreement [Article 5.1(a)] the Licensee (TMILL) is liable to pay royalty to Licensor (KOPT) at the agreed percentage level of the actual revenue earned by Licensee. Accordingly, all income from such activity of TMILL in respect of cargo handling at Berth No. 12 is to be considered for the purpose of calculation of royalty payable by TMILL. KOPT does not accept any dispute of TMILL in this regard. The consideration of royalty on such charge in the cost statement by TMILL clearly indicate that TMILL themselves recognises the legitimacy of claim of royalty on such revenue and there is no merit in the purported dispute raised by them in the matter. It is also pertinent to mention that the Independent Auditor, in the reports submitted so far, has also determined royalty on income earned by TMILL against various services rendered by them, against which, no rate is available in the Scale of Rates of KOPT. TMILL at one hand disputed the royalty determined by the Independent Auditor and did not pay the same to KOPT but on the other hand, they have charged the royalty so determined by the Independent Auditor, in their Accounts as Expenses.																				
(iv).	The investment of ₹350 lakhs and ₹210 lakhs for plot development and covered shed respectively.	As per the License Agreement, TMILL was required to invest ₹2.94 Crores towards facilities for storage of cargo. As per the certification of the Auditors, amount of ₹222.4 lakhs was invested by TMILL towards erection of the warehouse, which was commissioned on 20.02.2005. Subsequently, further land measuring 54,000 Sq. Mtr. (approx.) has been allotted by KOPT to TMILL for developing storage facilities for																				

		cargo handling at Berth No. 12. Development of this area has been done by TMILL, but the cost thereof has not been intimated to KOPT. However, no additional covered shed has been made by TMILL after 2005 with additional expenditure on same. TMILL may be advised to clarify the same.
(v).	The KOPT to verify the segregated accounts of TMILL pertaining to the years 2007-08 to 2009-10 and furnish its comments.	With reference to its comments on the segregated accounts, KOPT has drawn reference to point 7 of its letter dated 18 August 2010 to TAMP, wherein KOPT has furnished its comments on the TMILL general revision proposal vide. Point 7 of the KOPT letter dated 18 August 2010 which is reproduced below: As TMILL have been functioning as a general purpose company, the audited accounts of TMILL did not reflect the position of activities covered by the license agreement entered into with KOPT. After protracted discussions, TMILL, vide their letter dated September 14, 2007, confirmed that from current financial onwards they would consider Berth No-12 as a separate business segment and, accordingly, relevant financial information as per the requirement of AS-17 would be disclosed by them in the annual accounts of the Company as per the advice of KOPT. KOPT informed TAMP about the said confirmation which has been recorded under Para-8.6(iii) of their order dated October 12, 2007. However, while scrutinizing the audited accounts of TMILL for the year 2007-08, it was observed that TMILL did not adhere to the said written commitment and did not consider Berth No-12 as a separate business segment as per AS-17. It may be mentioned that based on the commitment of TMILL to draw their account in the specified manner from 2007-08 onwards, KOPT had earlier forwarded the accounts of Berth No-12 for the previous years identified by the statutory auditor of TMILL M/s S.B.Billimoria & Co. to TAMP, for consideration. As had been pointed out by KOPT to TAMP earlier and recorded under Para--8.6(iii) of their order dated October 12, 2007; there is a genuine and urgent requirement for adoption of Accounting Standard-17 by TMILL to draw up reliable Accounts of Berth No-12 at HDC, which would form part of their audited accounts every year. TMILL's failure to take appropriate action in this regard in spite of specific written commitment is unacceptable. It may further be mentioned that the accounts of Berth No-12 identified by the statutory auditors of TMILL and verified by the Independent Auditor M/s Ray & Ray does not show the different constituents of Income and Expenditure. It only indicates the total of Income from services and other income earned by TMILL from Berth No-12 from activities covered by MPT Act and other activities. So far as the expenditure is concerned, the said segregated accounts shows total of operating and administrative expenses and depreciation against the each of the said two categories. Consequently, we cannot comment on the income and cost considered by TMILL in the cost statement enclosed with the proposal for revision of SOR. In this regard it is also noteworthy that while dealing with the tariff proposal of TMILL TAMP had made the following observation in the tariff order dated October 12, 2007 [Ref: Para-13 (XLiii) of the order]: <i>"The tariff proposal is not based on item wise cost for each item. As admitted by TMILL, the tariff proposal is based on broad costing exercise. Since the proposed tariff for individual services is not with</i>

		<i>reference to the cost of providing the respective services, the surplus making activity cross subsidizing the deficit making activity cannot be ruled out. In this age of advanced technology, it may not be impossible to work out item wise cost for each item. The TMILL is advised to draw up its proposal supported by cost details for individual activities at the time of next revision of its tariff."</i> Without appropriate segregation of accounts of Berth No-12 with item wise break up; any such costing exercise, even if undertaken, would not be verifiable. However, it may be mentioned that the total operating income, operating cost and depreciation indicated in the cost statement for the year 2007-08 as well as 2008-09 are not matching with the segregated accounts of Berth No-12 for the year identified/ segregated by their statutory auditors M/s Deloitte Haskins & Sells and verified by the Independent Auditor M/s Ray & Ray or that with the additional information provided in the Note-12 of Schedule -12 of the audited accounts.
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9.1. A joint hearing on the case in reference was held on 25 August 2010 at the KOPT premises in Kolkata. The TMILL, KOPT and user organisations have attended the joint hearing.

9.2. As decided at the joint hearing, the TMILL was requested to furnish a copy of its updated proposal with all relevant details to KOPT also simultaneously with its submission to this Authority. While submitting the revised proposal, the TMILL was also requested to ensure that segregated accounts till the year 2009-10 are drawn up, audited and certified and also verified by KOPT. The various issues raised by KOPT to be addressed by TMILL.

9.3. The TMILL has furnished its revised proposal under cover of its letter dated 17 September 2010. A comparative position of the original proposal of TMILL of June 2009 and the revised proposal of September 2010 is summarised and tabulated below:

(₹ in Lakhs)							
Sl. No.	particulars	As given by TMILL in original proposal filed in June 2009			As given by TMILL in its revised proposal filed in September 2010		
		2010-11	2011-12	2012-13	2010-11	2011-12	2012-13
(i).	Traffic (in MTs)	900000	900000	900000	941887	951500	951500
(ii).	Operating income	2862	2934	2934	2529	2607	2833
(iii).	Net surplus / deficit after return	-123	-128	-182	-317	-467	-489
(iv).	Net deficit as a percentage of operating income	-4%	-4%	-6%	-13%	-18%	-17%
(v).	Average net deficit as a percentage of operating income	-4.66%			-15.90%		

9.4. The TMILL along with revised proposal furnished audited segregated accounts for the years 2008-09 and 2009-10. The segregated audited accounts for the year 2007-08 was already furnished by TMILL along with original proposal of June 2009.

9.5. Subsequent to its revised proposal, the TMILL vide its e-mails dated 28 February 2011, 2 March 2011, 8 March 2011, 9 March 2011 and 14 March 2011 furnished the following information / documents:

E-mail dated 28 February 2011

Fixed Asset Schedule for Berth No.12 for the years 2006-07 to 2009-10.

E-mail dated 2 March 2011

- (i). Fixed Asset Schedule for both No.12 for the year 2006-07 to 2009-12 after segregating further capitalized rent from lease hold land.
- (ii). Reconciliation of lease rent payable as per proposed and with segregated accounts for the year 2007-08 to 2009-10.

E-mails dated 8 March 2011

- (i). Calculation of Book Value (WDV) of one pay loader to at Berth No.12 is replacement of the existing very old pay loader which has nil book value.
- (ii). TMILL stated that for the financial year 2009-10, out of the royalty expense of ₹347 lakhs shown in the segregated accounts, ₹.65 lakh has been provided in the books of accounts towards disputed royalty which remains unpaid to the KOPT.
- (iii). (a). Reconciliation of expenses between figures shown in the segregated accounts and that shown in the proposal for the year 2007-08 to 2009-10
- (b). Copies of 2 work order for Railway Sliding already issued to a private party in January 2008 which could not be executed due to non-provision of railway link by the Port Authorities which has regulated into delay in completion of the expansion of Berth No.12 and consequential loss of potential earnings.

E-mail dated 9 March 2011

Revised summary of the comparison between actual revenue earned from berth No.12 vis-à-vis revenue as per approved SOR with workings:

(₹ in lakhs)

Years	Actual Revenue earned	Revenue eligible as per SOR	Differences
2007-08	2129.11	2784.29	-655.29
2008-09	1797.83	2600.57	-802.74
2009-10	2752.52	3540.89	-788.37
Total	6679.46	8925.75	-2246.40

E-mail dated 14 March 2011

At our request, the TMILL has furnished the actual tonnage handled at Berth no. 12 upto 28 February 2011 at 1147210 MT. (The TMILL has given cargo wise breakup of the traffic of 1147210 MT.)

9.6. The KOPT has furnished its comments on the revised proposal of TMILL.

10. The TMILL made a presentation of its proposal at the Office of this Authority. The KOPT was also present during the presentation. Based on the discussion held during the presentation, the TMILL has furnished the information. The main points made by TMILL are summarized below:

(i). (a). Effective Storage area in the bareland allotment of 63000 sq. mtrs:

A total area of 63,000 sq. mtrs of bare land has been taken on lease from HDC in two phases of 54,000 sq. mtr and 9,000 sq. mtr which is being developed and used for storing cargo handled through Berth no. 12. HDC has also allotted 14000 sq. mtr of hardstand land in 2002. The total effective storage area after due consideration of railway lines, sidings, utilities, office building, haul road, drains, fencing etc works out to 48619 sq. mtrs – the details is as follows:

(in sq. mtrs.)

Total area allotted	63000.00
Area for rail track (A) 23.00 X 76.00 mtrs	1748.00
Area for engine escape & buffer (B) 10.95 X 87 Mtrs	952.65
Area for drain & retaining wall (C&D) 2 X 670 mtrs	1340.00
Area covered by rail track (E) 13.45 X 670 mtrs	9011.50
Siding on either side of rail track (F) 2X8X670 mtrs (This area is for handling and not for storage)	10720.00
Peripheral drain & retaining wall (G,H,I & J) (2X1X29)+(2X1X35)	128.00
Approach to two warehouses (K) 8 X 35 mtrs	280.00
Offices, Security, tower lights etc.,	200.00
Total effective storage area	38,619.00

(b). Effective Storage area in the backup area of 14000 sq. mtrs of hard stand land:

The backup area of 14000 sq. mtrs has a effective storage area of 10000 sq. mtrs after excluding utilities, roads, offices, drains etc.

(c). Thus, from the above plots of 63000 sq. mtrs and 14000 sq. mtrs, the effective storage area for cargo would be 48619 sq. mtrs. Also, an area of approximately 4500 sq. mtrs would be kept on common user basis for storage of cargo during free period. Hence, the total storage area on which rentals can be earned is 44119 sq. mtrs.

(ii). The TMILL has furnished copies of the various insurance policies.

11. The KOPT was requested to furnish the details of lease rent payable by TMILL at the existing rent schedule and the lease rent payable as per the proposal filed by KOPT for revision of its existing Schedule for land and buildings at Haldia. The KOPT vide its letter dated 10 January 2011 has furnished the requisite details. The details furnished by the KOPT are tabulated below:

Type	Area (sq. m.)	Zone	Monthly rental paid by TMILL for Dec'2010		Monthly rental payable by TMILL as per proposed SOR filed by the KOPT	
			Rate of Rent Rs./100 sq.m.)	Monthly Rental incl. Service tax @ 10.3% (Rs.)	Rate of Rent Rs./100 sq. m.)	Monthly Rental incl. Service tax @ 10.3% (Rs.)
Bldg. Lic	278.000	RZ	157.35	43743	153.00	42534
Bldg. Lic	45.000	DZ	94.07	4233	93.00	4185
Land Lic.	14000.000	DIZH	3702.90	571802	3695.00	570852
Land Lic.	1000.000	DIZ	2380.78	26261	2376.00	26207
WL Lic.	2		1710.36	3772	2000.00	4412
Lease	54000.000	DIZ	2267.41	16206178 *	2376.00	16982317
Lease	9000.000	DIZ	2267.41	2701030 *	2376.00	2830366

* As against the yearly rent payable as stated above, the actual payment made by TMILL is ₹11260530 for 54000 sq. mtrs of land and ₹1876080 for 9000 sq. mtrs of land.

12.1. The TMILL has filed a separate proposal in July 2008 for fixation of hire charges for Harbour Mobile Crane (HMC) for use at Berth No. 12 of HDC at KOPT. The proposed provisions are included by TMILL in the general revision proposal, which was filed later.

12.2. The TMILL vide its letter dated 29 July 2008 has sought approval for a rate of Rs.125000/- per shift towards hire charges for HMC. TMILL has furnished cost statement for fixation of hire charges for HMC. It has also furnished copies of the letters from some of its major users agreeing to the proposed hire charge of Rs.125000/- per shift.

12.3. In accordance with the consultative procedure prescribed, the TMILL proposal was forwarded to the land lord port i.e. KOPT and to the concerned users/ user organisations alongwith additional user as suggested by the TMILL for their comments. The comments received from the KOPT and some of the users were forwarded to the TMILL as feedback information. The TMILL has not responded to the comments of KOPT and the users.

12.4. On a preliminary scrutiny of the proposal, it was found that additional information/ clarifications are required from the TMILL on some points. We have vide our letter dated 18 August 2010 requested TMILL to furnish additional information/ clarification. TMILL has not responded.

13.1 A joint hearing in this case was held on 25 August 2010 at the KOPT premises. At the joint hearing, the TMILL submitted that the proposed rate for MHC is already included as a part of its general revision proposal. The TMILL further submitted that the issue of hiring of MHC is no longer relevant in view of certain changes in operational conditions at HDC and the proposal of TMILL is essentially for ratification of the charges already levied. In this regard, the TMILL undertook to furnish a letter of consent towards the charges levied by it from all the parties who have availed the services of MHC so far.

13.2. After reminders, the TMILL has forwarded copies of letter of consent towards charges levied from the following eight users for hiring the MHC:

- (i). M/s. Ripley & Company Limited
- (ii). M/s. Tata Steel Limited
- (iii). M/s. Spanoceanic Services Private Limited

- (iv). M/s. Rashmi Metaliks Limited
- (v). M/s. J.M. Baxi & Co
- (vi). M/s. Devi Shipping Agency
- (vii). M/s. Jagwani Projects (P) Limited
- (viii). M/s. Sudama Export Private Limited

13.3. The above said users have agreed for paying a maximum charge of ₹1,25,000 per shift and asked for rebate in the event of breakdown of the crane, labour dispute, heavy rain or any other reason attributable to TMILL.

13.4. The TMILL has stated that the MHC is utilised for handling steel/ raw materials allowable as per the LA with KOPT.

14. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received 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>

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

- (i). The Scale of Rates of TMILL was fixed for the first time in October 2007 vide Order dated 12 October 2007. In the said tariff Order, a reduction of 20% in the then existing tariff of TMILL was effected. This reduction arose mainly on account of the additional surplus accrued to the TMILL from the commencement of its operations till September 2007. With reference to an application filed by TMILL to review the tariff Order of October 2007, this Authority vide its Order in March 2008 disposed the review application filed by TMILL and allowed the TMILL to refund the excess collection made by it during the period from the commencement of its operations till 23 November 2007. Since the excess collection was allowed to be refunded, the cost position warranted an increase in the then existing tariff of TMILL. Accordingly, this Authority accorded an increase of 18% over the then existing level of cargo related charges except demurrage rates, equipment hire charges and charges for supply of unskilled labour, to be effective from the effective date of the implementation of the tariff Order dated 12 October 2007 till 31 March 2010.

Subsequently, this Authority vide its Order dated 31 March 2010 has extended the validity of the existing Scale of Rates of TMILL till 30 September 2010, subject to fully adjusting the additional surplus, if any, over and above the admissible cost and permissible return for the period post 31 March 2010 in the tariff to be determined for the next tariff cycle.

- (ii). The TMILL has filed its proposal for general revision of its Scale of Rates in June 2009. This proposal was taken up for consultation with the relevant users/ user organisations. At the joint hearing, the TMILL desired to revise its proposal. Accordingly, the TMILL under cover of its letter dated 17 September 2010 has furnished a revised proposal. The revised cost statement furnished by TMILL under cover of its letter dated 17 September 2010 alongwith the subsequent

additional information/ clarifications furnished by TMILL is considered for the purpose of this analysis.

- (iii). Clause 2.13 of the tariff guidelines of 2005 mandates this Authority to review the actual physical and financial performance of the Major Port Trusts and private terminals at the end of the prescribed tariff validity period with reference to the projections relied upon at the time of fixing the prevailing tariff.

During the last fixation of tariff of TMILL, this Authority had relied upon the estimates for the years 2007-08, 2008-09 and 2009-10. As such, it is necessary to make a comparison of the estimates for the years 2007-08, 2008-09 and 2009-10 with that of the actuals for the said years. Further, the TMILL has continued to operate its facilities beyond March 2010 at the level of tariff approved in March 2008.

Thus, the actuals for the years 2007-08, 2008-09 and 2009-10 have been considered to analyse the past performance of TMILL. The period from April 2010 to March 2011 has been considered as part of next cycle under consideration.

- (iv). As was done in the previous occasion, the KOPT was requested to verify and furnish its comments on the audited Segregated Accounts of TMILL. The KOPT has pleaded its inability to furnish its comments on the ground that the Segregated Accounts of TMILL have not been drawn up as per the relevant Accounting Standard. We do not have the response of TMILL on the position taken by KOPT, though it was brought to the notice of TMILL during the proceedings of the case. It has to be recognised that the need to prepare a Segregated Accounts arises since the Licensee operates in many other areas apart from the licensed premises and the Accounts drawn up by him include the results of all his operations. The basic requirement of BOT cases is that the successful bidder of a port project has to form a Special Purpose Vehicle (SPV) to discharge his obligations under the Licence Agreement. It is incumbent upon the Landlord port to ensure that such SPV has been formed and then enter into a Licence Agreement with such separate entity created. For reasons not known to us, KOPT does not appear to have followed this established procedure. It would be necessary for KOPT to take appropriate steps to ensure such SPV is formed instead of pleading before this Authority its inability to verify the Segregated Accounts. This position came up for focussed discussion in the last revision of tariff of TMILL and KOPT did verify the Segregated accounts. Till KOPT ensures its Licensee forms a separate SPV and maintains separate accounts, the onus of certifying the Segregated accounts squarely rests on KOPT. We presume that KOPT has no serious objection to the Segregated Accounts presented by TMILL, or else, it should have taken upon the matter with its Licensees before reverting to this Authority.
- (v). The performance of TMILL during the years 2007-08, 2008-09 and 2009-10 is analysed below:
 - (a). As brought out earlier, this Authority in its order of March 2008 allowed an across the board increase of 18% over the then prevailing tariff, to be effective from the effective date of implementation of the Order dated 12 October 2007. Since the impact of the upward revision of tariff is reflected by the actual income, the

estimated income for the period from the effective date of implementation of the Order dated 12 October 2007 to 31 March 2010 is updated to reflect the increase granted, so as to enable a correct comparison between the actuals and the estimates.

- (b). TMILL has handled a cargo traffic of 941838 MTs, 924992 MTs and 1209077 MTs during the years 2007-08, 2008-09 and 2009-10 respectively, as against the estimated cargo traffic of 900000 MTs, 950000 MTs and 1000000 MTs during the corresponding years. Incidentally, the TMILL had estimated container traffic to the tune of 500 TEUs each during the years 2007-08 to 2009-10. However, the TMILL has not handled any containers during the said period. Thus, as against the estimated total cargo traffic of 2850000 MTs, the TMILL has actually handled cargo of 3075908 MTs. The variation in cargo traffic handled works out to around 8%.
- (c). Since the tariff fixing exercise cannot recognize the discounts/ rebates allowed by the private operator at his discretion, the TMILL was requested to furnish a detailed income calculation for the years 2007-08 to 2009-10 based on the actual traffic handled by it and by applying the rates approved in the Scale of Rates (SOR). Based on the workings furnished by TMILL, it is seen that the income based on the rates approved in its SOR for the years 2007-08 to 2009-10 are ₹2784.29 lakhs, ₹2600.57 lakhs and ₹3540.89 lakhs. This is considered as actual operating income for the years 2007-08 to 2009-10, for the purpose of past analysis.
- (d). As seen in the Segregated Accounts for the years 2008-09 and 2009-10, there is an income to the tune of ₹15 lakhs and ₹8.39 lakhs are reported under 'Other Income'. The TMILL has excluded the said income from the cost statement. However, for the purpose of the past analysis, it is treated as part of Finance and Miscellaneous Income in line with the approach adopted in respect of other major port trusts and private terminals.
- (e). It may be recollected that the TMILL has to pay Revenue share to the Licensor port KOPT on all kinds of cargo related charges as per prevailing Scale of Rates of KOPT. The Segregated Accounts for the years 2007-08 to 2009-10 show an amount of ₹492.76 lakhs, ₹452.79 lakhs and ₹346.82 lakhs as Royalty.

The KOPT as well as the TMILL have reported some dispute between them with regard to the quantum of revenue share payable by TMILL to KOPT. The disputed amount as reported by TMILL is to the tune of ₹297 lakhs, ₹261 lakhs and ₹65 lakhs for the said three years. The TMILL has made provisions for the disputed amount in its Segregated Accounts for the respective years and the amount is not yet paid by the TMILL to KOPT. It is noteworthy that the KOPT has also acknowledged this position. The undisputed revenue share is only considered in this analysis, without prejudice to the contentions of the rival parties before the appropriate forum.

In line with the stipulation contained at Clause 2.8.1. of the tariff guidelines of 2005, pass through of revenue share was allowed in the last tariff fixation of TMILL to the extent of 8.126% of the cargo related charges as per prevailing

Scale of Rates of KOPT for the years 2005-06 onwards. In other words, 76.91% of Revenue share payable by TMILL (i.e. 10.565%) only can be the maximum pass through that can be considered in tariff exercise. Hence 76.91% of the undisputed Revenue share is considered as a pass through in the past analysis for the years 2007-08 to 2009-10.

- (f). The Segregated Accounts furnished by TMILL do not explicitly reveal the lease rentals paid by TMILL to KOPT, as the Segregated Accounts reflects the position net of plot rental income for the years 2007-08 to 2009-10. The TMILL has furnished a Reconciliation statement to arrive at the lease rentals considered by it in its Cost statement. The lease rentals as furnished by TMILL in its Cost statement for the years 2007-08 to 2009-10 are considered in the past analysis.
- (g). Depreciation considered by TMILL in the Cost statement for the years 2007-08 to 2009-10 was lower by ₹96.35 lakhs, ₹108.53 lakhs and ₹113.93 lakhs as compared to the Segregated accounts for the respective years. In other words, a lower amount of depreciation has been considered in the Cost statement. The TMILL has explained that on the ground that it has acquired the right to use the land of KOPT, it has capitalized the entire lease rentals and shown it as an asset in the Segregated Accounts. Therefore, it is charging lease rental payable for the relevant year and showing it as part of depreciation in the Segregated Accounts. However, in the Cost statement, it has considered the lease rentals under the head of lease rentals and shown depreciation at the lower level. The position reported by TMILL is taken into account.
- (h). As stated above, the Fixed Asset Schedule pertaining to Berth no.12 for the years 2007-08 to 2009-10 includes the capitalized lease rentals. At our request, the TMILL has furnished the Fixed Asset Schedule pertaining to Berth no.12 for the years 2007-08 to 2009-10 by segregating the capitalised lease rentals from the Other assets. Accordingly, the net block of assets (excluding capitalized lease rentals) for the years 2007-08 to 2009-10 is taken as base and considered in the analysis.
 - (i). The working capital is analysed below:
 - (i). Sundry Debtors are not taken into account, as it was not considered as part of Current assets in the Order of October 2007 and also in the Review Order of March 2008.
 - (ii). The tariff guidelines of 2005 has prescribed a limit of six months average consumption of stores excluding fuels incase of items of Inventory. The TMILL has not furnished the details of the consumption of stores and fuels. During the last fixation, 50% of the repairs and maintenance was considered as Inventory, as then proposed by TMILL. On the same lines, 50% of the Repairs and maintenance as reflected in the segregated Accounts is considered as Inventory.
 - (iii). Cash balance has been calculated at one month's operating expenses including overheads, as done during the last tariff fixation of TMILL.
 - (iv). The TMILL has not furnished the current liabilities for the years 2007-08 to 2009-10. The current liabilities shown in the audited Segregated Accounts is for the

entire Haldia division and not with reference to Berth no.12. Therefore, the proportion of Current liabilities of the Haldia Division to the Current Assets of Haldia Division as given in the Segregated Accounts is taken as base and applied to the figures of Current Assets as calculated based on the approach as explained in the preceding paragraphs for the years 2007-08 to 2009-10 in the analysis.

- (v). Since the Current Liabilities for the years 2007-08 to 2009-10 is found to be more than the Current Assets, the Working Capital results in a negative figure. Therefore, the Working Capital is considered as NIL for the years 2007-08 to 2009-10. Thus, the Capital Employed comprises of only Net Block of assets at ₹2884.99 lakhs, ₹3823.50 lakhs and ₹3946.30 lakhs for the years 2007-08, 2008-09 and 2009-10 respectively.
- (j). In the last tariff Order of October 2007, Return on capital employed was allowed at 16% for the years 2007-08 to 2009-10. The same position is maintained for allowing Return on the actual Capital Employed for the said years.
- (vi). The Hon'ble High Court of Calcutta passed an Order on 15 May 2009 on the Writ Petition in reference. The directions of the Hon'ble High Court to this Authority are contained in the last paragraph at Page No. 48 of the High Court order. The following actions are to be taken by this Authority to comply with the said directions:
 - (a). Revisit the decision of this Authority not to allow the further sum of ₹1.14 Crore on account of shore handling charges.
 - (b). Correct the tariff by accounting for the amount paid by the TMILL by way of royalty for the period prior to April, 2005;
 - (c). Specify how the recalculated excess charges should be adjusted in the tariff already fixed or the future tariff to be fixed for the TMILL.
 - (d). Communicate its decision within 10 weeks from the date of order to TMILL.

Since this Authority has filed an appeal before the Division bench of Calcutta High Court against the Order of May 2009 on Royalty/ Revenue share for the period prior to 31 March 2005, only the decision of this Authority contained in Order dated 17 March 2008 to not allow the sum of ₹1.14 Crores is revisited. Exclusion of the sum of ₹1.14 Crores now, from the estimates of income relied upon in the last tariff fixation of TMILL is a redundant exercise, as the actual income for the relevant years is now available. Nevertheless, for the purpose of comparison of the actual income for the years 2007-08 to 2009-10 with the income estimated for the corresponding period during the last fixation of tariff of TMILL, for past period analysis, a sum of ₹1.14 crores is excluded from the estimated income.

- (vii). (a). A summary of the comparison of the actuals vis-à-vis the estimates considered in the last tariff Order is tabulated below:

(₹ In Lakhs)

Particulars	Aggregate of the Estimates relied upon in the last Order for the years 2007-08 to 2009-10	Aggregate of Actuals for the the years 2007-08 to 2009-10	% Variation
Traffic (in MTs)	2850000	3075908	+ 7.93%
Op. Income	8280.67 *	8925.75	+ 7.79%
Total Exps (incl. Depn)	6254.17	5307.31	- 15.14%

* The operating income estimates are moderated to reflect increase of 18% in cargo related charges granted in the then existing rates of TMILL. The estimates of operating income also exclude the additional income to the tune of ₹1.14 crores from Shore handling wrongly estimated and considered in the estimates of last tariff fixation of TMILL (revisited in compliance of the Order of the Hon'ble High Court of Calcutta in WP No.10094 (W) of 2008).

The details regarding the Actual Return earned by TMILL on the Capital Employed are given in the following table:

(₹ In Lakhs)

Particulars	2007-08	2008-09	2009-10	Average
Actual Surplus before Return earned by TMILL	1221.68	979.31	1426.92	1209.30
Actual Capital Employed	2884.99	3823.50	3946.30	3551.60
Actual Return earned on actual capital employed	42.35%	25.61%	36.16%	34.05%
Variation in Return on Capital Employed @ 16%	164.69%	60.07%	126.00%	112.81%

- (b). As can be seen from the above tables, the average additional surplus over and above the admissible cost and permissible return achieved by the TMILL during the said three years is found to be 112.81%.

As per clause 2.13 of the tariff guidelines, if review of actual physical and financial performance for the previous tariff cycle shows the variation of more than + or – 20%, then 50% of such accrued benefit / loss has to be adjusted in the next tariff cycle. Therefore, there is a case to adjust the past surplus in the current tariff cycle of TMILL, as per Clause 2.13 of the tariff guidelines.

- (c). As can be seen from the position given above, the TMILL has made an additional surplus over and above the admissible cost and permissible return during the years 2007-08 to 2009-10 at the existing level of tariff. Thus, the alleged estimation error the last fixation of tariff of TMILL to the tune of ₹1.14 crores on account of Shore handling during the said years has not put TMILL in a disadvantageous position. Thus, even after updating the estimates of operating income for the years 2007-08 to 2009-10 as explained earlier, the additional surplus emerges, which is to be set off in the future tariff.

- (viii). It may be recollected that in the Review Order of TMILL in March 2008, an amount of ₹1775.13 lakhs was assessed as additional surplus over and above the admissible cost and permissible return for the period from 2002-03 to September 2007. The said additional surplus was after taking into account the estimated deficit of ₹204.36 lakhs for the first half of the year 2007-08. This additional surplus of ₹1775.13 lakhs was ordered to be refunded to the concerned parties with interest. On analysis of actual performance of TMILL for the year 2007-08, it emerges that the operator has actually made an additional surplus of ₹760.08 lakhs for the entire year of 2007-08. The additional surplus for first 6 months for the year 2007-08 works out to ₹380.04 lakhs as against the estimated deficit of ₹204.36 lakhs for the corresponding period. Hence the revised actual additional surplus for the period from 2002-03 to September 2007 for refund to the concerned parties works out to ₹2359.54 lakhs as against the earlier quantified amount of ₹1775.13 lakhs.
- (ix). The revised refundable excess collection as a percentage of actual total operating income is shown below:

(₹ in Lakhs)

Sr. No.	Particulars	Amount
(i).	Total actual operating income for the period 2002-03 to 1 st half of 2007-08	10694.47
(ii).	Excess refundable collection as per actuals determined now	2359.54
(iii).	Actual refundable excess collection as a % of actual total operating income	22.06%

In the last review Order of March 2008 of this Authority, the TMILL was directed to refund the excess collection of ₹1775.14 lakhs at 16.36% of the bill amount made by it during the period from the commencement of its operations till 23 November 2007 (i.e. till date on which the revised Scale of Rates fixed by this Authority was to take effect) to the concerned parties. In the Writ petition filed by TMILL in the Hon'ble High Court of Calcutta, one of the prayers of TMILL was to set aside the Order of this Authority to refund the excess collection. The Hon'ble Single Judge of Calcutta High Court has not admitted this prayer of TMILL. The TMILL has preferred an appeal before the Division bench of the Calcutta High Court on various grounds, one among them being that this Authority has no power to direct any refund to its users. Though the Appeal is yet to be disposed of by the Hon'ble High Court of Calcutta, the Hon'ble High Court has not stayed either the operation of the tariff Order dated 17 March 2008 or the judgement and Order dated 15 May 2009 passed by the Hon'ble Single Judge in WP No. 10094 (W). Therefore, the direction given by this Authority to refund the excess collection, holds good. However, the amount to be refunded to the concerned parties stands revised at ₹2359.54 lakhs as against the earlier quantified amount of ₹1775.13 lakhs.

- (x). A summary of the surplus for the past period from October 2007 to 31 March 2010 is given below:

₹ in lakhs	
Years	Amount
2007-08 (6 months from October 2007 to March 2008)	380.04
2008-09	367.55
2009-10	795.51
Total	1,543.10
50% to be set off in future tariff	771.55

- (xi). As per Clause 2.13 of the tariff guidelines the past surplus is to be set off prospectively. Since the year 2010-11 will be over before the revised tariff approved for TMILL comes into effect, the adjustments of past surplus can only be effected from the year 2011-12 onwards, as no retrospective adjustment of tariff is envisaged. Following the approach adopted in the cases of some other private terminals which were decided earlier, the past surplus is set off over a period of five years beginning from the year 2011-12.
- (xii). The cargo profile at berth No. 12 consists of iron ore, limestone, steel, logs, fertilizer, project cargo and earth moving equipment. As against the actual traffic of 1209077 MTs during the year 2009-10, the operator in its revised cost statement has estimated total throughput of 941887 MT, 951500 MT and 951000 MT for the years 2010-11 to 2012-13 respectively. The TMILL has almost estimated the same level of traffic for the years 2010-11 to 2012-13, without considering any growth in its traffic projections.

Considering the actual traffic of 11.47 lakhs MT handled by TMILL during the period of 11 months from April 2010 to February 2011, the annual traffic for the year 2010-11 works out to 12.52 lakh MT, which is comparable to the actual traffic of 12.09 lakh MT for the year 2009-10.

As against the cargo traffic of 941887 MTs as estimated by TMILL in its revised proposal for the year 2010-11, it is seen that the TMILL has already actually handled 1147210 MTs till February 2011. In a scenario where the actuals for almost the entire year is already available, there is no reason why this Authority should not consider the pro-rated traffic based on actuals for the year 2010-11. As a result, cargo traffic of 1251502 MTs is considered for the year 2010-11.

Relying on the statement made by TMILL that it anticipates no growth of traffic during the years 2011-12 and 2012-13 on the

ground that market condition is unlikely to change favorably and that with the expected commissioning of HMC at Berth no.2 and 8 of KOPT, and also since KOPT has endorsed the position of no growth in the traffic for all the years under consideration, the traffic for the years 2011-12 and 2012-13 each is estimated at the level of traffic estimated for the year 2010-11 at 1251502 MTs.

The TMILL has not projected any container traffic in its future traffic estimates. It may be recalled that during the last revision of tariff of TMILL in October 2007, the TMILL had included container traffic in its traffic estimations. However, as discussed earlier, no container has been handled by TMILL at Berth No. 12. KOPT has argued that TMILL is not permitted to handle any container traffic and as a result has requested to not prescribe any rate for handling containers in the SOR of TMILL. However, as recorded in the tariff Order of October 2007, the permissible cargo at Berth no. 12 as stipulated in the LA includes containerized cargo and as such, it is for the Licensor and Licensee to sort out the issues among themselves.

If there is a significant reduction in the cargo traffic handled by TMILL during the years 2011-12 and 2012-13, as compared to the traffic estimates considered by us now, it is open for TMILL to seek an ahead of schedule review of its tariff.

- (xiii). (a). The TMILL has furnished detailed workings for estimation of income from cargo handling for the years 2010-11 to 2012-13. Considering the revised estimated traffic of 1251502 MTs each for the year 2010-11 to 2012-13 and the relevant rates prescribed in the existing Scale of rates of TMILL, the estimated income for the years 2010-11 to 2012-13 from cargo handling is reworked.

Incidentally, the TMILL has also estimated income from providing on-board equipment assistance for various types of cargo. The existing Scale of rates of TMILL prescribes Equipment assistance charges for handling equipments like front end loaders and forklifts of different capacities. The TMILL has estimated the income for providing equipment assistance and furnished workings in this regard. It has assumed different number of shifts for the use of different handling equipment and also different parcel size for the various types of cargo estimated to be handled. The basis for the assumptions made by TMILL remains unexplained. The assumptions made by TMILL are relied upon in the estimation of income arising from providing equipment assistance.

Thus the revised cargo handling income estimated at ₹2594.23 lakhs, ₹2598.12 lakhs and ₹2600.31 lakhs for the years 2010-11 to 2012-13 respectively is considered in this analysis.

(b). The 'Other Income' as shown in the Cost statement comprises of Plot Rental income and Income from the use of HMC at Berth no. 12.

(i). The TMILL has furnished workings to arrive at the plot rental income for the said years. As seen from the workings, the estimate is based on the assumptions of TMILL regarding parcel size for each category of cargo, area requirement for each parcel size, number of parcels expected and storage time for each parcel. Based on the workings furnished by TMILL and the assumptions made by it in this regard, the estimates of plot rental income are revised to reflect the revised cargo traffic of 1251502 MTs each considered for the years 2010-11 to 2012-13. Thus, the revised plot rental income works out to ₹216.68 lakhs each for the years 2010-11 to 2012-13.

(ii). With reference to the income estimated by TMILL from the use of HMC at berth no. 12, it is relevant to mention here that the TMILL has filed a separate proposal for fixation of charges for the use of HMC at berth no. 12 in October 2008. From the proceedings relating to this case, which has been brought out in the earlier part of this Order, it is seen that TMILL has been levying the said rate.

As seen from the workings, the HMC is proposed to be utilised by TMILL in respect of cargo like Iron ore, Steel imports, Fertiliser Raw materials, Sugar and Project cargo. The TMILL has assumed different levels of productivity per day for different cargo and considering the traffic of the respective cargo, has arrived at the number of shifts. Based on the assumptions made by TMILL in its workings and by considering the rate of ₹125000/- per shift, the estimated income from the use of HMC is revised so as to reflect the revised estimates of cargo traffic of Iron ore, Steel imports, Fertiliser Raw materials, Sugar and Project cargo. The revised income from the use of HMC works out ₹582.44 lakhs for the year 2010-11.

Inorder to avoid the hassles of billing based on the actual usage of HMC, the TMILL envisages to levy charges for the use of HMC on tonnage basis, though the operator has also proposed to levy charges on shift basis. From a user's point of view, the duration of deployment of the crane for loading/ unloading operations may not be of much relevance. For the

user, the tariff should correlate to the tangible output i.e. cargo handled. Hence, it would be more appropriate to prescribe tariff on tonnage basis instead of shift basis. The modified calculation results in a rate of ₹24/- per MT for use of the HMC at berth no. 12. This is discussed in the later part of this analysis. Since the rate on tonnage basis approved for the use of HMC at TMILL will be applicable for the years 2011-12 and 2012-13, the income from the use of HMC for the years 2011-12 and 2012-13 is estimated for the revised traffic estimates at ₹24/- per MT. The income so arrived works out to ₹245.31 lakhs each for the years 2011-12 and 2012-13.

- (xiv). In respect of all the expenditure estimates for the years 2010-11 to 2012-13, TMILL has considered an escalation factor of 8.60% per annum, on the ground that the year on year inflation in January 2010 was about 8.60% as per the Annual Report for the year 2009-10 of Ministry of Finance, Government of India. The TMILL has further contended that the escalation factor of 3.76% notified by this Authority for the tariff cases to be disposed during the year 2010-11 is very low as compared to the actual cost increase experienced.

The annual escalation of the cost estimates is considered in terms of Clause 2.5.1 of the Revised Tariff Guidelines which requires that the expense projections of the major ports and terminal operators should be in line with traffic adjusted for price fluctuation with reference to current movement of Wholesale Price Index for all commodities as announced by the Government of India. It is to be noted that the expenditure estimates are moderated applying the escalation factor of 3.76% in the tariff cases of the major port trusts and private terminal operators decided during the year 2010-11. Therefore, it may not be possible to deviate in the case of TMILL alone, from the procedure followed so far in respect of other cases. Hence, the expenditure projections of TMILL are moderated applying the escalation factor of 3.76% per annum, taking the respective previous year as base.

- (xv). Operating and Direct Labour cost consists of “Stevedoring expenses” and “labour cost for operation of Equipments”.
- (a). The TMILL has applied an escalation factor of 8.60% per annum over the actuals of ₹414 lakhs incurred during the year 2009-10, to arrive at the estimates of Stevedoring expenses for the years 2010-11 to 2012-13.

The TMILL has outsourced the stevedoring activity. A copy of the Contract furnished by TMILL for the year 2009-10 indicates an amount of ₹414 lakhs, but does not indicate the per tonne rate. It also does not indicate the volume of traffic

for the year 2009-10. It may be relevant to recollect that during the last fixation of tariff of TMILL in October 2007, the expenditure on this account was considered on per tonne basis at the rate of ₹38 per MT based on the Contract copy furnished by TMILL at the relevant point of time, as proposed by TMILL then.

Taking into account the actual stevedoring expenditure of ₹414 lakhs for an actual traffic of 1209077 MT, the rate works out to ₹36.47 per MT. This rate is taken as base and escalated by 3.76% per annum to arrive at the per tonne rate for the years 2010-11 to 2012-13. Accordingly, the estimates of cost of Stevedoring activity are considered at ₹444.64 lakhs, ₹461.36 lakhs and ₹478.70 lakhs for the years 2010-11 to 2012-13 respectively.

- (b). The other element is labour cost for operation of Equipment. The cost includes cost of Operators for operating Loaders and Forklifts and cost of Trailer drivers and helpers. The TMILL has estimated this cost at ₹92.17 lakhs, ₹100.10 lakhs and ₹108.71 lakhs for the years 2010-11 to 2012-13 respectively as against the actuals of ₹88.40 lakhs during the year 2009-10. The estimates for the year 2010-11 are supported by contract copies in respect of both the said expenses. As reported by TMILL, the cost is for 11 operators for operating Loaders and Forklifts and 21 trailer drivers and 21 cleaners. The rates applicable for the year 2010-11 is taken as base and escalated by 3.76% per annum to arrive at the labour cost for the years 2011-12 and 2012-13, as against the escalation factor of 8.60% considered by TMILL.
- (xvi). The TMILL has estimated the cost of labour for maintenance of equipment at ₹15.76 lakhs, ₹17.12 lakhs and 18.59 lakhs for the years 2010-11 to 2012-13 respectively as against the actuals of ₹13.18 lakhs during the year 2009-10. As reported by TMILL, the cost is for 12 labourers. The TMILL has furnished Contract copy with reference to the expenditure of ₹15.76 lakhs applicable for the year 2010-11. This is taken as base and escalated by 3.76% per annum to arrive at the labour cost for the years 2011-12 and 2012-13.
- (xvii). The Equipment Running Cost comprises of Oil and Lubricant cost and Repairs and maintenance cost in respect of Bulk handling Equipment like loaders, trailers, forklifts and Harbour Mobile Crane and Equipment Registration cost.
 - (a). From the workings furnished by TMILL, it is seen that the Loaders are used in respect of handling Bulk cargo like Iron Ore, Limestone, Raw Sugar, Cement Clinker. To arrive at the Oil and lubricant cost in respect of Loaders for the year 2010-11, the TMILL has taken the actual Oil and lubricant cost in

respect of Loaders for the year 2009-10 as base and proportionately adjusted it to the traffic for the year 2010-11 and applied an escalation factor of 8.60%. In the absence of any details relating to the consumption and cost of oil and lubricants, the methodology adopted by TMILL is relied upon, and accordingly the cost is considered for the revised traffic subject to restricting the escalation factor to 3.76%.

- (b). Similarly, from the workings furnished by TMILL, it is seen that the trailers and forklifts are used in respect of handling Break bulk cargo like Steel, Logs and Project cargo. To arrive at the Oil and lubricant cost in respect of trailers and forklifts for the year 2010-11, the TMILL has taken the actual Oil and lubricant cost in respect of trailers and forklifts for the year 2009-10 as base and proportionately adjusted it to the traffic for the year 2010-11 and applied an escalation factor of 8.60%. In the absence of any details relating to the consumption and cost of oil and lubricants, the methodology adopted by TMILL is relied upon and accordingly the cost is considered for the revised traffic, subject to restricting the escalation factor to 3.76%.
 - (c). To determine, the Oil and lubricant cost in respect of HMC for the years 2010-11 to 2012-13, the TMILL has linked the actual cost of Oil and lubricant cost incurred during the year 2009-10 to the actual total number of shifts operated during the year 2009-10 and proportionately adjusted to the total number of shifts estimated to be operated during the years 2010-11 to 2012-13 and applied an escalation factor of 8.6%. The methodology adopted by TMILL is relied upon and accordingly the cost is considered for the revised number of shifts relevant for the revised traffic, subject to restricting the escalation factor to 3.76%.
 - (d). The TMILL has made an actual payment of ₹7.06 lakhs during the year 2009-10 towards port permit and road tax. The TMILL has furnished documentary evidence for payment of port permit and road tax. For the years 2010-11 to 2012-13, the TMILL has considered an amount of ₹7.06 lakhs each, without any escalation.
- (xviii). This Authority has recently disposed of the general revision proposal of KOPT in November 2010. The revised cargo related charges have come into effect at KOPT from the later part of March 2011. As stated earlier, as per Clause 5.1(a) read with Clause 4.1(a) of the Licence Agreement, the TMILL has to pay revenue share on all kinds of cargo related charges as per prevailing Scale of Rates of KOPT. The computation of revenue share payment furnished by TMILL for the years 2010-11 to 2012-13 is updated so as reflect the Revenue share on the revised cargo related charges of KOPT like

wharfage, on board charges, transportation, loading / unloading/ restacking etc and also the revised cargo wise traffic. In response to our query, the TMILL stated that it has estimated revenue share payable by it to KOPT at the level of the revenue share quoted by the second highest bidder. However, the workings furnished by TMILL show that the Revenue share has been calculated at 10.565% for the years 2010-11 and 2011-12 and 10.585% for the year 2012-13. The estimated revenue share is moderated to 8.126% for the years 2010-11 to 2012-13.

It is noticed that TMILL has considered the rate as prescribed in its Scale of rates for Plot Rentals for the purpose of determining Revenue share from Plot Rentals and the rate of ₹125000/- per shift for use of HMC proposed by it in its separate proposal. Since this is not in line with the provisions of the LA, we have calculated admissible amount of revenue share on plot rentals based on the rates recently notified for HDC at KOPT. In respect of revenue share for the income from the use of HMC at TMILL, the rate of ₹52/- per MT approved in the Scale of Rates of KOPT recently and the revised cargo traffic has been taken into account for the years 2011-12 and 2012-13. No revenue share for use of HMC for the year 2010-11 is considered since no rate for the said service prevailed in the pre-revised Scale of Rates of KOPT.

The TMILL in its calculation has considered Revenue share for on board equipment assistance incase of Iron ore based on the rate prescribed in its Scale of Rates. Since this approach is not in line with the provision in the LA, we have not considered this component in the calculation of Revenue share.

Incidentally, the TMILL in its calculation for Royalty/ Revenue share has included the component of On-board supervision charges. TMILL has reported that the Scale of Rates of KOPT does not prescribe rates for 'On-board supervision'. Since TMILL has to pay revenue share on all kinds of cargo related charges as per prevailing Scale of Rates of KOPT, it has denied the applicability of revenue share on on-board supervision charges. However, KOPT claims the same from TMILL. The TMILL has reported that the matter has gone for arbitral resolution. In this backdrop, it has calculated the Revenue share by considering On-board Supervision charges in its calculations.

The KOPT is of the view that as per the License Agreement [Article 5.1(a)] TMILL is liable to pay royalty to KOPT at the agreed percentage level of the actual revenue earned by Licensee. Accordingly, all income from the activity carried out by TMILL in respect of cargo handling at Berth No. 12 is to be considered for the purpose of calculation of royalty payable by TMILL. Since the Scale of Rates of TMILL includes rate for 'On-board Supervision charges', the income earned by TMILL from such services is to form part of

actual revenue earned by TMILL for the purpose of determination of Royalty/ Revenue share.

In this context, it may be relevant to mention here that this Authority in its tariff Order of October 2007 has considered Revenue share on the cargo related charges as per the then prevailing Scale of Rates of KOPT. In line with the approach adopted in October 2007 Order with regard to the Revenue share, the Revenue share is calculated on the cargo related charges prescribed in the Scale of Rates of KOPT for the purpose of this analysis.

By way of abundant caution, it is mentioned that revenue share figures considered in this exercise are only for the tariff fixation purpose and should not be taken as the determination by this Authority of the dispute, between the TMILL and KOPT on the subject payment.

- (xix). The Equipment hire charges is for hire of small loaders to handle the traffic of limestone and sugar/ cement. The Contract copy furnished by TMILL shows a hire charge of ₹6000/- per shift applicable for the period from June 2010 to March 2012. The TMILL has estimated the said expenditure by considering the contractual rate and by considering the number of shifts the loader will be put into use for handling limestone and sugar/ cement. The assumption of TMILL regarding the number of shifts is revised to reflect the revised cargo traffic. Since the Contract is valid till the year 2011-12, escalation is considered at 3.76% for the year 2012-13, taking the year 2011-12 as base.
- (xx). The TMILL has estimated lease rentals at ₹229.38 lakhs, ₹238.01 lakhs and ₹247.06 lakhs for the years 2010-11 to 2012-13 respectively, based on the claim made by the Licensor port KOPT, for the initial allotment of hard stand land of 14000 sq. mtrs and subsequent allotment of 54000 sq. mtrs and 9000 sq. mtrs of land area. The LA stipulates that the licence fee will be enhanced every year by 5% of the licence fee payable in the preceding year or the scheduled licence fee then in force, whichever is higher. The TMILL has reported that its estimates are based on the claim made by the KOPT. At our request, the KOPT has also furnished workings for the monthly rental payable by TMILL as per lease rentals proposed by it in its proposal for revision of Rent Schedule for the estate of KOPT including Haldia.

This Authority has recently disposed of the proposal filed by KOPT for revision of its Rent Schedule at Haldia and Kolkata Dock System (KDS) in January 2011. The revised Rent Schedule have come into effect at KOPT from the later part of March 2011. For the years 2011-12 and 2012-13 the lease rentals are calculated based on the rates prescribed in the revised schedule of rent approved for the KOPT lands at HDC.

- (xxi). The TMILL has produced documentary evidence in respect of the insurance expenses incurred by it during the year 2009-10. From the documents, it is seen that TMILL has insurance policies to cover for Stevedore liability, HMC, Berth, Cranes, Material in godowns, Forklifts, Trailers, Other vehicles etc.

While estimating insurance for the years 2010-11 to 2012-13, the TMILL has maintained the actuals for the year 2009-10. In addition to this insurance amount, the TMILL has estimated insurance of 1% on the proposed additions to the assets during the said years. The approach adopted by TMILL is considered subject to moderation to give effect to the deferment of additions to the capital assets, as explained in the later part of the analysis.

- (xxii). The estimates of other expenses relate to Lashing, Securing and Dunnaging (LSD), unlashng, sticker, despatch related services, intraport transportation, survey, clearing & forwarding expenses and miscellaneous expenses. Each of these items is discussed below:

(a). Lashing / Securing / Dunnaging (LSD)/ unlashng:

TMILL has outsourced this activity as seen from the copy of the contract furnished. This activity is seen to have been outsourced for the estimated traffic of steel cargo of TATA steel, at the rate of ₹85/- per MT (for supply of materials) and ₹15/- per MT for supply of labour. The Contract is for a period from 1 April 2010 to 31 March 2012. The TMILL has considered a rate of ₹100/- per MT for the year 2010-11 and escalated by 8.60% per annum for the subsequent years. Since the Contract is valid till the year 2011-12, the rate of ₹100/- is maintained for the year 2011-12 also. For the year 2012-13, an escalation factor of 3.76% is considered.

Another item estimated by operator is the expenditure towards unlashng service in respect of steel cargo and project cargo, which has also been outsourced at Rs.15/- per tonne for a period from 1 April 2010 to 31 March 2012. The TMILL has considered a rate of ₹15/- per MT for the year 2010-11 and escalated by 8.60% per annum for the subsequent years. Since the Contract is valid till the year 2011-12, the rate of ₹15/- is maintained for the year 2011-12 also. For the year 2012-13, an escalation factor of 3.76% is considered.

(b). Sticker, Tag writing & color coding services:

The document furnished by TMILL in support of the said expenditure is a contract for providing miscellaneous export related services for an amount of ₹184902/-. The TMILL has stated that the contract is for engaging an outsourced pool of

14 persons for the purpose of doing the job in relation to the Steel exports cargo only. In view of lower export volumes, it has considered the cost of 7 persons to be allocated to berth no.12 in its cost projections. The cost of ₹13207/- per person is taken as base for the year 2010-11 and escalated by 3.76% per annum. The number of persons is maintained at 7 for all the years under consideration as proposed by TMILL.

(c). Despatch related services

The despatch related services for handling limestone has been outsourced by TMILL. The contract copy furnished by TMILL is for a rate of ₹13/- per MT to be applicable for the period from 2010-11 to 2012-13. The TMILL has however considered an escalation of 8.60% in its workings. Since the validity of the contract is for the entire tariff validity cycle, the rate of ₹13/- is uniformly considered for all the years under consideration without applying any escalation factor. The TMILL has not estimated this expenditure for the year 2010-11. We have, considered the said expenditure for the year 2010-11 also.

(d). Intra-port Transportation

The cargo items considered by TMILL for estimation of intra-port transportation are limestone, steel and Iron ore.

From the workings it is seen that the TMILL has considered a rate of ₹35/- per MT incase of limestone, ₹45/- per MT incase of Steel and ₹26/- per MT incase of Iron ore for the year 2010-11. The rates considered by TMILL are supported by documentary evidence. Incase of limestone, the contract is for the period from 2010-11 to 2012-13, for steel, it is for a period 2010-11 and 2011-12 and for Iron ore it is applicable for the year 2010-11 alone. The TMILL has however considered the escalation factor of 8.6% to be applicable for all the years under consideration, for all the rates.

Incase of limestone, since the validity of the contract is for the entire tariff validity cycle, the rate of ₹35/- per MT is uniformly considered for all the years under consideration, without any escalation factor. For Steel, the rate at ₹45/- per MT is considered for the years 2010-11 and 2011-12 and for the year 2012-13, an escalation factor of 3.76% is considered. For Iron ore, the rate of ₹26/- per MT is considered for the years 2010-11 and an escalation factor of 3.76% per annum is considered for the years 2011-12 and 2012-13,.

(e). Survey Expenses

Other expenses include survey expenses of lime stone, steel and iron ore. The rate of survey expenses considered by TMILL for estimation purpose varies from cargo to cargo.

TMILL has furnished documentary evidence for the rate of ₹2.62 per MT for Limestone, ₹12.24 per MT for TATA Steel cargo, applicable for the years 2010-11 and 2011-12. No documentary evidence is furnished in respect of Other steel (₹2.33 per MT) and Iron ore (₹0.85 per MT). Assuming that the contract for the survey expenses for Other steel and Iron ore would also be valid till 2011-12, the rates as considered by TMILL for the year 2010-11 is considered for the year 2011-12 also, subject to verification of actuals with reference to these two tariff items. For the year 2012-13, an escalation factor of 3.76% is considered.

(f). Clearing & forwarding Expenses:

The KOPT has objected to the tariff item towards Clearing & Forwarding service. This issue is already settled based on the clarification furnished by the TMILL during the last fixation of tariff in October 2007.

TMILL has considered a rate of ₹4.25 per MT for estimation of this expenditure for 2010-11, which is supported by documentary evidence. The per tonne rate of ₹4.25 is escalated by 3.76% per annum for estimating Clearing & Forwarding expenditure for the years 2011-12 and 2012-13, taking the respective previous year as base.

(g). Miscellaneous Operational Expenses:

In respect of the estimated miscellaneous operational expenses which are in the nature of slings and gear cost, strapping, other miscellaneous cost, civil maintenance, an escalation factor of 3.76% per annum is considered for the years 2010-11 to 2012-1, taking the actuals for the year 2009-10 as base.

In addition, TMILL has estimated an expenditure of around ₹12 lakhs and ₹52 lakhs during the years 2011-12 and 2012-13 respectively towards unloading of steel cargo at siding. The estimated expenditure has been calculated by TMILL at ₹89/- per MT of rail bound steel cargo and for the year 2012-13, it has considered an escalation factor of 8.60%. The TMILL has given documentary evidence to justify the expenditure. The estimated expenditure is considered and moderated to reflect the applicable escalation factor.

The TMILL has also considered expenditure incurred towards stacking of Iron ore under the said head of expenditure of around ₹65 lakhs, ₹71 lakhs and ₹54 lakhs during the years 2010-11 to 2012-13 respectively. The TMILL has not given any documentary evidence in support of the expenditure. The estimated expenditure has been calculated by TMILL at ₹12/- per MT of iron ore cargo and for the year 2011-12 and 2012-13, it has considered an escalation factor of 8.60%. The

estimated expenditure is considered and moderated to reflect the applicable escalation factor subject to verification with actuals during the next review of its tariff.

- (xxiii). The TMILL has not claimed Efficiency gain, in any of the items of the Operating cost. As such, no Efficiency gain is considered in the estimation of operating costs for the years 2010-11 to 2012-13 in the current tariff revision of TMILL.
- (xxiii). The Management & Administration Overheads mainly comprises of Salary and wages, legal charges, electricity expenses and other office related expenses. The TMILL has taken the actuals for the year 2009-10 as base and applied an escalation factor of 8.60% for the subsequent years 2010-11 to 2012-13 to arrive at the said expenditure. The estimates are moderated applying an escalation factor of 3.76% per annum.
- (xxiv). The TMILL has taken the actual General Overheads for the year 2009-10 as base and applied an escalation factor of 8.60% for the subsequent years 2010-11 to 2012-13 to arrive at the said expenditure. The estimates are moderated applying an escalation factor of 3.76% per annum.
- (xxv). The Finance and Miscellaneous Income comprise of the discounted terminal value. As per the provisions of the Licence Agreement, the terminal value payable by KOPT to TMILL is ₹2.30 crores. Recognising that the payment would be due for 30 years, the annualised present value for the years 2010-11 to 2012-13 is arrived at by applying a discount factor of 12.75%. The discounting rate of 12.75% to arrive at the net present value is selected bearing in mind the prevailing PLR rate.
- (xxvi). The Finance and Miscellaneous Expenses comprise of the Contribution to Provident Fund. The TMILL has taken the actual Contribution for the year 2009-10 as base and applied an escalation factor of 5.40% for the subsequent years 2010-11 to 2012-13 to arrive at the said expenditure. The estimates are moderated applying an escalation factor of 3.76% per annum.
- (xxvii). The Capital Employed comprising of Net Fixed Assets and Working Capital are analysed in the following paragraphs:

(a). Fixed Assets:

(i). Year 2010-11:

The TMILL has proposed additions to the tune of ₹3.91 crores for the following items:

No.	Particulars	₹ in Lakhs
1.	Rail Siding	300.00
2.	2 Pay loaders (Bucket size 4CBM)	91.34

	TOTAL	391.34
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With reference to the Railway siding, the TMILL has stated that the investment was proposed in the last tariff cycle, however it has been deferred due to delay in provision of Railway connectivity. To a query in this regard, the TMILL has stated that it has planned the expenditure in next couple of years. In this context, it may be recollected that during the last revision of tariff of TMILL in October 2007, it had proposed investment of ₹266 lakhs and ₹42 lakhs in the year 2008-09 and 2009-10 respectively. The provision of railway siding was intended for quick movement of rakes to increase cargo throughput and handle multiple rail bound cargo. The allotment of 54,000 sq. mtrs of land was stated to facilitate railway siding. We have no benefit of the views of KOPT on the timing of the proposed investment. Since the TMILL has stated that the investment is planned during the next couple of years, the proposed investment of ₹300 lakhs is shifted to the year 2012-13.

The TMILL has stated that the additions in respect of Pay loaders are for replacement of existing pay loaders and it has reported that the existing pay loaders have no book value.

The TMILL has furnished workings for the Written Down Value (WDV) of one pay loader proposed to be deployed at Berth no. 12 in the year 2011-12. From the workings furnished by TMILL, it appears that the TMILL has envisaged to deploy 2 old Pay loaders at Berth no. 12, the original cost of which is ₹62.49 lakhs each as of August 2005. Considering a depreciation rate of 4.75% as per provisions of Companies Act, the WDV of one pay loader as on 1 April 2011 works out to ₹45.67 lakhs. Thus, the WDV of 2 Pay loaders works out to ₹91.34 lakhs. Since the year 2010-11 is already over, the investment is shifted to the year 2011-12.

(ii). Year 2011-12:

The TMILL has proposed additions to the tune of ₹2.30 crores for the following items:

No.	Particulars	₹ in Lakhs
1.	Construction Office at Berth no. 12	30.00
2.	Covered Shed	200.00
	TOTAL	230.00

With regard to construction of office, the TMILL has stated that it plans to replace its existing containerized

office constructed in 2002, with a permanent structure. The estimate is not supported by any documentary evidence. Since the investment related to basic need of an organisation, the proposed estimate is relied upon and considered in the analysis.

The TMILL has stated that the investment for construction of covered shed was proposed in the last tariff cycle, however it has been deferred due to delay in provision of Railway connectivity. It may be recollected that during the last revision of tariff of TMILL in October 2007, it had proposed investment of ₹244 lakhs in the year 2007-08 for construction of Covered shed. However, the TMILL has not made this investment as proposed by it as could be seen from the actuals for the past years. This position has been endorsed by KOPT.

The proposed investment is for the purpose of covered shed in the area of 54000 sq. mtrs, allotted to TMILL. Since the investment for railway siding in the area of 54000 sq. mtrs is shifted to the year 2012-13, the proposed investment in covered shed, which is also envisaged at the area of 54000 sq. mtrs of land is also shifted to the year 2012-13.

- (iii). No additions have been proposed by TMILL during the year 2012-13.

(b). Working Capital:

- (i). The TMILL has not considered Sundry Debtors as part of its estimates of Working Capital.
- (ii). The TMILL has considered 50% of the estimated Repairs and maintenance cost for the years 2010-11 to 2012-13 as Inventory for the said years. The TMILL has confirmed that it is in line with the stipulation at Clause 2.9.9 of the tariff guidelines of 2005. The estimated Inventory is reckoned with the moderation effected in the Repairs and Maintenance cost as discussed earlier.
- (iii). Cash balance has been calculated at one month's operating expenses including overheads.
- (iv). TMILL has requested this Authority to consider the security deposit for the leased land paid to KOPT as an item of current asset. The TMILL has stated that as a part of the license for Berth no.12 and plots taken for conducting operation, TMILL is required to invest

capital amount in the form of Security Deposit as per License Agreement/ plot allotment conditions. The TMILL has claimed an amount of Rs.155.75 lakhs as Security Deposit to be included in the Current assets each for the years 2010-11 to 2012-13. The TMILL has not furnished workings to arrive at the amount of Rs.155.75 lakhs. As seen from the details furnished by TMILL, it has considered Security Deposit to the tune of Rs.141.92 lakhs towards the lands allotted to it and Rs.13.83 lakhs as Security Deposit towards supply of power to berth no. 12.

The payment of Security Deposit for the lands allotted to TMILL are governed by the Scale of Rates of the Licensor port, KOPT. As per Note 9 of the then existing Rent Schedule for KOPT at Haldia at the relevant point of time, Security for payment of rent/ licence fee shall be recovered at 12 months rent/ licence fee for all types of allotments. Based on the rate of licence fee applicable at the time of initial allotment of 14000 sq. mtrs and subsequent allotment of 54000 sq. mtrs and 9000 sq. mtrs of land, the Security deposit for 12 months period works out to Rs.141.61 lakhs. Incidentally, this amount is closer to the amount of Rs.141.92 lakhs considered as Security Deposit by TMILL for the lands allotted to it by KOPT.

With reference to the Security Deposit considered by TMILL for power supply, the TMILL has not furnished any details for the same. As such, only an amount of Rs.141.61 lakhs is considered as Security Deposit forming part of Current assets each for the years 2010-11 to 2012-13.

- (v). The TMILL has not furnished the figures of estimated Current liabilities for the years under consideration. As stated earlier, current liabilities relevant for Berth no. 12 have been calculated for the past period. Based on the ratio between the current assets and current liabilities for the past period, current liabilities are estimated for the years 2010-11 to 2012-13. The current liabilities so worked out for each year are seen to be more than the current assets, resulting in a negative working capital. Hence, the working capital is considered as NIL in the analysis.

(xxviii). Clause 2.7.1 of the revised tariff guidelines stipulates that in case of private terminals, depreciation has to be allowed on straight line method with life norms adopted as per the Companies Act, 1956 or based on the life norms prescribed in the Concession Agreement

whichever is higher. The LA does not prescribe life norms for the assets. As such, with reference to additions in the form of construction of office, Covered sheds, Railway sidings and Plant and Machinery, the depreciation rates as prescribed for the respective items in the Companies Act have been considered. Since the TMILL has not furnished the date of commissioning of the proposed facilities, 50% of the depreciation is considered in the respective initial year of the commissioning of the assets.

(xxix). During the current proceedings of the case in reference, the TMILL has stated that the capacity of berth no. 12 is 11.24 lakh MT per annum, by considering an average ship day output rate of 4400 MT per day following the pattern of planned cargo mix for 365 days with 70% utilisation. We do not have the benefit of the views of KOPT in this regard. However, it may be relevant to recollect that the KOPT during the proceedings relating to last tariff fixation of tariff of TMILL had conveyed the capacity of the TMILL at 10.7 lakh tonnes. Therefore, Return on the Capital Employed at the rate of 16% is allowed for the years 2010-11 to 2012-13.

- (xxx). (a). As stated in the earlier part of the note, the TMILL has filed a separate proposal for fixation of hire charges in respect of the HMC. The general revision proposal of TMILL in current exercise also includes its proposal for the hire charges in respect of the HMC. As brought out in the note relating to the factual position, the TMILL was specifically requested to revise its proposal for fixation of hire charge for HMC based on standard capacity, quoting the cases of fixation of charges for the use of HMC at Paradip Port Trust (PPT), Tuticorin Port Trust (TPT), New Mangalore Port Trust (NMPT) and Visakhapatnam Port Trust (VPT). The TMILL has not responded.
- (b). The Licensor port KOPT has raised various objections to the cost estimates furnished by TMILL in support of the proposed hire charges for HMC during the proceedings relating to the general revision proposal as well as the separate proposal for fixation of hire charges for HMC. We have not received any response of the TMILL on the objections raised by the KOPT.
- (c). The proposal of TMILL for fixation of hire charges is for a HMC of 104 tonne capacity, as seen from the proposed Scale of Rates of TMILL. This Authority has fixed hire charges for HMC of 100 tonne capacity at the above mentioned major ports following the normative approach. However, it is to be noted that the rates fixed following the normative approach in respect of other major ports was under the stipulation of Clause 7.2. of the tariff guidelines of March 2005 which requires this Authority to fix ceiling rates for services to be applied commonly at the concerned ports without reference to

the individual service provider. Thus, the rate so fixed is a common rate to be applicable to all operators of HMC at the particular port. However, in case of TMILL, the TMILL itself is a service provider. The overall traffic estimates for TMILL is lower than the normative capacity of the HMC considered as base to arrive at the hire charges for HMC at the said major ports. Further, as per the tariff guidelines of 2005, tariff in respect of the services provided by the private terminals is to be fixed based on the traffic and cost estimates. Therefore, normative approach may not apply in this case.

- (d). For reasons stated earlier hire charge for the use of HMC is to be prescribed on per tonne basis. Since the estimates of operating cost considered by TMILL in its proposal for fixation of hire charges are not supported by workings, we have attempted to test the reasonableness of the estimated operating costs considered by TMILL with reference to certain established norms considered while fixing hire charges for HMC at the other major ports. In the process, we have moderated some of the estimates of operating costs furnished by TMILL. The rate so calculated, works out to ₹24.00 per MT. A statement for fixing rate per tonne for use of HMC at TMILL is attached as **Annex – I**.

Clause 5.9. of the tariff guidelines of 2005 calls for linking tariff to the benchmark levels of productivity, providing incentive for better performance and disincentive for performance below the benchmark levels. The basis for the productivity levels for handling iron ore, steel cargo and other dry bulk cargo proposed by TMILL to measure performance levels in order to grant rebate for under performance remains unexplained. Further, the proposed note does not indicate incentive for better performance. Therefore, the TMILL is advised to come up with a well analysed conditionalities to govern incentive for better performance and penalty for under performance, within six months from the date of the Order passed by this Authority.

- (e). The separate proposal of the TMILL to prescribe hire charges of ₹125000/- per shift for operation of HMC at TMILL was taken on consultation with the relevant stakeholders. It is noteworthy that generally the users have agreed for payment of the charges of ₹125000/- per shift. During the proceedings relating to the proposal, it was pointed out by TMILL that the proposal is essentially for ratification of charges already levied. Clause 2.17.4 of the tariff guidelines of March 2005 enables this Authority to recognise the interim rate adopted in an adhoc manner retrospectively. The measure of TMILL to implement the charges of ₹125000/- per shift on adhoc basis is approved as such. The levy of adhoc charge from the date

of commencement of operations of HMC at TMILL is allowed to continue till the effective date of implementation of the revised rate notified by this Authority.

- (xxx). (a). Subject to the discussions above, the cost statement has been modified. The modified cost statement is attached as **Annex – II**. The results disclosed by cost statement at the existing level of tariff at TMILL are summarized as shown in the table given here in under:

SUMMARY OF THE RESULTS OF TMILL AT THE EXISTING LEVEL OF TARIFF													
Sr. No	Particulars	Operating Income (₹ in crores)				Net Surplus(+)/ Deficit(-) (₹ in crores)				Net Surplus(+)/ Deficit(-) as a % of operating Income			Average Surplus/ Deficit %
		2010-11	2011-12	2012-13	Total	2010-11	2011-12	2012-13	Total	2010-11	2011-12	2012-13	
1	TMILL as a whole	33.93	30.60	30.62	95.16	5.44	2.15	0.67	8.26	16.02%	7.04%	2.20%	8.42%

- (b). As can be seen from the above table, the TMILL would be in surplus to the tune of around ₹8.26 crores during the years 2010-11 to 2012-13 at the existing level of tariff, after adjustment of two instalments of past surplus during the years 2011-12 and 2012-13.
- (xxxi). (a). Since a separate rate is prescribed for the use of HMC, it becomes necessary to consider the cost position excluding the cost position for operation of HMC to assess the cost position for services rendered at TMILL, other than use of HMC. Hence, the Operating Income, Operating Expenses, Capital employed and Return pertaining to HMC are excluded from the Cost statement for TMILL as a whole. A Cost statement excluding the position of HMC is attached as **Annex – III**. The result disclosed by the Cost statement excluding the position of HMC is summarised below:

Sl. No.	Particulars	₹ in Lakhs
1	Estimated Operating Income excluding the income from HMC for the years 2011-12 and 2012-13	5631.79
2.	Surplus after Return excluding the position of HMC	966.45
3.	Surplus for the year 2010-11	543.54
4.	Adjustment of 2 installments of past surplus	308.62
5.	Total estimated Surplus position excluding the position of HMC (2 + 3 + 4)	1818.61

- (b). The estimated surplus as a percentage of estimated operating income works out to 32.29%. Therefore, an across the board reduction of 32.29% is effected in the existing tariff of TMILL.
- (xxxii). It may be recollected that this Authority in the tariff Order of October 2007 had advised TMILL to draw up its proposal supported by cost details for individual activities. While responding to a query in this regard, the TMILL has pleaded its inability to prescribe rates based

on cost details on the ground that its Scale of Rates are based on KOPT rates and outsourced contractual rates and stated that the details as sought by this Authority is very difficult and practically impossible to provide. In the age of computerization, it may not be impossible for a terminal like TMILL to furnish activity based costing. The TMILL is advised to gear up its internal system so that it can draw up its proposal supported by cost details for individual activities at the time of next review of its tariff.

- (xxxiii).(a). In line with Clause 4.2.2 of the tariff guidelines of 2005 which requires the ports to phase out the advalorem rates, the TMILL during the proceedings relating to the last general revision in October 2007 had given an assurance to phase out the advalorem rate. The TMILL has kept up its assurance and has prescribed rates based on weight. Since the Scale of Rates proposed by TMILL does not prescribe any advalorem rates, the definition for the term 'advalorem' is deleted, as proposed by TMILL.
- (b). The TMILL has replaced the existing advalorem rates for levy of wharfage with a rate of ₹236/- per tonne for Import cargo and Export cargo. The TMILL has not furnished detailed working with cost elements for arriving at the proposed rate. Since the action taken by TMILL is in the right direction of phasing out the advalorem rate, in line with the tariff guideline position, the proposed rate of ₹236/- per tonne is approved. However, the TMILL is advised to furnish the details of the cargo items actually handled under this category of the Wharfage Schedule, during the next review of tariff of TMILL, so as to enable to check the reasonableness of the levy of ₹236/- per MT approved.
- (xxxiv).The TMILL has proposed to modify the existing definition of 'Month' so as to define month as 31 consecutive calendar days also, as against the existing 30 consecutive calendar days. The Scale of Rates of Licensor Port KOPT as well as the Scale of rates of the other private terminal operating at KOPT define 'Month' as 30 consecutive days. Prescription of a different definition at TMILL alone may lead to confusion among the user groups. The TMILL has not explained any difficulties faced by it, if the existing definition continues. The existing definition may, therefore, continue.
- (xxxv).The existing arrangement defines 'On-board Supervision' as certain services, both on-board and on-shore services rendered by TMILL during ship to shore/ shore to ship transfer operation of cargo. It has proposed to modify the existing definition to mean that the on-board supervision will be those services which are not included within the purview of the tariff item of 'On-board handling charges' or 'Loading/ Unloading charges' or 'Miscellaneous Charges' and are ancillary in nature.

The separate existing Schedule prescribing the rates for 'On-board Supervision' lists out the various services included under the levy of 'On-board Supervision'. As rightly pointed out by KOPT, prescription of a definition for 'On-board Supervision' and a separate list of services elsewhere in the Scale of Rates, may lead to confusion. The TMILL has not explained whether the proposed modification to the existing definition of 'On-board Supervision' will be in harmony with the existing services listed under the Schedule of 'On-board Supervision'. The existing definition for On-board Supervision may continue without any change.

- (xxxvi).As per the definition contained in existing Scale of Rates of TMILL, 'Transshipment' shall mean transfer of cargo/ container from a sea going vessel/ barge to another sea going vessel/ barge for destination to other Port/ Ports. It also includes any cargo unloaded from a vessel for some operational reason and subsequently loaded in the same vessel. The KOPT has stated that as per the common shipping practice, 'Transshipment' should not include a cargo unloaded from a vessel for some operational reason and subsequently loaded in the same vessel. The definition for 'Transshipment' as contained in the Scale of Rates of other major ports like Cochin Port Trust (COPT), Mumbai Port Trust (MBPT), Paradip Port Trust (PPT) and KOPT, do not include the operation of unloading the cargo from a vessel for some operational reason and subsequently loading in the same vessel. The existing definition is suitably modified in line with the prescription made in the Scale of Rates of other major ports.
- (xxxvii).In line with clause 2.18.2 of the tariff guidelines, the note 3(vii)(b) has been modified to reflect the prevailing Prime Lending Rate of State Bank of India at 12.75 %.
- (xxxviii).The TMILL has introduced a note to the effect that all rates prescribed in the Scale of Rates are ceiling rates; likewise the rebates and discounts are at floor levels. The note further gives liberty to TMILL to charge lower rates and/ or allow higher rebates and discounts, if it so desires. This prescription is in line with Clause 2.16.1 of tariff guidelines of 2005 and hence is approved. However, the revenue impact of the rebates/ discounts, if any, allowed by the TMILL at its discretion, will not be recognized in the next tariff review.
- (xxxix).A new note has been prescribed stating that TMILL does not handle thermal coal in bulk, coking coal in bulk, various types of coke and other black cargo in bulk and various types of liquid bulk cargo handled through pipelines, at berth no. 12. The proposed note is in line with the provisions of the Licence Agreement and hence is approved.

- (xL). All the Sections contained in the proposed Scale of Rates of TMILL contain two common notes.

One being that the prescribed rate is applicable for a 20' container. For container above 20' upto 40', the rate would be 150% of the prescribed rate. For container above 40', 200% of the prescribed rate would be levied.

The next note is that incase of coastal cargo/ containers, other than iron ore and iron ore pellets, 60% of the rates specified shall be applicable.

Instead of prescribing the said notes under every Section, they are prescribed as general notes under Section – 3 'General Principles of Assessment'.

- (xLi). The TMILL has re-grouped/ re-classified its Wharfage Schedule and On-board charges Schedule reportedly based on the general revision proposal of KOPT, on the ground that TMILL also operates within the same dock. Any effort to simplify and rationalize the Scale of Rates is to be appreciated. However, the rationalization as proposed by KOPT in the Wharfage Schedule and On-board handling charges Schedule of its Scale of Rates was not approved by this Authority since the effect of rationalization should not result in any unintended tariff burden on certain segments, as reasoned in the relevant Order. The TMILL has not quantified the financial impact on account of the proposed rationalisation in the Wharfage schedule and Schedule relating to On-board handling charges. As such, this Authority may not be in a position to approve the rationalization, as proposed by TMILL. The existing Wharfage Schedule structure and Schedule relating to On-board handling charges may continue unaltered.

However, the TMILL is advised to come up with a separate proposal for rationalizing its Wharfage Schedule and Schedule relating to On-board handling charges alongwith revenue impact analysis on different commodities. The TMILL may undertake this exercise in such a manner to maintain revenue neutral position.

- (xLii). In line with the observation made by this Authority in the Order of October 2007 to TMILL to review and revise the list of services rendered under on-board supervision by excluding the service of water sprinkling at berth and cleaning of berth from on-board supervision service and consider these tariff items in appropriate tariff item with adjustment in rates, the TMILL in its current proposal has de-linked the charges for cleaning of jetty, water sprinkling and hatch/ deck cleaning charges from the scope of On-board supervision and included it as a separate entry under Miscellaneous charges. The TMILL has furnished documentary evidence which shows that the rate for providing On-board supervision in respect of

Limestone is ₹18.50 per MT. From the clarification of TMILL, it is seen that the rate for on-board supervision of limestone concluded with the private party includes a rate of ₹4/- per MT for cleaning and water sprinkling. Therefore, the rate of ₹4/- per MT is prescribed as a separate entry under miscellaneous charges in the Scale of rates of TMILL, with a corresponding adjustment in the existing unit rate prescribed for the relevant cargo item under the Schedule of 'On-board supervision charges', subject to the general reduction in this rate.

- (xLiii). In line with the observation made by this Authority in the Order of October 2007 to TMILL to review and reclassify the tariff item "Loading/ Unloading/ Restacking" in connection with use of hoppers for unloading and loading of dumpers using hoppers and propose suitable modifications in its proposed draft Scale of Rates, the TMILL in its current proposal has excluded the use of dumpers from the scope of "Loading/ Unloading/ Restacking" and included it under Miscellaneous charges and proposed a separate new rate for the said activity. Since the said activity is segregated from the existing service of Loading/ Unloading, it appears that the existing unit rates for the tariff items listed under the Section of Loading/ Unloading may require suitable adjustment. However, the existing unit rates prescribed for loading/ unloading/ restacking of various cargo items have not been adjusted to maintain a revenue neutral position. The existing arrangement may therefore continue and the TMILL is advised to review and reclassify the tariff item "Loading/ Unloading/ Restacking" in connection with use of hoppers for unloading and loading of dumpers using hoppers and propose suitable modifications in the unit rates maintaining revenue neutral position, in the next review of its tariff.
- (xLiv). The existing Scale of Rates prescribes rate for 'Project cargo and machinery and spares including their packages weighing less than 20 tonnes' at ₹37.17 per MT, under the Section relating to 'Transportation'. The TMILL has introduced a new tariff item for the packages weighing greater than 20 tonnes and upto 35 tonnes' at ₹150/- per MT and the higher rate proposed is on the ground that project cargo weighing above 20 tonnes would require special type of trailers and hence cost for handling such project cargo would be more than the cost of handling project cargo less than 20 tonnes. The TMILL has not justified the statement made by it with necessary workings and the revenue implication arising therefrom. Further, the TMILL has neither proposed procurement of special type trailers nor proposed to take on hire the said trailers to handle project cargo weighing above 20 tonnes. Hence, this Authority is not in a position to approve the new tariff item.
- (xLv). The TMILL has proposed wharfage rate of ₹118/- per MT or part thereof for levy on cargo which is landed from a vessel for a subsequent transshipment by the same vessel due to some operational reasons. Likewise, the TMILL has proposed to introduce

a rate of ₹177/- per MT as On-board charges to cover cargo not falling under any of the category as mentioned in the 'On-board Charge Schedule'. Similarly, the TMILL has proposed to introduce a rate of ₹177/- per MT as On-board supervision charges to cover cargo not falling under any of the category as mentioned in the 'On-board Supervision Schedule'.

Further, while TMILL has sought an increase of 15% in respect of other tariff items in the Schedule relating to 'Loading/ Unloading/ Restacking', it has sought an increase of 20% in respect of Iron Ore. It has also proposed to introduce a new note under the Section 'Loading/ Unloading/ Restacking' to the effect that wherever only labour support is provided by TMILL only and no equipment support is provided, consolidated rate of ₹30/- per MT will be applicable irrespective of any number of activities performed within the TMILL berth.

Under the Section 'Miscellaneous Services', the TMILL has proposed a rate of ₹6600/- per MT for Equipment assistance charge for IT-12 Caterpillar and the rate of ₹17600/- per shift for Equipment assistance charge for Forklifts of above 20 MT capacity. The TMILL has also proposed rate of ₹5/- per MT and ₹10/- per MT for on-board equipment operation for all dry bulk cargo and other cargo like tubes/ pipes etc.

In all the above cases, the proposals of TMILL are not justified with cost details. TMILL has also not furnished the financial implications arising from the proposed new tariff items. With respect to the equipment assistance charges proposed by TMILL, they are not supported either by the documentary evidence to reflect the market rate or by the prescribed cost statement for fixation of tariff for usage of equipments. It is notable that the income estimations considered for the years 2010-11 to 2012-13 in the Cost statement do not capture the income from the above mentioned new tariff items. The Authority, is therefore, not in a position to approve the proposal of TMILL in this regard.

(xLvi). The TMILL has also introduced a new note under this Section which states that wherever high heaping at plot is needed at the time of receipt of export iron ore/ iron ore pellets, the same is included in one time stacking charges. However, if after receipt and stacking of cargo, high heaping is done, then additional restacking charges shall be levied. Since the higher rate for iron ore is not approved as explained in the preceding paragraph, it is not relevant to prescribe the said note in the Scale of Rates of TMILL.

(xLvii). It may be recollected that this Authority vide its Order dated 16 June 2010 has approved insertion of some conditionalities governing short term allotment of storage areas, in the Scale of Rates of TMILL. The TMILL, in its revised proposal of September 2010 has

not included the said conditionalities in its proposed draft Scale of rates. The conditionalities approved by this Authority vide its Order dated 16 June 2010 are included in the revised Scale of Rates approved by this Authority.

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

- (a). ratifies the levy of charge of ₹125000/- per shift from the date of commencement of operations of HMC at TMILL till the effective date of implementation of the revised Scale of Rates notified by this Authority, and
- (b). approves the revised Scale of Rates of the TMILL which is attached **Annex-IV**.

15.2. The revised Scale of Rates and conditionalities of the TMILL will come into effect after expiry of 30 days from the date of notification in the Gazette of India and shall be in force till 31 March 2013. The approval accorded to the Scale of Rates will automatically lapse thereafter unless specifically extended by this Authority.

15.3. The tariff of the TMILL has been fixed relying on the information furnished by the TMILL and based on assumptions made as explained in the analysis. If this Authority, at any time, during the prescribed tariff validity period, finds that the actual position varies substantially from the estimations considered or there is deviation from the assumptions accepted herein, this Authority will require the TMILL to file a proposal ahead of the schedule to review its tariff and to set off the advantage accrued on account of such variations in the revised tariff, as per Clause 2.13 of tariff guidelines of 2005.

15.4. The validity of the existing Scale of Rates of the TMILL is deemed to have been extended beyond 30 September 2010 till the effective date of implementation of the revised Scale of Rates, in terms of the earlier extension Order.

15.5. The TMILL is required to furnish to this Authority its Segregated annual accounts and performance report within 60 days of closing of the respective accounting year, through KOPT. If TMILL fails to provide such information within the stipulated time period, the KOPT may initiate appropriate action against TMILL. In the event, this Authority may proceed suo motu to review the tariff of TMILL. This apart, analysis of variation will also be made at the time of the next general review at the end of the usual tariff validity period and adjustment of additional surplus will be made in the tariff to be fixed for the next cycle.

(Rani Jadhav)
Chairperson

WORKING FOR ARRIVING AT THE PER TONNE RATE FOR USE OF HMC AT TMILL.

Cost of HMC as on June 2004 (given by TMILL)	(Amount in Rs.) 138700000
Operating cost	
Fuel cost (70 ltrs per hour * Rs. 42.2 per litre * 1642 hours)	4850468
Repairs (5% of Rs.1387 lakhs)	6935000
Insurance (1% of Rs.1387 lakhs)	1387000
Depreciation (Co.'s Act, 10.34% of Rs.1387 lakhs)	14341580
Rental (As in NMPT for 150 sq.m of open land @ Rs.58.36 per sq.m per month)	0
Other Expenses (5% of Rs.1387 lakhs)	<u>6935000</u>
	34449048
Return on Capital Employed (16%)	22192000
Operating cost plus Return	56641048
Estimated traffic propsoed to be handled by HMC	1221956
Rate per tonne	46.35

Annex - I

WORKING FOR ARRIVING AT THE PER TONNE RATE FOR USE OF HMC AT TMILL.

(Amount in Rs.)

Particulars	As per TMILL		As per TAMP	
Capital cost of HMC		1.39E+08		1.39E+08
Estimated traffic propsoed to be handled by HMC		625000	As per revised traffic estimates considered for the years 2011-12 anfrd 2012-13	1221956
Operating cost				
Fuel cost	75000 litres @ 41.67 per litre	3125250	70 litres per hour @ Rs.42.20 per litre for 1642 hours	4850468
Repairs		2525000	As given by TMILL	2525000
Insurance		2100000	1% of cost of HMC @ Rs.1387 lakhs	1387000
Depreciation		6600000	As given by TMILL	6600000
Other Expenses	Salary for 4 employees @ Rs.2 lakhs per annum)	800000	As given by TMILL	800000
Total		15150250		16162468
Return on Capital Employed @16%	138700000*16%	22192000	82600000*16%	13216000
Operating cost plus Return		37342250		29378468
No. of shifts considered by TMILL		300		-
Proposed rate per shift (rounded off)		125000		-
Rate per tonne (Total cost plus Return / Traffic)		-		24.04

Gross value of HMC		1.39E+08							
	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Value of HMC at the beginning of the year	138700000	#####	125500000	#####	112300000	#####	99100000	92500000	859000000
Depreciation	6600000	6600000	6600000	6600000	6600000	6600000	6600000	6600000	6600000
Written down value at the end of the year	132100000	#####	118900000	#####	105700000	99100000	92500000	85900000	793000000
Average written down value		#####							
Thus, Average Capital Employed for the purpose of allowing Return								82600000	

TM International Logistics Limited (TMILL)
Consolidated Income & Cost statement.

(Rs. In Lakhs)

Sr. No.	Particulars	Actuals			Estimates at existing level of tariff as given by TMILL			Estimates at existing level of tariff as moderated by us.		
		2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2010-11	2011-12	2012-13
	Traffic (In MTs)	941838	924992	1209077	941887	951500	951500	1251502	1251502	1251502
I	Total Operating Income									
	Cargo handling income	2503.29	2101.57	2709.58	2001.58	2124.53	2361.28	2594.23	2598.12	2600.31
	Others	281.00	499.00	831.31	527.67	482.69	471.82	799.12	462.00	462.00
	Total	2784.29	2600.57	3540.89	2529.25	2607.22	2833.10	3393.35	3060.11	3062.31
II	Operating Costs (excluding depreciation)									
	Operating & Direct Labour	393.22	368.32	502.40	541.78	588.37	638.97	536.78	556.96	577.91
	Maintenance Labour	13.62	12.98	13.18	15.76	17.12	18.59	15.76	16.35	16.97
	Equipment Running Costs	105.01	147.94	193.93	172.61	182.48	188.04	251.13	260.30	269.82
	Royalty / revenue share	150.57	147.51	216.76	144.05	152.66	175.69	156.71	210.60	211.18
	Equipment Hire	0.85	11.01	43.38	3.60	6.12	12.11	3.79	3.79	3.93
	Lease Rentals	206.89	214.63	184.40	229.38	238.01	247.06	207.96	247.07	259.42
	Insurance	39.09	29.25	38.82	42.73	45.13	45.13	38.82	40.03	45.03
	Other expenses	245.16	258.08	313.00	305.35	413.75	559.81	409.30	428.91	460.30
	Total	1154.41	1189.72	1505.87	1455.26	1643.63	1885.41	1620.24	1764.02	1844.56
III	Depreciation	151.52	174.53	209.87	235.07	236.50	236.50	209.87	214.39	223.39
IV	Overheads									
	Management & Administration overheads	236.66	254.33	386.80	420.06	456.19	495.42	401.34	416.43	432.09
	General Overheads	16.48	13.66	13.46	14.62	15.87	17.24	13.97	14.49	15.04
	Total	253.14	267.99	400.26	434.68	472.06	512.66	415.31	430.92	447.13
V	Operating Surplus / (Deficit) (I) – (II) – (III) – (IV)	1225.22	968.33	1424.89	404.24	255.02	198.53	1147.93	650.77	547.23
VI	Finance & Miscellaneous Income (FMI)									
	Discounted terminal value receivable as per the concession agreement.	0.38	0.43	0.49	0.55	0.62	0.70	0.55	0.62	0.70
	Prior Period Income	0.00	15.00	8.39	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.38	15.43	8.88	0.55	0.62	0.70	0.55	0.62	0.70
VII	Finance & Miscellaneous Expenses (FME)									
	Contribution to Provident Fund	3.92	4.45	6.85	7.22	7.61	8.02	7.11	7.37	7.65
	Total	3.92	4.45	6.85	7.22	7.61	8.02	7.11	7.37	7.65
VIII	FMI Less FME (VI) – (VII)	(3.54)	10.98	2.03	(6.67)	(6.99)	(7.33)	(6.56)	(6.76)	(6.96)
IX	Surplus Before Interest and Tax (V) + (VIII)	1221.68	979.31	1426.91	397.57	248.03	191.21	1141.37	644.01	540.28
X	Capital Employed	2884.99	3823.50	3946.30	4467.61	4467.18	4251.31	3736.43	3643.38	3919.99
XI	Return on Capital Employed	461.60	611.76	631.41	714.82	714.75	680.21	597.83	582.94	627.20
XII	Net Surplus / (Deficit) after allowable ROCE (IX - XI)	760.08	367.55	795.51	(317.25)	(466.72)	(488.99)	543.54	61.07	(86.91)
XIII	50% of the past surplus set off over a period of five years.	771.55			0.00	0.00	0.00	0.00	154.31	154.31
XIV	Total Surplus				-317.25	-466.72	-488.99	543.54	215.38	67.40
XV	Net Surplus / (Deficit) as a % of operating income (XIV/II in %)				-12.54%	-17.90%	-17.26%	16.02%	7.04%	2.20%
XVI	Average Net Surplus/ (Deficit) as a % of operating income				-15.90%			8.42%		

Annex - III

COST STATEMENT EXCLUDING HARBOUR MOBILE CRANE

NO.	PARTICULARS	2011-12	2012-13	Total
I	Operating Income as in the Cost statement	3060.11	3062.31	
	Less: Income from HMC	-245.31	-245.31	
	Residual Estimated Operating Income	2814.80	2817.00	5631.79
II	Operating Cost as in Cost statement	1764.02	1844.56	
	Less: Expenses relating to HMC	-95.62	-99.22	
	Residual Estimated Operating Expenses	1668.40	1745.34	3413.73
III	Depreciation as in Cost statement	214.39	223.39	
	Less: Depreciation relating to HMC	-66.00	-66.00	
	Residual Depreciation	148.39	157.39	305.79
IV	Capital Employed as in Cost statement	3643.38	3919.99	
	Less: WDV of HMC	-859.00	-793.00	
	Residual Capital Employed	2784.38	3126.99	5911.37
V	Return on Capital Employed as in Cost statement	582.94	627.20	
	Less: Return on HMC	-137.44	-126.88	
	Residual Return on Capital Employed	445.50	500.32	945.82
VI	Residual Surplus after Return (I - II - III - V)			966.45
VII	Surplus after Return for the year 2010-11 as in Cost statement			543.54
VIII	Total Surplus for the years 2010-11 to 2012-13			1509.99
IX	Adjustment of 2 instalments of past surplus			308.62
X	Total Surplus			1818.61
XI	Total Surplus as a percentage of Residual Operating Income (X / I)			32.29%

**T M International Logistics Limited
Scale of Rates for operations at Berth No.12 of Haldia Dock Complex**

1 Short title of Commencement

The Scale of Rates set out herein shall be called SCALE OF RATES of the T M International Logistics Limited (TMILL), Berth No. 12, Haldia Dock Complex of the Kolkata Port Trust.

2. Definition

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

- (i). 'T M International Logistics Limited' shall mean the company registered under Companies Act, 1956 having its registered office at 43, Chowringhee Road, Kolkata – 71.
- (ii). TMILL premises shall mean the area licensed to TMILL including the back up area allotted under the License agreement.
- (iii). 'Day' shall mean the period starting from 6 am of a day and ending at 6 am on the following day.
- (iv). 'Demurrage' shall mean charges payable for storage of cargo within TMILL premises beyond free period as specified in this Scale of Rates and shall not include the cargo stored at the area allotted to a port user on licence basis for storage of cargo during the licence period.
- (v). 'Hazardous I' shall mean the cargo categorized as Hazardous-I in the list of Hazardous Cargo adopted by the Kolkata Port Trust from time to time.
- (vi). 'Month' shall mean 30 consecutive calendar days including holidays unless otherwise specified.
- (vii). 'On Board handling Charges' shall mean charges on Cargo/ Commodity/ Article/ Package/ Container for rendering on board services by the TMILL in the form of supply of manpower for ship loading/ unloading operation.
- (viii). 'On-board supervision' shall mean certain services, both on-board and on-shore, rendered by TMILL during ship to shore/shore to ship transfer operation of cargo for achieving greater productivity/efficiency in vessel-operation.
- (ix). 'Overside Discharge/ Shipment' shall mean the operation of unloading/ loading of cargo ex/into vessel without passing through the quay at the time of discharge/ shipment operation.
- (x). 'Shut out' cargo shall mean export cargo left in the TMILL premises having not been shipped on board the vessel for which it was received for shipment in TMILL premises.
- (xi). 'Stock Cargo' shall mean cargo received at the Port for shipment without export documents.
- (xii). 'TEU' shall mean Twenty Feet Equivalent Unit of container.
- (xiii). 'Transshipment' shall mean transfer of cargo/ container from a sea going vessel/ barge to another sea going vessel/barge for destination to other Port/ Ports.
- (xiv). 'Wharfage' shall mean the basic dues recoverable on all cargo/ container landed or shipped or transhipped within the TMILL premises.

3. General Principles of Assessment:

- (i). The minimum weight/ measurement chargeable shall be 1 tonne/1 CBM although the gross weight/measurement may be less than 1 tonne/1 CBM. In case where the charge is on weight basis and the gross weight is not an exact multiple of 100 Kgs, the same will be rounded off to the next higher multiple of 100 Kgs. Where the gross CBM includes decimals, the same should be rounded off to the next higher whole unit of CBM.
- (ii). Rates applicable for a period/ unit other than weight shall be applicable to the part of a period/ unit thereof.
- (iii). Unless otherwise specified, if TMILL equipment is booked for landing/ shipment of cargo/ container from/ into vessel or for any other purpose by the vessel, equipment hire charge as specified in Section 10.1 shall be levied.
- (iv). Cargo Related Charges shall be levied on the owners of the cargo or their Clearing and Forwarding Agents / Handling Agents except where specified otherwise, or in cases where Ship Owners/Steamer Agents agree to pay such charges.
- (v). Samples, Catalogues and other articles for which Shipping Companies charge no freight and on which no Customs duty is payable, diplomatic mail bags, crew baggage and all goods meant for TMILL's use at Berth no.12, HDC shall be exempted from payment of all cargo related charges.
- (vi). No demurrage shall be charged for the days during which delivery cannot be effected due to strike by the Kolkata Port Trust/ TMILL employees provided, the concerned Importer or his Authorized Agent files the complete delivery documents on payment of all charges prior to commencement of the strike.
- (vii). Interest on delayed payments / refunds:
 - (a). The user shall pay penal interest on delayed payments under this Scale of Rates. Likewise, the TMILL shall pay penal interest on delayed refunds.
 - (b). The rate of penal interest will be 14.75%. The penal interest rate will apply to both the TMILL and the port users equally.
 - (c). The delay in refunds will be counted only 20 days from the date 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 TMILL. This provision shall, however, not apply to the cases where payment is to be made before availing the services / use of TMILL Terminal facilities as stipulated in the Major Port Trust Act and / or where payment of charges in advance is prescribed as a condition in this Scale of Rates.
- (viii). Before classifying any cargo under "unspecified category" or otherwise, if required, to know the nature of cargo for levy of cargo handling charges, the relevant Customs classification shall be referred to in order to find out whether the cargo can be classified under any of the specified categories mentioned in the schedules.
- (ix). Users will not be required to pay charges for delays, beyond a reasonable level, attributable to TMILL.
- (x). (a). Wherever a specific tariff for a service/ cargo is not available in the notified Scale of Rates, the TMILL can submit a suitable proposal to the TAMP.

- (b). Simultaneously with the submission of proposal, the proposed rate can be levied on an ad hoc basis with due notice to Kolkata Port Trust about levy of such rate, till the rate is finally notified.
- (c). The ad hoc rate to be operated in the interim period must be derived based on existing notified tariffs for comparable services/ cargo; and, it must be mutually agreed upon by the TMILL and the concerned user(s).
- (d). The final rate fixed by the TAMP will ordinarily be effective only prospectively. The interim rate adopted in an ad hoc manner will be recognised as such unless it is found to be excessive requiring some moderation retrospectively.
- (xi). The rates prescribed in this Scale of Rates are ceiling level; likewise the rebates and discounts are floor levels. The TMILL may, if it so desires, change lower rates and/ or allow higher rebates and discounts.
- (xii). The TMILL does not handle the following cargoes at Berth no. 12:
 - (a). Thermal Coal in bulk.
 - (b). Coking Coal in bulk.
 - (a). Various types of coke and other black cargo in bulk.
 - (a). Various types of liquid bulk cargo handled through pipelines.
- (xiii). The rate prescribed for handling of containers is applicable for 20 ft. container. For container above 20 ft. and upto 40 ft. the rate would be 150% of the prescribed rate. For containers exceeding 40 ft. the rate would be 200% of the prescribed rate.
- (xiv). In case of coastal cargo/ containers, other than thermal coal, iron ore and iron ore pellets, 60% of the prescribed rates shall be applicable.

4. Wharfage Charges:

4.1 Wharfage on Foreign cargo shall be levied at the rates as mentioned in the table below:

Sl. No.	Particulars	Rate per MT (in ₹)
1	Iron Ore & Sand	14.38
2	Limestone, Pig Iron and other Ferrous metals and all types of ore except iron ore.	28.76
3	Finished Fertilizer, Soda, Sulphur, C.I. Goods, Cement, all types of bag cargo and other dry bulk not specified.	50.33
4	Tubes and pipes, Iron and Steel, Newsprint.	43.14
5	Project cargo and machinery & spares (Immobile units)	50.34
6	Containers	1581.98 per TEU
7	Car, any rubber tyre vehicle, earth moving equipment	2876.32 per unit
8	Logs/ Timber/ Veneer	75.50 per CBM
9	All other Cargo not specified above, except those specified at Section 3(xii).	236.00

- 4.2 On cargo discharged/ shipped overside, charges shall be levied 70% of the above mentioned rates.
- 4.3. For transshipment of cargo or shifting of cargo on board, charges shall be recovered at 1.5 times the rates specified in 4.1 above.

- 4.4. On shutout/ stock cargo, which is taken back from TMILL premises, 50% of wharfage shall be levied. In addition, on-board handling charges & shore handling charges, as may be applicable, shall be levied if labour and/or equipment are/ is supplied by TMILL for handling of cargo.

No additional wharfage shall be levied on shutout cargo if the same is subsequently shipped without being removed from port premises.

5. On-Board Charges:

5.1 On-Board Charges shall be levied on Foreign cargo at the rates as mentioned in the table below:

Sl. No.	Particulars	Rate per MT (in ₹)
1	Limestone, Pig Iron and other Ferrous metals and all types of ore.	21.57
2	Finished Fertilizer, Soda, Sulphur, C.I. Goods, Cement, all types of bag cargo and other dry bulk not specified.ore.	21.57
3	Tubes and pipes, Logs, Iron and Steel, Newsprint.	57.53
4	Project cargo and machinery & spares (Immobile units)	28.76
5	Containers (TEU)	197.75 per TEU
6	Car, any rubber tyre vehicle, earth moving equipment	35.95 per unit

- 5.2 On cargo discharged / shipped overside, charges shall be levied 70% of the abovementioned rates.

- 5.3. For transhipment of cargo or shifting of cargo on board, charges shall be recovered at 1.5 times the rates specified in 5.1 above.

6. On-board supervision:

6.1 On-board supervision charges shall be levied for the following services provided by TMILL at berth no. 12 terminal in respect of import/ export cargo at the rates specified below:

- Unlashing of import cargo.
- Lashing, securing and dunnaging of export cargo.
- Providing slings and gears for the cargo handling operation.
- Tally survey of cargo during discharge.
- Survey of cargo quality discharged/ shipped.
- Placement and removal of dunnages at jetty during discharge.
- Heaping of cargo at hook point.
- Supervising/ monitoring/ directing the entire cargo handling work during vessel operation including queuing of trailers/ dumper from plot to jetty and vice versa in order to achieve better discharge/ loading thereby reducing the turnaround of the vessel.

Sl. No.	Particulars	Rate per MT (in ₹)
1	Limestone, Pig Iron and other Ferrous metals, all types of ore and other dry bulk cargo	10.47
2	Tubes and pipes, Logs, Iron and Steel, Newsprint discharged from the ship.	64.72
3	Tubes and pipes, Logs, Iron and Steel, Newsprint shipped into ship.	103.86
4	Project cargo and machinery & spares (Immobile units)	119.85
5	Containers	199.75 per TEU
6	Car, any rubber tyre vehicle, earth moving equipment	2396.93 per unit

7. Loading/Unloading/Re-Stacking:

7.1 Following charges for supply of manpower and equipment for loading/ un-loading/ re-stacking of Foreign cargo shall be levied at the rates specified in the table below:

Sl. No.	Particulars	Rate per MT (in Rs.)
1	Limestone, Pig Iron and other Ferrous metals and all types of ore.	14.38
2	Soda, Sulphur, C.I. Goods, Cement, all types of bag cargo and other dry bulk not specified.	31.96
3	Tubes and pipes, Logs, Iron and Steel, Newsprint.	35.96
4	Project cargo and machinery & spares including their packages weighing less than 20 tonnes.	35.96
5	Containers	129.43 per TEU

Note: For removal of doubts it is hereby clarified that where equipment support is provided and charges are levied under clause 10 – ‘Miscellaneous charges’ then no separate levy will be made under this section.

7.2 Where a cargo is unloaded and stacked simultaneously at the place of unloading, then it would amount to one operation only.

7.3 Where hoppers are used for the unloading of cargo from the vessel and dumpers are loaded using the hopper then it would constitute one operation of loading activity.

8. Transportation

8.1 The following charges shall be levied on cargo, for which TMILL Terminal undertakes any transportation within the port limits.

Sl. No.	Particulars	Rate per MT (in ₹)
1	Limestone, Pig Iron and other Ferrous metals and all types of ore.	25.16
2	Soda, Sulphur, C.I. Goods, Cement, all types of bag cargo and other dry bulk not specified.	25.16
3	Tubes and pipes, Logs, Iron and Steel, Newsprint weighing less than 20 tonnes.	25.16
4	Project cargo and machinery & spares including their packages weighing less than 20 tonnes.	25.16
5	Containers (TEU)	215.72 per TEU

9. DEMURRAGE

9.1 Demurrage shall be levied on Import cargo (other than containerised cargo) after allowing a demurrage-free period as specified below: -

Sl. No.	Description	Demurrage-free period
1.	Hazardous-I cargo	Actual date of landing
2.	All other cargo except those mentioned at Sl. No. 1,3 & 4	3 days after the last landing date of the vessel by which the cargo is imported.
3.	Non-hazardous cargo using port equipment for delivery, non-hazardous cargo for Nepal and Bhutan, Log, Timber and Veneer.	6 days after the last landing date of the vessel by which the cargo is imported.

4.	Cargo imported by voluntary/relief organization like Missionaries of Charity, Bharat Sevashram Sangha, Ramkrishna Mission, CARE, CRS, WFP and others as may be accepted by Kolkata Port Trust from time to time on the basis of certification by the Appropriate Govt. Authority of Central Govt./State Govt. and Govt. of Nepal/ Bhutan or their local Consulate General.	30 days after the last landing date of the vessel by which the cargo is imported.
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Note Last Landing Date (LLD) is the date on which a vessel completes her import discharge. However, TMILL

i) may declare any other date as such LLD for cargo already discharged from the vessel when the vessel is not doing cargo operation work in working berth for more than 24 hours for any fault/ reason not attributable to TMILL. In such cases, a vessel may have more than one LLD.

ii) For the purpose of calculation of free time, Customs notified holidays and the KoPT/ TMILL's non-operational days shall be excluded. Sundays shall not be excluded for the purpose of calculation of free time unless Customs notified holidays and the KOPT/ TMILL's non-operational days fall on Sundays.

After demurrage charge begins to accrue no allowance is made for Customs notified holidays or KOPT/ TMILL's non-operational days.

9.2 Demurrage on Import cargo (except log, timber, veneer) shall be levied after the expiry of demurrage free period at the following rates: -

Sl. No.	Type of cargo	Rate in Rupees per tonne per day or part thereof.	
		For the first 15 days.	16 th day onwards
1.	Hazardous – I	103.60 per tonne	121.88 per tonne
2	All other cargo	24.38 per tonne	36.56 per tonne

9.3 Demurrage on Import log, timber, veneer shall be levied after the expiry of demurrage free period at the following rates: -

Sl. No	Type of cargo	Rate in Rupees per CBM per day or part thereof.		
		For the first 7 days.	8 th to 14 th day	From 15 th day onwards
1.	Log, Timber, Veneer	3.66	7.31	10.96

9.4 No demurrage shall be levied on export/stock cargo, except Hazardous-I category, if such cargo is shipped within 30 days from the date of receipt. However, after the 31st day, demurrage on such cargo shall be levied @ ₹24.38 per tonne per week or part thereof from the date of receipt till the date of shipment.

9.5 Export cargo of Hazardous-I category shall be received only for direct shipment. In case such cargo is not shipped on the date of receipt, demurrage shall be levied at rate of ₹103.60/- per tonne per day or part thereof from the day following the date of receipt upto the date of shipment or removal from port premises.

9.6 Demurrage shall be levied on shutout/stock cargo, other than Hazardous I cargo, @ ₹6.09 per tonne per day or part thereof from the date of receipt of cargo upto the date of removal of cargo from the port premises without being shipped. If shutout cargo is shipped by any subsequent vessel provision of clause.9.4 shall apply.

9.7 On cargo/commodity which is received neither as import nor as export nor as stock for shipment, demurrage shall be levied @ ₹24.38 per tonne per day or part thereof from the date of receipt upto the date of removal of the cargo from the port premises.

- 9.8 On uncleared /Customs confiscated cargo sold by auction or tender or private agreement or in any other manner demurrage shall be levied at the rates specified at clause 9.2 or 9.3, as the case may be, after allowing free time of 10 days after the date the cargo is made available for delivery.
- 9.9 The demurrage on cargo shall not accrue for the period during which the TMILL is not in a position to deliver cargo for reasons attributable to the TMILL when requested by the user.

10. Storage and Miscellaneous Services:

10.1 Charges shall be levied for the following services/facility as per table below –

Sl.No	Particulars	Rate (in ₹)
1	Despatch related services for opening, cleaning and closing of wagons	4.79 per MT
2	Lease rentals for short term allotment of Hard stand land	32.43 per sq.mtr per month
3	Lease rentals for short term allotment of Hard stand Covered shed	51.13 per sq.mtr per month
4	Lease rentals for short term allotment of bare land	20.85 per sq.mtr per month
5	Charges for supply of unskilled labour	101.57 per manshift
6	Equipment hire charges for Front end loaders of Bucket capacity exceeding 3.5 CBM	8125.20 per shift
7	Equipment hire charges for Front end loaders of Bucket capacity not exceeding 3.5 CBM	4062.60 per shift
8	Equipment hire charges for Forklift of capacity below 10 MT	1692.75 per shift
9	Equipment hire charges for Forklift of capacity between 10 MT and 20 MT	8125.20per shift
10	Placement and Removal of dunnages at plot for steel cargo wherever customer demands	7.99 per MT
11	Clearing and Forwarding	3.60 per MT
12	High heaping of bulk cargo at plot	16.41 per MT
13	Equipment assistance charges for Harbour Mobile Crane of 104 MT	24.00 per MT
14	Cleaning of Jetty/ deck and water sprinkling for bulk cargo handling wherever necessary for bulk cargo handling.	4.00 per MT

10.2 Equipment hire charges shall be levied at 50% of the specified rates wherever the deployment of equipment is less than or equal to 4 hours in any shift.

10.3 The licensing of open/ covered space by TMILL within its allotted area for a period of up to (11) eleven months on monthly rent basis for storage of import/ export cargo may be done without recourse to a tender procedure. The following conditions shall be followed in such cases:

- (i). The period of license shall not exceed (11) eleven months.
- (ii). The space allotted shall not be subletted/ assigned/ transferred/ shared by the allottees.
- (iii). Encroachment or unauthorized occupation of land and Railway Tracks etc. by the licensee will involve a liability to pay a penalty at the rate of ten times the scheduled license fee in addition to the cost of rectification of damages caused to the TMILL's properties. If the licensee fails to remove the cargo from the encroached area in spite of notice to do so, the cargo will be removed elsewhere within TMILL's allotted area by TMILL at the risk and cost of the licensee and penal license fee at the rate of ten times the normal rate will be levied on the space occupied by the cargo so removed.

- (iv). Cargo stored under a license shall be at the entire risk and responsibility of the licensee. The licensee shall post his own watchman to safeguard the cargo stored at the allotted space and to prevent any unauthorized occupation of such space by others.
- (v). The licensee shall not construct or put up any building, erection or convenience on space occupied under license.
- (vi). In case the licensee fails to hand over the space in vacant possession on the date of expiry of the license, TMILL shall levy normal demurrage charges as per TMILL's Scale of Rates as applicable from time to time for the period the cargo remains in TMILL's premises beyond the period for which the license was granted.
- (vii). The licensee shall agree to comply with all rules and directions issued by TMILL from time to time. If the licensee neglects to comply with such rules or directions, TMILL may terminate the license.
- (viii). The license is terminable on 15 days' notice on either side. No claim for any compensation whatsoever for revocation of the license will be entertained.
- (ix). The licensee shall agree that all payments and expenses of whatever sort due to TMILL in respect of the license be recovered at the rates prescribed on TMILL's Scale of Rates from time to time.
- (x). The licensee shall comply with all instructions, rules or regulations that may from time to time be issued by KOPT, Municipal Authority, the Chief Controller of Explosives, Government of India or whosoever concerned in relation to storage of cargo.
- (xi). The license fee will be charged from the date of handing over possession of the land on the actual area to be found on demarcation.
- (xii). When the storage area is allotted on license basis for storage of import / export cargo, demurrage on cargo stored in the licensed premises shall not be levied again.
- (xiii). The licensee shall be required to utilize the allotted land for the purpose for which it is licensed. No change in purpose of utilization will be allowed without specific written permission from TMILL.
- (xiv). The licensee will not cause any damage to TMILL's properties. If, however, any damage is caused, the licensee shall be liable to make good the damages at his own cost and arrangement to the satisfaction of TMILL.
- (xv). The licensee shall have to make his own arrangements to keep the allotted land and its surroundings neat, clean and in proper sanitary condition.

11. Rebates/Refunds:

In case a vessel idles at berth no. 12 due to non-availability or breakdown of the port equipment or power failure at TMILL or for any other reasons attributable to TMILL, rebate equivalent to the berth hire charges accrued during the idling period of vessel shall be allowed.

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