

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)
TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 62

New Delhi,

21 February 2017

NOTIFICATION

In exercise of the powers conferred by Sections 48 & 50 of the Major Port Trusts Act, 1963, (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Kolkata Port Trust for Performance norm based Incentive/Penalty, Anchorage charges in respect of Dry Bulk Cargo handled at Haldia Dock Complex at Kolkata Port Trust, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/59/2016-KOPT

Kolkata Port Trust

QUORUM

Applicant

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

ORDER

(Passed on this 4th day of January 2017)

This case relates to the proposal received from Kolkata Port Trust (KOPT) for approving the Performance norm based Incentive / Penalty, Anchorage charges in respect of Dry Bulk Cargo handled at Haldia Dock Complex (HDC) at KOPT.

2.1. The Ministry of Shipping (MOS) under cover of its letter dated 16 June 2016 has forwarded the Berthing Policy for Dry Bulk Cargo for Major Ports, 2016 and have requested all the Major Port Trusts to take action.

2.2. Accordingly, the KOPT has filed its proposal for approving the Performance norm based Incentive / Penalty, Anchorage charges in respect of Dry Bulk Cargo handled at Haldia Dock Complex (HDC).

3.1. The main points made by KOPT in its proposal are summarised below:

- (i). For timely implementation of the Berthing Policy together with the associated Performance Norms, Penalty/ Incentive and levy of Anchorage charges in compliance of the guidelines and as per the direction given by MOS, the norms of Performance, Penalty/ Incentive and levy of Anchorage Charges applicable for Dry Bulk Cargo handling at HDC was calculated by KOPT after considering the infrastructure available in the port as well as the various limitation encountered by HDC (viz. tidal constraints, draft constraints, limited lock window etc.)
- (ii). The guidelines suggest for considering the actual stayal time of the vessel at the working berth vis-a vis the ideal stayal time of the vessel at the berth in terms of the performance norms fixed. In reality the vessels at HDC cannot sail out immediately after completion of work due to tidal constraints and cannot be shifted to waiting berths due to paucity of tugs. In view of the same, the actual working period vis-à-vis the stipulated working period (calculated based on the performance norms) has been considered for fixing the penalty/ incentive norms, instead of considering actual berth stay of vessels.
- (iii). While proposing the norms of penalty/ incentive, the port has considered the following:
 - (a). At HDC, Dry Bulk Cargo is primarily handled at HDC operated Berth No.2, 4, 4B, 8, 9 and 13, and the BOT Berth no. 4A and 12 operated by the concerned Licensees. Berth no. 4 is a fully mechanized berth backed up with conveyor systems for loading of Thermal Coal and Berth no. 2,4B and 8 cargo are handled exclusively by use of MHCs only in normal course. At Berth no. 13, MHC is expected to be installed by end of September 2016. At Berth no. 9, clean dry bulk cargo is handled in conventional method using ship's gears.
 - (b). For the MHC equipped berth there are provisions regarding penalty/ incentive payments in the contract for achieving lower/ higher productivity as compared to the Minimum Level of performance of 20000 MT per ship day. Therefore, no other penalty / incentive are proposed for such MHC

equipped Berth i.e. berth no. 2, 8, 4B and 13. For calculation of ship day productivity at MHC equipped berths the conditionality provided in the contract will be followed.

- (c). Since more than 80% of the dry bulk cargo handled at HDC (except BOT operated berths) is covered under the contractual obligation in respect of operation at Berth no. 2, 4B, 8 and 13, the proposed penalty/ incentive norms will be applicable for berth no. 9, where the dry bulk cargo is handled through ship's gears expecting that the proposed imposition of penalty/ payment of incentive will improve the performance at Berth No. 9.
- (iv). The anchorage point (Sandheads) being in open sea, unlimited number of vessels can anchor before getting call from the port to come for berthing. The vessel can be called depending on its arrival / calling seniority (as per KOPT guidelines), availability of tides/ drafts/ lock windows etc.
- (v). Therefore, at KOPT the vessel cannot be called at the port immediately after anchoring and thus the levy of the proposed anchorage charges in normal scenario cannot serve the interest of the port and the trade may not accept the same.
- (vi). The proposal has been sanctioned by the Board of Trustees of KOPT vide its resolution No. R/88/HDC/SH&CH/1/08/2016 dated 24.08.2016. (The copy of the Draft Board Note is enclosed by KOPT with its proposal.)
- (vii). Accordingly, the proposal of the KOPT seeks approval for the following:

“1. Performance norms for loading / unloading of various dry bulk cargo at HDC

1.1. Performance norms:-

- 1.1.1. For fixation of performance norms for unloading of dry bulk cargo in conventional methods using ships gears the average crane cycles per hour and average picking factor have been considered as 12 and 0.75 respectively as dry bulk cargo carrying vessels are always calling HDC with 35% to 40% of the full load quantity due to draft constraints.
- 1.1.2. In the above premises, the average ship day productivity of various dry bulk commodities handled through ship's cranes at Berth No-9 of HDC, considering four working cranes per vessel and 22.5 hours working time per day, will be as given below:

Sr. No.	Commodity	Average crane cycles per hour	No. of cranes per vessel	Grab size in CBM	Performance Norms	
					Ship-day productivity for the first year after the date of its introduction (in MT per vessel per Day)	Ship-day productivity beyond the first year after the date of its introduction (in MT per vessel per Day)
1	Coal	12	4	12	6225	8300
2	Met Coke	12	4	12	5850	7800
3	Limestone	12	4	12	10275	13700
4	Manganese Ore	12	4	10	7350	9800

5	Iron Ore	12	4	8	9750	13000
6	Fertilizer	12	4	12	6000	8000
7	Cement linker	12	4	12	10950	14600
8	Gypsum	12	4	12	10950	14600

Note:

- (i). The above ship-day productivity will be applicable on the basis of the average availability of four cranes per vessel. However, if the availability of the number of cranes gets reduced the productivity of the ship will also get proportionately reduced. Similarly, if the grab size is less than or more than 8/10/12 CBM then the productivity norms will be reduced / increased proportionally.
- (ii). Apart from the above commodities, if other types of dry cargo are handled then the performance norms will be calculated separately by port as per the approach adopted for the above said performance norms.

1.2. **Penalty/Incentive:-**

- 1.2.1 The stipulated time for a vessel's stay at berth will be calculated based on the stipulated performance norms as mentioned above.
- 1.2.2. For failure or success in achieving the stipulated time at berth, penalty / incentive will be applicable as per the provision given below:
 - (i). If the actual working period of the ship (time between berthing at the working berth till completion of vessel's operation) remains within 5% (higher or lower) of the stipulated time for that commodity, then no penalty / incentive will be levied / paid.
 - (ii). In case where actual working period of the ship (time between berthing at the working berth till completion of vessel's operation) exceeds 5% of the stipulated time for that commodity, penalty will be levied 2 times of the normal berth hire charges for additional hours taken to complete the ship's cargo operation.
 - (iii). In cases where actual working period of the ship (time between berthing at the working berth till completion of vessel's operation) is lower than the stipulated time by more than 5% of the same then incentive will be paid at the rate of berth hire charges for every additional hour saved.

Note to provisions regarding Penalty/ Incentive Norms:

- (i). For the purpose of calculation of time for computation of penalty / incentive, fraction of an hour will be considered as full hour.
- (ii). In computing actual performance achieved by each ship for the purpose of calculating penalty / incentive and stoppage of operation on account of port related or weather related issues will be discounted. Such exclusions are listed below:
 - (a). Breakdown / non-availability of port provided equipment at berth.

- (b). Weather related stoppage.
- (c). Shifting of ships between berth on account of port.
- (d). Time consumed for each draft surveys upto a maximum period of 30 minutes.
- (e). Time lost due to stoppage of work for any other reasons will be excluded for calculation of performance norms, only with the approval of the Chairman.

2. Levy of Anchorage/ penal charges at the reporting stations/ lighterage points:

- 2.1. Even after calling the vessel and allocation of pilots by port, the vessel refuses to call at the port or lighterage point due to the reasons attributable to the vessel/ exporter, then Anchorage charges will be levied by port at the following rates:

Idling Time	Applicable penal charges
For first 48 hours after calling the vessel	10% of the applicable Berth Hire charges as per SOR for the entire duration of waiting since the vessel was initially called
After 48 hours & upto 96 hours	25% of the applicable Berth Hire charges as per SOR for the entire duration of waiting since the vessel was initially called
After 96 hours till boarding of pilot	50% of the applicable Berth Hire charges as per SOR for the entire duration of waiting since the vessel was initially called

- 2.2. Idling period is to be considered from the time when the vessel is initially called till actual pilot boarding time.
- 2.3. In addition, penalty is also proposed to be imposed at the following rates for idling of vessels at Saugar and other lighterage points where the vessel(s) are scheduled to lighten their cargo for achieving Haldia draft.

Idling Time	Applicable penal charges
For first 48 hours	25% of the applicable Berth Hire Charges as per SOR for idling of vessels for every hour or part thereof.
More than 48 hours	50% of the applicable Berth Hire Charges as per SOR for idling of vessels for every hour or part thereof for the entire period.

- 2.4. The record pertaining to idle time will be maintained by Harbour Master (River), KOPT, since the related bills are raised from KDS end.
- 2.5. However, the port can exempt vessels from paying anchorage charges in exceptional circumstance and the same will require approval of the Chairman.
3. The performance and penalty/ incentive norms as specified above and levy of anchorage/ penal charge at the lighterage points as specified above will be effective from 1 October 2016."

3.2. The Board of Trustees of KOPT has approved the proposal on trial basis for a period of 6 months and review the same thereafter.

3.3. The KOPT has further stated that as per Ministry's letter, the ports were required to implement the norms with actual incentives and penalties, within the stipulated timeline viz. 20 August 2016, which is over. The Board has, therefore, approved to effect the said norms from 1 October 2016 after submission of proposal to this Authority. In view of the above, the KOPT has

requested to approve its proposal with effect from 1 October 2016, pending formal approval of this Authority on the proposal. The KOPT has also stated that the trade has already been notified in respect of performance as well as penalty / incentive norms and also Anchorage / Penal charges for idling at lighterage points.

4. In accordance with the consultative procedure prescribed, a copy of the KOPT proposal dated 19 September 2016 was forwarded to the concerned users/ user organisations vide our letters dated 30 September 2016 and 6 October 2016, seeking their comments.

5.1. As brought out earlier, the KOPT has requested to approve its proposal with effect from 1 October 2016, pending formal approval of this Authority on the proposal, on the ground that as per instruction given by the Ministry, the ports were required to implement the norms with actual incentives and penalties, within the stipulated timeline viz. 20 August 2016, which has been over.

5.2. In this connection, given that the KOPT had already notified the trade in respect of Performance as well as penalty/ incentive norms and also Anchorage/ penal charges for idling at lighterage points and since it may take some more time for the case to mature for the final disposal of this Authority, this Authority vide its Order dated 25 October 2016 has approved grant of adhoc approval to KOPT for introduction of performance and penalty/incentive norms as well as levy of anchorage/ penal charges as proposed by the port, subject to final approval of this Authority based on the consultation proceedings on the case in reference. This Authority has also directed the KOPT to refund the excess collection made by it till the effective date of implementation of the final Order without interest, if the interim arrangement adopted in an adhoc manner is found to be excessive. This Order has been notified in the Gazette of India on 15 November 2016 vid Gazette no. 406. A copy of the said Notification and Order has been communicated to KOPT and all the concerned users/ user organisations vide our letter dated 18 November 2016.

6.1. A joint hearing in this case in reference was held on 24 November 2016 at the KOPT premises in Kolkata. The KOPT has made a brief power point presentation of its proposal. At the joint hearing, the KOPT and the users/ user organisations have made their submissions.

6.2. Subsequent to the joint hearing, the KOPT vide its letter dated 25 November 2016 has addressed the points made by the Association of Shipping Interest in Calcutta (ASIC) during the joint hearing.

6.3. Further, the KOPT vide its letter dated 20 December 2016 has made the following submissions:

- (i). As proposed by KOPT, TAMP has granted adhoc approval for the following with effect from 1 October 2016:
 - (a). Performance norms for handling of various dry bulk cargo by ship's cranes at Berth no. 9 of HDC.
 - (b). Levy of penalty/ incentive related to non-achievement/ achievement of performance norms by ships.
 - (c). Levy of Anchorage/ penal charges at the reporting stations/ lighterage points.
- (ii). It was later assessed that due to paucity of barges, idling of ships at anchorage points is not in the control of the vessels.
- (iii). In the joint hearing held by TAMP on 24.11.2016, the trade bodies too raised objection against the levy of penal charges for idling of vessels at lighterage points.
- (iv). The matter was placed before the Board of Trustees meeting held on 30.11.2016 for approval for withdrawal of the levy of penal charges for idling of vessels at lighterage points as well as not to levy such penalty effective from 01.10.2016. The Board has approved the proposal. [The copy of the extract of the draft resolution of the Board is furnished by KOPT.]

- (v). Accordingly, TAMP is requested to pass an Order approving KOPT's instant proposal for withdrawing the levy of penal charges for idling of vessels at lighterage points. However, the other proposals, as approved by TAMP, will remain unchanged and the same has been implemented from 01.10.2016.
7. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>.
8. With reference to the totality of the information collected during the processing of the case, the following position emerges:
- (i). The MOS in June 2016 has issued the Berthing Policy for Dry Bulk Cargo for Major Ports, and has directed all the Major Port Trusts to implement the norms with actual incentives and penalties. The policy lays down standardized guidelines for all major ports to compute performance norms for different dry bulk commodities, taking into account the infrastructure available at ports. The Policy also recommends penalties and incentive structures to be instituted by all major ports based on the performance norms calculated. The Policy requires all major ports to adapt these guidelines for their own specific ports and institute penalties and incentives tied to the performance norms as part of the overall berthing policy. The Policy also describes a method for re-rating capacity of berths as well as guidelines for levying anchorage charges to reduce turn-around time.
- (ii). In this backdrop, the KOPT has come up with a proposal in September 2016 for approving the Performance Norms based Incentive/ Penalty, scheme and Anchorage charges in respect of Dry Bulk Cargo handled by ship's crane at Haldia Dock Complex (HDC) at KOPT. The separate proposal received from KOPT seeking approval for the Performance Norms based Incentive/ Penalty, scheme and Anchorage charges in respect of Dry Bulk Cargo handled at KDS at KOPT is being dealt with separately.
- (iii). As brought out above, the Berthing Policy is with regard to handling of dry bulk cargo. In this regard, the KOPT has stated that the Dry Bulk Cargo is primarily handled at HDC operated Berth Nos. 2, 4, 4B, 8, 9 and 13 and the BOT Berth no. 4A and 12 operated by the concerned Licensees i.e. BOT operators. The port has reported that Berth no. 4 is fully mechanized and that in Berth nos. 2, 4B, 8 and 13, cargo is handled exclusively by use of MHCs only. Since the contracts entered by KOPT with the relevant stakeholders for handling cargo at the MHC equipped berth already contain provisions regarding penalty/ incentive payments for achieving lower/ higher productivity, the KOPT has not felt the need to prescribe different penalty/ incentive for such MHC equipped Berths, based on the provisions of the Berthing Policy, since the conditionality provided in the contract will be followed. Since clean dry bulk cargo is handled at Berth no. 9 in conventional method using ship's gears, the port has proposed to prescribe the penalty/ incentive norms based on the stipulation of the Berthing Policy, with regard to handling of dry bulk cargo at Berth no. 9, so as to improve the performance of Berth No. 9. In other words, the proposal of KOPT under reference is to prescribe norms for Performance, Incentive/ Penalty, Anchorage charges in respect of Dry Bulk Cargo handled at Berth no. 9 of HDC only. The performance norms based incentive /penalty scheme is not applicable for BOT operated terminal and the berth governed by contractors and the fully mechanized berth No. 4. In this connection, this Authority intends to make the approved norms for Performance, Incentive/ Penalty, Anchorage charges, applicable to all the relevant berths of HDC, where dry bulk cargo is being handled by KOPT.
- (iv). Based on the parameters viz., Density of the commodity, Grab size, Grab picking factor for full/ partial cargo operation, productivity of Ship cranes, productivity per

vessel, the KOPT has arrived at the Performance norm in respect of various dry bulk cargo viz., Coal, Met Coke, Limestone, Manganese Ore, Iron Ore, Fertilizer, Cement clinker and Gypsum. Each of the above mentioned parameters is discussed below:

- (a). **Density of the Commodities:**
The density of Coal, Met Coke, Limestone, Manganese Ore, Iron Ore, Fertilizer, Cement clinker and Gypsum is considered by KOPT at 0.85, 0.80, 1.4, 1.2, 2.0, 0.8, 1.5 and 1.5 respectively. The density of Coal, Iron Ore and Fertiliser as considered by the Port is as prescribed in the Berthing Policy. In respect of other dry bulk cargo, the KOPT appears to have considered the actual density as per its past data. The density of various commodities as considered by KOPT is relied upon.
- (b). **Size of Grab:**
The KOPT has considered the Size of Grab at 12 cbm in respect of all commodities except for Manganese Ore at 10 cbm and Iron Ore at 8 cbm. The Sizes of Grab considered in respect of these commodities are as per the norms Berthing Policy.
- (c). **Grab picking factor:**
On the ground that after the initial two shifts of cargo operation when the picking factor could be 90%, the bottom cargo is to be discharged from the holds, when the picking factor would be around 50%-60%, the grab picking factor has been considered at 75% by KOPT for all commodities. The Berthing Policy does not indicate any norms with regard to grab picking factor. The grab picking factor as considered by the KOPT, is relied upon.
- (d). **Cycles per hour for full load and partial load operations:**
In the event of deployment of ship cranes, the Policy prescribes 18 cycles/ moves per hour incase of Full load operations and 12 cycles/ moves per hour incase of Partial load operations for all dry bulk cargo. The KOPT has considered the average crane cycles per hour at 12 on the ground that all the dry bulk cargo carrying vessels arrive in less than half load condition due to draft limitation at HDC, due to which there is no scope for considering the full load condition of vessels at HDC. In view of the reasoning given by the port, the Cycles per hour for partial load operations at 12 in respect of all commodities as proposed by the Port is considered in the analysis.
- (e). **Working Hours:**
With regard to number of working hours, the Policy requires considering typically 0.5 hour per shift towards idle time, translating to number of working hours of 22.5 per day. At the same time, the Policy also stipulates that initially, ports can use 1 hour idle time per shift for calculation of norms. The KOPT has considered 22.5 working hours in a day, which is considered in the analysis.
- (f). The following table explains, how the various parameters as discussed above, culminates into the performance norms for the various commodities:

Sl. No.	Particulars	Coal	Met coke	Limestone	Manganese Ore	Iron Ore	Fertilizer	Cement Clinker	Gypsum
1	Density of commodity	0.85	0.80	1.40	1.20	2.00	0.80	1.50	1.50
2.	Grab size (in cbm)	12	12	12	10	8	12	12	12
3.	Grab picking factor	75%	75%	75%	75%	75%	75%	75%	75%
4.	Cycles/ Moves per	12	12	12	12	12	12	12	12

	hour (all partial load)								
5.	Quantity per grab lift (in Tonnes) (1 x 2 x 3)	7.65	7.20	12.6	9.00	12.00	7.20	13.50	13.50
6.	Productivity per hour per Crane (in Tonnes) (4 x 5)	91.80	86.40	151.20	108.00	144.00	86.40	162.00	162.00
7.	No. of working hours	22.50	22.50	22.50	22.50	22.50	22.50	22.50	22.50
8.	No. of Ship Cranes per Vessel	4	4	4	4	4	4	4	4
9.	Productivity per Vessel per day (in Tonnes) (6 x 7 x 8)	8262	7776	13608	9720	12960	7776	14580	14580
10.	Productivity per Vessel per day rounded off (in Tonnes)	8300	7800	13700	9800	13000	8000	14600	14600

- (v). Thus, the Ship-day productivity per vessel per Day has been arrived by KOPT for Coal, Met Coke, Limestone, Manganese Ore, Iron Ore, Fertilizer, Cement clinker and Gypsum at 8300 tonnes, 7800 tonnes, 13700 tonnes, 9800 tonnes, 13000 tonnes, 8000 tonnes, 14600 tonnes and 14600 tonnes respectively.

Since the average ship day productivity of the dry bulk cargo vessels handled during the last three years at Berth no. 9 is only 50% of the norms proposed above, the KOPT has proposed to prescribe during the 1st year after introduction of the policy, the performance norms for the above said commodities at 75% of the norms arrived above and that from the second year onwards, the norms arrived above, will be applicable for determination of penalty/ incentive in respect of handling of dry bulk cargo vessels at Berth no. 9 of HDC. The productivity arrived at by the KOPT as given in the table above is seen to be lower than the productivity stipulated in the Berthing Policy in the range of 20% - 30%. The Policy at Clause 4.1.3 (c) directs the ports to ensure that the berth productivity is not reduced because of inefficiency of the ship cranes. However, at the same time, Clause 7.2 of the Policy regarding rolling out of Performance Norms encourages ports to roll out performance norms in a phased manner during the first year to reach the target levels. The ports are required to review the performance norms every quarter in the first year until target norms are achieved. Harmonious reading of the above said two Clauses lead to a position that reduced performance norms will not be encouraged except for the first year of implementation of the Policy. That being so, the performance norms as proposed by the Port is approved for the first year only.

Thus, the Ship-day productivity per vessel per Day arrived above by KOPT for Coal, Met Coke, Limestone, Manganese Ore, Iron Ore, Fertilizer, Cement clinker and Gypsum at 6225 tonnes, 5850 tonnes, 10275 tonnes, 7350 tonnes, 9750 tonnes, 6000 tonnes, 10950 tonnes and 10950 tonnes respectively, will be applicable for determination of penalty/ incentive for the 1st year.

- (vi). The Berthing Policy stipulates considering the stayal time of the vessel at the berth to determine the quantum of levy of penalty/ incentive in the event of non-achievement/ achievement of the performance norms. In this regard, the vessel at the HDC even after the completion of operational work cannot immediately sail out due to tidal constraints and cannot be shifted to waiting berths due to non-availability

of adequate number of tugs. In view of this position, the KOPT has proposed considering the actual working period of a vessel at the berth instead of actual berth stayal time of vessels. Thus, the port has proposed notes to the effect that if the actual working period of the ship (time between berthing at the working berth till completion of vessel's operation) remains within 5% (higher or lower) of the stipulated time for that commodity, then no penalty / incentive will be levied / paid, in cases where actual working period of the ship (time between berthing at the working berth till completion of vessel's operation) is lower than the stipulated time by more than 5% of the same then incentive will be paid at the rate of berth hire charges for every additional hour saved. Based on the reasoning furnished by the port, this Authority is inclined to approve the notes as proposed by the port.

- (vii). Clause 8.2 of the Berthing Policy also stipulates that in case where actual Berth stay is more than 5% higher than the stipulated time, the number of additional hours spent at berth will be penalized by 3 x berth hire. However, the port has proposed that in case where actual working period of the ship (time between berthing at the working berth till completion of vessel's operation) exceeds 5% of the stipulated time for that commodity, penalty will be levied 2 times of the normal berth hire charges for additional hours taken to complete the ship's cargo operation. The KOPT has not explained the reason for reducing the level of penal charges. However, in the proposal submitted by KOPT with regard to prescription of incentives/ penalties based on the stipulation of the Berthing Policy, the KOPT has proposed levy of penalty of 2 times at KDS on the ground that after completion of discharge/ loading of dry bulk cargo at KDS, the vessels have to remain idle often for a considerable period at the berth for non-availability of pilots, tidal constraints, limited lock windows etc. Prescription of any stiff penal provision like penal berth hire at 3 x berth hire as provided in the policy may have negative impact and that prescription of penalty of 2 times would help in keeping a balance between the policy and the industries need and to maintain the spirit behind imposition of penal berth hire linked to performance norms. Since HDC also encounters the issues like tidal constraints, this authority is inclined to approve the note as proposed by the Port.
- (viii). The KOPT has proposed notes to the effect that in computing actual performance achieved by each ship for the purpose of calculating penalty / incentive and stoppage of operation on account of port related or weather related issues will be discounted; and, such exclusions include breakdown / non-availability of port provided equipment at berth, weather related stoppage, shifting of ships between berth on account of port, time consumed for each draft surveys upto a maximum period of 30 minutes, time lost due to stoppage of work for any other reasons to be excluded for calculation of performance norms, only with the approval of the Chairman. These notes are seen to be as per Clause 8.2 of the Berthing Policy and hence approved, except that the approving authority is indicated as 'Board' as per the Policy instead of 'Chairman'.
- (ix). The KOPT has proposed a note to the effect that the ship-day productivity to be applicable on the basis of the average availability of four cranes per vessel and if the availability of the number of cranes gets reduced the productivity of the ship will also get proportionately reduced and that if the grab size is less than that or more than 8/10/12 CBM then the productivity norms will be reduced/ increased proportionally. The Berthing Policy does not provide for adjustment in the performance norms on account of deployment of lower number of Ship Cranes or on account of change in the grab size. Infact the Berthing Policy at Clause 4.1.3 (v) makes a mention about routine use of 4 Cranes in conjunction across several ports. In view of this position, this Authority is not in a position to prescribe the note as proposed by the Port.
- (x). The KOPT has proposed a note to the effect that apart from the listed commodities, if other types of dry cargo are handled then the performance norms will be calculated separately by port as per the approach adopted for the performance

norms, arrived earlier. The KOPT is advised to approach this Authority in such an eventuality. The proposed note in this regard is, therefore, not approved.

- (xi). Clause 6.2 of the Berthing Policy stipulates that Ports are to provide a free waiting period for vessels (not exceeding 48 hours) during which no anchorage charges will be levied. Thereafter, a normal anchorage charge ranging from 10% to 25% of the berth hire charges is to be levied on the vessel for a period of 48-96 hours and higher anchorage charges for a waiting period of 96-144 hours and that Anchorage charges should not be higher than 50% of the berth hire charges at any point of time.

The Port has not explicitly prescribed a free period of 48 hours. The anchorage points at Sandheads being in open sea, the KOPT has reported that anchoring of unlimited number of vessels is possible, before getting a call from the port for berthing. The purpose of prescription of anchorage charges is for efficient use of port anchorage. At the same time, the port has expressed its limitations in calling the vessels immediately at the berth. Thus, according to KOPT, levy of anchorage charges immediately after the free period of 48 hours may not find acceptance with the users. Since the port anchorage is not reported to be a constraint at KOPT, non-prescription of specific free period at anchorage point does not appear to affect the efficient use of anchorage point, as the port proposes to start the levy of anchorage charges after it calling the Vessels and not earlier.

Thus, even after calling the vessel and allocation of the pilots, if the vessels refuse to call at the port or lighterage point due to reason attributable to vessel/ importer/ exporter, the KOPT has proposed levying anchorage charges at the reporting stations and lighterage points at 10% of the applicable Berth Hire charges as per SOR for the entire duration of waiting since the vessel was initially called for first 48 hours after calling the vessel, levy of 25% of the applicable Berth Hire charges as per SOR for the entire duration of waiting since the vessel was initially called after 48 hours and upto 96 hours and levy of 50% of the applicable Berth Hire charges as per SOR for the entire duration of waiting since the vessel was initially called after 96 hours till boarding of pilot. The percentage of levy as proposed by the Port is seen to be in line with the stipulation in Clause 6.2 of the Berthing Policy, and hence is approved.

- (xii). In addition to the levy of anchorage charges, the port had initially proposed to impose penalty for idling of vessels at Saugar and other lighterage points where the vessels are scheduled to lighten their cargo for achieving Haldia draft. However, subsequently, during the joint hearing, the port has chosen to withdraw the levy of penal charges for idling of vessels on lighterage points for Haldia bound vessels, conceding to the points made by the users that on the constraints of availability of barges and absence of dedicated barge handling facilities at HDC. Thus, the proposal of the port to impose penalty for idling of vessels at Saugar, at 25% of the applicable Berth Hire Charges as per SOR for idling of vessels for every hour or part thereof for first 48 hours and 50% of the applicable Berth Hire Charges as per SOR for idling of vessels for every hour for more than 48 hours, is approved.
- (xiii). The port has not quantified the financial impact of the proposed tariff arrangement. Given that the proposal of the port is in the nature of levy of penalties/ incentive on account of over stayl of vessel/ early evacuation of berth and is dependent on the performance of the ship, it may not be possible for the port to ascertain the financial impact of the proposed tariff arrangement.
- (xiv). It may be recalled that based on the request made by the port, this Authority vide its Order dated 25 October 2016 has granted adhoc approval to KOPT for introduction of performance and penalty/ incentive norms as well as levy of anchorage/ penal charges as proposed by the port with effect from 01 October 2016, subject to final approval of this Authority based on the consultation proceedings on the case in reference. This Authority has also directed the KOPT to

refund the excess collection made by it till the effective date of implementation of the final Order without interest, if the interim arrangement adopted in an adhoc manner is found to be excessive. Given that there is no change in the performance norms or the incentives/ penalties approved on an adhoc basis vis-à-vis the performance norms or the incentives/ penalties approved now, the existing arrangement is allowed to continue, except for the withdrawal of imposing a penalty at lighterage points by KOPT and introduction of anchorage charge at par with HDC.

- (xv). Clause 7.2 of the Berthing Policy encourages the Ports to roll out performance norms in a phased manner during the first year to reach the target levels achievable for each commodity given the infrastructure available at the berths. As stipulated in the said Clause, the KOPT is advised to compute performance norms every quarter in the first year until target norms are reached. In the event of upgradation of infrastructure at berth leading to an improvement in the performance norms approved, the port is advised to come up with a proposal to give effect to the improved performance norms. Further, since the port is expected by the Policy to reach the target levels achievable for each commodity in the first year, it is found appropriate to approve the validity of the proposal for a period of one year from 01 October 2016.

7.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the SOR of the KOPT notified separately in the Gazette of India.

7.2. The notified provisions may be deemed to have come into effect from 01 October 2016 and may remain valid upto 30 September 2017.

(T.S. Balasubramanian)
Member (Finance)

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

F. No. TAMP/59/2016-KOPT	Proposal received from Kolkata Port Trust (KOPT) for approving the Performance norm based Incentive / Penalty, Anchorage charges in respect of Dry Bulk Cargo handled at Haldia Dock Complex (HDC) at KOPT.
---------------------------------	--

Association of Shipping Interest in Calcutta (ASIC) vide its letter dated 7 October 2016 has furnished its comments. The comments furnished under the cover of its letter dated 7 October 2016 are seen to be the comments furnished by ASIC to KOPT at earlier occasions vide its letter dated 21 March 2016 and 10 September 2016 on the matter. The said comments were forwarded to KOPT as feedback information. The KOPT has responded vide its letter dated 25 November 2016. A summary of the comments of ASIC and response of Kolkata Port Trust (KOPT) thereon is tabulated below:

Sr. no.	Comments of ASIC to KOPT vide its letter dated 10 September 2016	Comments of KOPT
(i).	For cargo operations at berth nos. 2, 4B, 8 and 13, the responsibility / onus for productivity has rightly been passed on to the MHC Service Provider. This evidently and logically absolves the Vessel of her responsibility in ensuring the desired norms of productivity as set.	At conventional berths the cargo is discharged by ship's gears and the productivity depends on the performance of the ship's gears only. Since the maintenance of the ship's gear is the responsibility of the Master of the vessel, ensuring productivity is also the liability of the Master. Further the productivity of the vessel is also affected due to the uneven distribution as well as improper condition of cargo inside the ship's holds. In addition, improper trimming of cargo also affects the productivity. For all such activity, the Master of the vessel is responsible and therefore for non-achievement of the performance level the vessel is rightly held responsible and penal berth hire charges has been proposed for longer berth occupancy. Interestingly, for better performance payment of incentives has also been proposed to the vessel only.
(ii).	Hence, the onus of such scope of job should be attributed to the Cargo Interests only, who engage their Service Providers for shore related activities and the Port (HDC) who act as Stevedores on board for cargo handling operations and are equally responsible for expeditions cargo operations, wherein Port workforce are engaged onboard .	
(iii).	During the meeting with HDC, we had apprehended that any further financial burden on Vessel Owners / Operators, if imposed, would have a cascading effect on the freight levels of EXIM cargoes carried at Haldia and may also compel shift of business to neighboring ports, who enjoy advantage of draft and other related supports available at their locations.	
	Comments of ASIC to KOPT vide its letter dated 21 March 2016	
(i).	Port, as stevedores, is responsible for undertaking on board handling of cargoes at prescribed charges as published in TAMP's SOR for various commodities, as mentioned in Part 1,8.5 of the relevant SOR.	
(ii).	Further, all bulk cargoes are handled in Free In and Out (FIO) terms wherein Vessel Owners / Agents are in no way responsible for vessels productivity, while alongside berth. Such productivity is also directly linked to shore logistics/ support provided by receivers being a major attribute to same.	

(iii).	At the mechanical berths i.e. berth no. 2, 4B and 8, the vessel has no role to play at all, other than opening hatches and providing discharge sequence, as all operations are done by the shore support.	
(iv).	Where cargoes are handled by ship's gear, vessel provides adequate/ uninterrupted power to its cranes, based on requirement from Port as per hooks sanctioned for cargo operations.	
(v).	More often, it is noticed that Port is unable to provide sufficient labour for onboard operations under its control, thus resulting in loss of productivity, besides increased berth occupancy of vessel and costs to vessel for extended port stay.	
(vi).	It is also pertinent to point out that considerable time is lost in late reporting of port labour / operator on board, besides early departure of such manpower during every working of the day. This too results in loss of productivity and extended berth occupancy / costs to vessel.	
(vii).	Considering the above, Vessel Operators/ Agents should be instead compensated by Port for non-achievement of productivity norms proposed by BCG, which is entirely within the purview of HDC Authorities as stevedores for onboard vessel operation.	

2.1. A joint hearing in this case in reference was held on 24 November 2016 at the KOPT premises in Kolkata. The KOPT has made a brief power point presentation of its proposal. At the joint hearing, the KOPT and the users/ user organisations have made their submissions.

KOPT:

- (i). The Government has issued guidelines for Berthing Policy for Dry Bulk Cargo vessels, which provides for calculation of performance as well as penalty/ incentive norms and for computing normative productivity of unloading of dry bulk cargo.
- (ii). The objective of the Policy is to standardize computation of performance norms for different dry bulk commodities and available infrastructure, designing norms for achieving higher productivity and best infrastructure utilization, reassessing capacity of berths and introduce anchorage charges across all major ports.
- (iii). Norms have been designed to reduce the Turn Around Time of the vessel, improve utilisation of port assets and increase competitiveness amongst ports.
- (iv). The productivity has been worked out based on grab size, ship size, density of cargo, non-working time per shift etc.
- (v). For variation of +/- 5%, no incentive/ penalty is proposed.

- (vi). The proposal is applicable for berth no. 9, where the dry bulk cargo is handled through ship's gears.
- (vii). Levy of Anchorage charges is proposed when even after calling the vessel and allocation of pilots by port, the vessel refuses to call at the port due to the reasons attributable to the vessel/ exporter.
- (viii). Due to operational issues, we wish to withdraw the levy of penal charges for idling of vessels on lighterage points for Haldia bound vessels.
- (ix). We will not charge penalty at anchorage for HDC bound vessels from SAGAR for the time being. We drop our proposal in this regard. Penalty arising due to Pilot detention at anchorage will be charged.

ASIC

- (i). Vessel Owners / Agents are in no way responsible for vessels productivity, while alongside berth. Such productivity is directly linked to shore logistics/ support provided by receivers. The scope of penal charges should be applicable to the Cargo Interests only, who engage their Service Providers for shore related activities.
- (ii). Inability to discharge the vessel due to weather conditions should not be counted.

2.2. Subsequent to the joint hearing, the KOPT vide its letter dated 25 November 2016 has addressed the points made by the Association of Shipping Interest in Calcutta (ASIC) during the joint hearing. The issues raised by ASIC (as brought out by KOPT) and comments of KOPT thereon is tabulated below:

Sr. no.	Issues raised by Trade	Comments of KOPT
(A).	Regarding penalty on vessels for non-performance	
	The vessels for loading/ unloading of Dry Bulk Cargo are chartered on "Free Out" basis and it is the responsibility of the importers/ exporters to ensure the smooth and speedy cargo handling operation and hence achieving the Performance Norms is the liability of either importers / exporters or their handling agents. Therefore, it is not justified to levy penal charges on the vessel for non-achieving the ship Day Productivity at the conventional berth for handling Dry Bulk Cargo.	At conventional berths the cargo is discharged by ship's gears and the productivity depends on the performance of the ship's gears only. Since the maintenance of the ship's gear is the responsibility of the Master of the vessel, ensuring productivity is also the liability of the Master. Further the productivity of the vessel is also affected due to the uneven distribution as well as improper condition of cargo inside the ship's holds. In additions, improper trimming of cargo also affects the productivity. For all such activity, the Master of the vessel is responsible and therefore for non-achievement of the performance level the vessel is rightly held responsible and penal berth hire charges has been proposed for longer berth occupancy. Interestingly, for better performance payment of incentives has also been proposed to the vessel only.

(B).	Regarding levy of Penal Charges for idling of vessel at Sagar and other Lighterage points.	
(i).	The deployment of barges at Lighterage Points is the responsibility of the importers / exporters and vessels are primarily idling for non-availability of barges as the number of barges deployed for lighterage operation are limited in numbers and also inadequate. There is no dedicated barge handling facilities at HDC and infrastructure available at KDS and Diamond Harbour for handling of barge are also very poor. He stated that unless the barge handling infrastructure are adequately improved, levy of penal charges for idling of vessels at the Lighterage Points may be detrimental to the growth of traffic at KOPT.	Due to the constraints raised by the users for handling barges at the Lighterage Points as well as at HDC, KDS and Diamond Harbour, Port may consider to withdraw the proposal for levy of penal charges for idling of vessels at Lighterage Points. Necessary action is being taken in this regard. The above submissions may be considered appropriately.
(ii).	The barge are remaining idling at the Lighterage Points due to non-boarding of Customs officials as without clearance from Customs officials the discharge operation cannot be commenced. As such, he also requested not to levy idling charges at the Lighterage Points.	
