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Tariff Authority for Major Ports

GNo. 106

New Delhi,

02 June 2008

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby accords provisional approval to the proposal received from the Visakhapatnam Port Trust for revision of lease rental of Port land as in the Order appended hereto.

(Brahm Dutt)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/41/2005 - VPT

Visakhapatnam Port Trust

- - -

Applicant

O R D E R

(Passed on this 22nd day of April 2008)

This case relates to a proposal received from the Visakhapatnam Port Trust (VPT) for revision of lease rental of the port lands.

2. The background of the revision of lease rentals of VPT lands is narrated below:

- (i). This Authority had passed an Order on 29 October 1999 fixing annual lease in respect of some zones of the VPT lands. The rates were approved for individual lessees.
- (ii). Based on the representation received from a lessee, this Authority amended its earlier Order of October 1999 to notify the rates in respect of the concerned zones instead of individual lessees retrospectively from the effective date of implementation of this Authority's earlier Order dated 29 October 1999. Accordingly, the lease rentals approved are tabulated below:

Sl.No.	Zone	Rent per acre per annum (Rs.)
1	II/A (3)	47,044.80
2	II/B	47,044.80
3	IV/A	36,000.00
4	IX/B	36,000.00

- (iii). Subsequently, while disposing of the representation from Andhra Petrochemicals Limited about exorbitant revision of lease rentals by the VPT by applying the formula specified in the lease agreement based on the valuation obtained from the District Revenue Authority (DRA), this Authority vide its Order dated 21 March 2002 held that the valuation given by the DRA is only an input for determination of the current lease rents and the lease rental arrived at will become legally enforceable only when it is approved by this Authority.

The VPT was directed to obtain approval of the Authority for lease rentals of different zones of its land before their inclusion in its SOR and to apply such approved rates in both new lease and revise the rates in the existing lessees, if the lease agreement provides for periodic revision.

- (iv). In compliance of this Order, the VPT in January 2003 filed a proposal for increase in lease rentals for its land for the quinquennium 1998-2003. The proposal was, however, not a definite one and did not comply with the guidelines issued by the Government for fixing lease rentals for the port lands. The VPT was, therefore, advised to file a revised proposal in line with the guidelines prescribed by the Government. However, in view of the request made by the port for granting further period for filing the revised proposal, it was decided in our Order passed on 17 March 2003 to close the case as withdrawn and to consider the revised proposal afresh.

3.1. In this backdrop, the VPT has filed the instant proposal for revision of lease rentals. The VPT has reported that a Committee was constituted by the port under the Chairmanship of Chairman (VPT) and comprising of District Collector and a representative from the Ministry as members to review and recommend the rates ascertained by the DRA. The proposal for revision of lease rental is based on the recommendations made by the Committee.

3.2. The VPT has made the following main points in its proposal:

- (i). Port land is divided into 31 zones (16 zones and 15 sub-zones) for valuation of land.

- (ii). The VPT has been obtaining the land valuation from District Revenue Authorities (DRA) once in 5 years since 1953.
- (iii). Till the Government issued guidelines in February 2000, the DRA indicated the land valuation on the developments carried out by the port during the preceding quinquennium for fixing the valuations for the respective quinquennium. The quinquennial valuation done by the DRA formed the basis for collecting the lease rentals for lands leased on short term/long term basis.
- (iv). The agreements entered for long term leases contain a specific rental clause whereby the lessees have to pay annual rentals at agreed percentage of land cost based on valuation fixed by the DRA. The lease rental @ 6% on such valuation is charged for leases commenced prior to 1986 and @ 9% for the leases commenced after 1986. For the leases commenced after 1995, annual escalation clause is incorporated in the respective agreement as per the Government guidelines. There are few cases like M/s. East India Petroleum Limited (EIPL), M/s. Rain Calcining Limited (RCL) etc., whereby the annual escalation rate is applied @ 10% as per the directions of the Government of India in the individual cases.
- (v). From the year 2000, the concept of fixing rentals based on the market rates for fresh lease has come into existence in terms of the Government guidelines of 15 February 2000. Since then, the quinquennium valuation of DRA based on the development is applied to the existing leases and market value of land indicated by the DRA are applied to fresh leases for fixing the reserve price for the tenders invited. The rates quoted by the successful tenderers and approved by its Board are considered for realising the lease rentals.
- (vi). The DRA provides the basic value of lands. Quinquennium valuation is provided by the DRA based on the development work done by the port with reference to the respective zones.
- (vii). For the quinquennium 1998-2003, the DRA recommended the quinquennial valuation of the port lands with 30% increase over the previous quinquennial valuation. Apart from this, the basic value of the VPT lands for various zones were also furnished by the DRA to the Rate Fixation Committee. The Rate Fixation Committee after examining the land valuation furnished by the DRA recommended adoption of the same in toto for the quinquennium 1998-2003.
- (viii). The VPT has stated that the annual escalation at 5% works out to 27.7% for the 5 years period i.e. 1998-2003. Further, the Government guidelines dated 15 February 2000 specifies a minimum increase of 30% in the land valuation once in 5 years. Therefore, the proposed quinquennial valuation for 1998-2003 by increasing the earlier quinquennial valuation by 30% is reasonable. It has sought retrospective approval of lease rental for this period. The quinquennial valuation for the quinquennium 2003-08 was received from the DRA only in February 2005. In the absence of any DRA valuation available for this period, lease rents applicable for the previous quinquennium 1998-2003 were adopted for the years 2003-04 and 2004-05 as provisional rent to be regulated after receipt of DRA valuation.
- (ix). Valuation of land from the DRA for the quinquennium 2003-08 was earlier received by the Rate Fixation Committee in December 2004 for recommending the rates to TAMP as per the Government guidelines. The Committee observed that the quinquennium valuation for 2003-08 furnished by the DRA are increased by 100% over the previous valuation for all the zones and sub-zones. The Committee, therefore, advised the DRA to review the rates for the quinquennium 2003-08. The DRA after reviewing, revised the quinquennial values for the quinquennium 2003-08 in proportion to the increase in the basic values of land from 1998 to 2003 in such a manner that the values do not exceed 100% and should not be less than 30% in the respective zones over the previous quinquennial values. The revised valuation of land made by the DRA was placed before the Rate Fixation Committee on 16 May 2005. The Committee recommended adoption of the revised quinquennial valuation and the basic land values of the land suggested by the DRA to arrive at the lease rentals.

3.3. The quinquennial valuation and basic value of land proposed by the VPT based on the recommendations made by the Rate Fixation Committee are summarised below:

- (i). For the quinquennium 1998-2003:
It has proposed 30% increase in the quinquennial valuation of land over the previous quinquennium. The basic valuation of land provided by the DRA is proposed for arriving at lease rentals in case of fresh leases /tenders.
- (ii). For the quinquennium 2003-08:
The revised quinquennial valuation of land and basic value of land furnished by the DRA and recommended by the Rate fixation Committee is proposed for levy of lease rentals.
- (iii). (a). The quinquennial valuation of DRA is applicable to long term leases entered prior to issuance of Government guidelines on 15 February 2000. All long term lease agreements specify revised rent as the percentage of the quinquennial land value fixed by the DRA. It has, accordingly, proposed to adopt the quinquennial land value as fixed by the DRA and percentage of rent as mentioned in the respective lease agreements as per the terms of the lease agreements. It has, therefore, sought approval of the proposed quinquennial valuation.

(b). In respect of fresh lease of lands from February 2000 onwards, the Committee recommended to work out lease rentals both under upfront mode or annual payment mode considering a rate of 6% on land valuation done by the DRA for its 31 zones as per the Government guidelines announced in March 2004. Accordingly, it has proposed the basic valuation of the land for both the quinquennium as recommended by the Rate Fixation Committee.
- (iv). The Committee, however, observed that lease rents @ 9% of basic value was being collected till the announcement of the revised land policy guidelines issued by the Government in March 2004. Whereas, as per the revised guidelines issued by the Government in March 2004, the lease rents (from 1 April 2004) has to be collected at 6% of the land valuation. This, if adopted, will lead to reduction in the lease rent for the year 2004-05 in comparison to lease rents levied for the year 2003-04. In such cases to avert drop in lease rent collections, the VPT based on the recommendations of the Committee proposes to follow the same lease rents claimed for the year 2003-04 and 2004-05 and later as well till such time the rent at the rate of 6% of the current land valuation (as per the revised land policy guidelines) matches with the lease rents for the year 2003-04 and thereafter, it proposes to charge lease rents as per the revised land policy guidelines.
- (v). Accordingly, the quinquennium valuation and basic value of land proposed by the VPT based on the recommendations of the Rate Fixation Committee for both these quinquennium for arriving at lease rental both under upfront fee or annual payment mode are tabulated below: -

For the quinquennium 1998-2003

Sl. No	Zone	Quinquennia l valuation for previous quinquenniu m 1993-1998 (Rs. per sq. yard)	Quinquennial valuation for quinquennium 1998-2003 (Rs. per sq. yard)	% Increase over the previous quinquennium	Basic valuation of land for the quinquennium 1998-2003 (Rs. per sq. yard)
1.	2.	3.	4.	5.	6.
1.	I-A	144.00	187.20	30%	1350.00
2.	I-B	174.00	226.20	30%	1350.00
3.	I-C	115.20	149.76	30%	1200.00
4.	II-A1	108.00	140.40	30%	3000.00
5.	II-A2	108.00	140.40	30%	2000.00
6.	II-A3	108.00	140.40	30%	800.00
7.	II-B	108.00	140.40	30%	800.00
8.	II-C	36.00	46.80	30%	800.00

9.	III	108.00	140.40	30%	800.00
10.	III-A	108.00	140.40	30%	800.00
11.	III-B1	108.00	140.40	30%	800.00
12.	III-B2	108.00	140.40	30%	950.00
13.	III-B3	108.00	140.40	30%	650.00
14.	IV	17.20	22.36	30%	1100.00
15.	IV-A	43.20	56.16	30%	800.00
16.	V	108.00	140.40	30%	950.00
17.	VI-A	28.80	37.44	30%	2000.00
18.	VI-B	100.80	131.04	30%	1300.00
19.	VII	7.20	9.36	30%	2000.00
Sl. No	Zone	Quinquennia I valuation for previous quinquennium 1993-1998 (Rs. per sq. yard)	Quinquennial valuation for quinquennium 1998-2003 (Rs. per sq. yard)	% Increase over the previous quinquennium	Basic valuation of land for the quinquennium 1998-2003 (Rs. per sq. yard)
20.	VIII	14.40	18.72	30%	2000.00
21.	IX-A	28.80	37.44	30%	800.00
22.	IX-B	28.80	37.44	30%	800.00
23.	X-A	30.24	39.31	30%	5000.00
24.	X-B	54.72	71.14	30%	5000.00
25.	XI	57.60	74.88	30%	450.00
26.	XII	115.20	149.76	30%	1500.00
27.	XIII	115.20	149.76	30%	2800.00
28.	XIII-A	115.20	149.76	30%	800.00
29.	XIV	144.00	187.20	30%	1350.00
30.	XV	100.80	131.04	30%	800.00
31.	XVI (Bheemili Mandal)		NIL	30%	NIL

For the quinquennium 2003-2008

Sl. No	Zone	Quinquennia I valuation for previous quinquennium 1998-2003 (Rs. per sq. yard)	Quinquennial valuation for quinquennium 2003-2008 (Rs. per sq. yard)	% Increase over the previous quinquennium	Basic valuation of land for the quinquennium 2003-2008 (Rs.per sq. yard)
1.	2.	3.	4.	5.	6.
1.	I-A	187.20	307.15	64%	2215.00
2.	I-B	226.20	371.14	64%	2215.00
3.	I-C	149.76	299.52	100%	2400.00
4.	II-A1	140.40	182.52	30%	2800.00
5.	II-A2	140.40	196.56	40%	2800.00
6.	II-A3	140.40	182.52	30%	1000.00
7.	II-B	140.40	182.52	30%	1000.00
8.	II-C	46.80	60.84	30%	1000.00
9.	III	140.40	228.15	62%	1300.00
10.	III-A	140.40	182.52	30%	1000.00
11.	III-B1	140.40	184.27	31%	1050.00
12.	III-B2	140.40	182.52	30%	1050.00
13.	III-B3	140.40	280.80	100%	1375.00
14.	IV	22.36	29.07	30%	1375.00
15.	IV-A	56.16	73.00	30%	1000.00
16.	V	140.40	182.52	30%	1050.00
17.	VI-A	37.44	48.67	30%	2400.00
18.	VI-B	131.04	201.60	54%	2000.00
19.	VII	9.36	12.17	30%	2400.00

20.	VIII	18.72	24.34	30%	2400.00
21.	IX-A	37.44	60.84	62%	1300.00
22.	IX-B	37.44	48.67	30%	1000.00
23.	X-A	39.31	51.10	30%	6000.00
24.	X-B	71.14	92.48	30%	6000.00
25.	XI	74.88	149.76	100%	1500.00
26.	XII	149.76	239.62	60%	2400.00
27.	XIII	149.76	246.03	64%	4600.00
28.	XIII-A	149.76	299.52	100%	4125.00
29.	XIV	187.20	294.67	57%	2125.00
30.	XV	131.04	196.56	50%	1200.00
31.	XVI (Bheemili Mandal)	NIL	NIL		110000.00 (per acre)

The VPT has sought approval of the quinquennial valuation and basic valuation of land proposed in column 4 and 6 in each of the above tables. It has sought retrospective approval of the same for the last quinquennium 1998-2003 and for the years 2003-04 and 2004-05.

(vi). Proposed conditionalities governing the lease rentals:

- (a). Fresh leases will have 2% annual escalation during the subsequent year i.e. 2004-05 and so on for the quinquennium i.e. 2003-08.
- (b). In respect of land leases for long term on upfront basis, nominal annual rent shall be Re.1/- per sq. mtr. and upfront fee is to be worked out based on basic land valuation by DRA with 6% annual rent, 2% annual escalation and discounting at 6%.
- (c). In respect of long term lease of land on annual lease rental mode, one year non-refundable rent is chargeable as premium and 5 years rent or 25% of the total lease rent for the duration of the lease whichever is lower is chargeable towards refundable Security Deposit.
- (d). The existing reduction of 25% in lease rent applicable in case of low lying and water logged areas is proposed to be reduced to 10% recognising that the cost of filling such low lying water logged areas would involve approximate cost of Rs.250/- to Rs.300/- per sq. mtr.
- (e). A reduction of 30% in lease rents is recommended in respect of larger extents of land of 50 acres and above subject to the conditions that road, drainage, illumination, etc., developed by the lessees in the periphery of the leased plots is for common usage by other lessees and the VPT.

3.4. The Board of Trustees of VPT has approved the said proposal in its meeting held on 3 June 2005.

4. In accordance with the consultative procedure prescribed, the proposal of VPT was forwarded to the concerned users / lessees seeking their comments. The comments received from the various lessees were forwarded to the VPT as feedback information. The VPT has responded to the comments furnished by the user organisations.

5. Based on a preliminary scrutiny of the proposal, the VPT was requested to furnish additional information / clarification on various points. The VPT has furnished its reply to our queries. Some of the main queries raised by us and reply submitted by the VPT are summarised as below:

Sl.No.	Our queries	Reply submitted by VPT
(i).	The observation made by this Authority in some of the earlier cases clarifying that the valuation given by the DRA is only an input for determination of the current lease rents and the lease rental arrived will become legally	It has not made any specific comment except reiterating the submission made in its proposal. Subsequently, on our insistence to clarify the position, it has forwarded some rental bills of its lessees for the years 2003-04 and 2004-05 and

	enforceable only when they are approved and notified under Section 49 of the MPT Act, 1963 was pointed out to the VPT. It was stated that lease rentals levied by the VPT for the years 2003-04 and 2004-05 and for the period 1998-2003 [in respect of various zones except IA(3), II(B) IVA and IVB] lacks the approval of the Authority.	2005-06 levied by it provisionally and sought approval of TAMP. It has clarified that since rates for the quinquennium 2003-04 are not approved by the Competent Authority, only provisional rates are charged with a specific mention in the bills rendered that from 1 April 2003, the rent will be revised based on rates approved by the TAMP and lessees should pay the revised/differential rent to VPT without contest.
(ii).	(a). The proposal seeks retrospective approval of lease rent for the last quinquennium 1998-2003 and for the years 2003-04 and 2004-05. In this regard confirm whether the lease agreement entered by the VPT with the various lessees contain a clause allowing for retrospective revision of lease rentals. (b). With reference to the "Rent Clause" quoted by the VPT, it was pointed out that since the schedule of rates are not revised, such increase in rates had not become leviable.	(a). The period of quinquennium was almost coming to an end by the time the joint hearing was fixed in January 2003 with reference to its earlier proposal for revision of lease rentals. By such time, the VPT had already raised the bills for the years 1998-99, 1999-2000, 2000-01, 2001-02 and 2002-03 based on the valuations furnished by District Revenue Authority (DRA) vide proceedings dated 6 December 2000. Hence VPT has requested TAMP to accord approval to the rates for the quinquennium 1998-2003, as furnished by DRA for existing lease and transaction made on basic Values for application to fresh leases. It has quoted rent clause of the Lease Agreement which states that the lessees shall be liable to pay lease rent at a higher rate whenever the schedule of rents are revised upwards. (b). "Rent Clause" in the lease agreement and the lease agreement itself are approved and published in the Gazette in the year 1976. By that time, the revision of Schedule of rates corresponds to the revision of rates by DRA for the respective quinquenniums. Hence, the rates as applicable were levied on the lessees as per revision made by DRA. As the lease agreement does not contain a clause pertaining to retrospective revision, the TAMP is requested to accord approval to the rates furnished by DRA and levied by VPT for the existing leases.
(iii).	(a). The basis on which the District Revenue Authority (DRA) have determined the market value of each zones of the land may be explained in view of the Govt. guidelines explicitly prescribing the various methodologies to be considered by the Committee for valuation of land. (b). The Committee's Report nowhere analyses the basis followed for valuation of land by the DRA. The valuation of land will depend on many factors, like vicinity to the roads, development of the land, facilities provides on each of zones, etc. A report of the Committee giving detailed computation of land valuation of each of the zones of the VPT land may be furnished.	As per guidelines dated 15 February 2000 issued by the MOS, the concept of fixing rentals on commercial rates for fresh leases has come into existence. Further, the guidelines dated 17 July 2001 states that for waiver of Minimum Guaranteed Throughput (MGT), the condition of payment of lease rentals on prevalent market rate has to be fulfilled. There are no transactions of buying and selling of port lands. Hence, market value for VPT lands cannot be assessed to facilitate the adoption of the same. So the basic value provided in the State Government's ready reckoner is being adopted by DRA for fixation of land valuation for VPT lands. The Rate Fixation Committee has to depend on the input of value given by DRA for making further recommendations.
(iv).	In respect of the lease rental proposed for the quinquennium 1998-2003, it is observed that for some of the zones (for example like IA and IB, zones II A3, IIB, IIC, III, IIIA, III-B1), the basic valuation of land by DRA are the same,	The DRA have been furnishing the values for various VPT lands since 1953. It has reiterated that Government guidelines dated 1 April 1995 and 25 January 1996 prescribe an escalation @ 5% per annum (compoundable) on the lease

	however, quinquennial valuation proposed (by applying 30% escalation over the quinquennial valuation of the previous quinquennium) are different. The reasons for such variations may be explained.	rentals. Accordingly, after five years, the percentage of increase in lease rentals works out to 27.7%. As per the "Rents Clause" existing in the lease agreement, the annual rent shall not at any stage be less than the preceding year's rent. To facilitate this a uniform increase of 30% was proposed by DRA for the quinquennium 1998-2003 for all the Zones and the same was implemented by VPT.
(v).	The quinquennial valuation for the quinquennium 2003-08, is proposed by applying different percentage of increase in the range of 30% to 64% and also 100% increase in some of Zones like III-B3, XII, XIII-A over the lease rental proposed for the previous quinquennium 1998-2003. Explain the basis for applying such varying percentage of increase.	The quinquennial rates are enhanced in such a manner that the values do not exceed 100%, and also should not be less than 30% in the respective zones over the previous quinquennium i.e. 1998-2003. So, it is reiterated that the increase in the percentage is between 30% to 100% and not more than that. It is further submitted that a comparison of values fixed by DRA cannot be drawn to the prevailing market values. The DRA has done valuation of land based on the development activities taken place in the particular zones.
(vi).	Confirm that the formula prescribed for arriving at upfront fee based on DRA's basic land valuation with 6% annual rent, 2% annual escalation and discounting at 6% is in line with provision prescribed in March 2004 Government guidelines.	It has confirmed that the formula prescribed for arriving at upfront fee based on DRA's basic land valuations with 6% annual rent, 2% annual escalation and discounting at 6 % is in line with provisions prescribed in Government Guidelines dated 8 March 2004.
(vii).	The VPT has proposed to levy the lease rental collected by it during the years 2003-04 and 2004-05 and later as well till the rent at 6% of land valuation (as per Government guidelines) matches with the rent levied by it in 2003-04. In this regard it was again clarified that this Authority is bound to follow the guidelines prescribed by the Government for fixation of lease rentals of port lands. It does not have any discretion to modify the policy guidelines issued by the Government in this regard. If VPT pleads for any relaxation it should approach the Government.	It has been collecting lease rentals @ 9% p.a. as approved by the Ministry vide its letter dated 18 May 1987 by incorporating suitable condition in the lease agreements in respect of long term leases and by incorporating suitable condition in the terms of allotment in respect of short term leases for which lease agreements are not drawn. By the time the MOST guidelines dated 8 March 2004 was received, most of the bills were raised with 9% annual rental and 5% escalation. With the Govt. Guidelines dated 8 March 2004 coming into force VPT had to implement 6% rentals with regard to fresh leases and short term leases not covered by the agreements in respect of leases materialized after 15 February 2000. Moreover, the escalation every year has also been reduced from 5% to 2%. Taking these two parameters together, a reduction in lease rentals has been noticed compared to the lease rental levied a year before. Keeping in view of the rent clause existing in the lease agreement stating "annual rent shall not be at any stage be less than the preceding years rent", the Rate Fixation Committee recommended adoption of the rentals collected for the year 2003-04 itself for future years till the rent of 6% of the land valuation matches the rental claimed for 2003-04. The VPT has agreed to obtain approval of MOS to set aside the ambiguity observed by the Authority in the proposal with reference to the guidelines issued by the MOS in March 2004.
(viii).	(a). Furnish a complete copy of the lease rental schedule of all the zones approved by the Ministry in 1993, lease rent levied by the VPT for each of the zones for each of the	(a). Statement showing zone-wise lease rentals collected for the period from 1993 to 2004 is submitted. The VPT is levying the SOR for long term leases as per the market value, in terms of

	years subsequently till 2003-04. (b). The general conditionalities governing the proposed schedule of lease/license of land uniformly applicable for all the zones may be furnished instead of giving the conditionalities applicable for each of the lessee in the respective zones. The conditionalities governing the existing schedule of lease/ license approved by the Ministry may also be furnished.	guidelines dated 8 March 2004 which is fixed by DRA. It has forwarded the Ministry's letter No. PT.17011/1/86-PG dated 18 May 1987 granting approval to the proposal of VPT (11 July 1986) for enhancement of rate of rent from 6% to 9% per annum on the land value suggested by the DRA. (b). In view of the guidelines issued by Ministry from time to time, a general conditionality cannot be made applicable for all the leases.																											
(ix).	The financial implication on account of the proposed increase in the lease rentals may be indicated.	Since, the lease rentals have been levied provisionally, the financial implication on account of the proposed increase in lease rentals can be submitted only upon approval by TAMP.																											
(x).	Furnish the total area of the land available with the port, land available in each of the zones, area occupied by the port in each of the zones for the last three years, zone-wise details of number of leases, type of leases for lands allotted for various purposes for last three years, breakup of the lands utilised / unutilized for last three years and details of the services provided by the port at each types of land allotted.	The requisite details have been furnished. A summary of the same is tabulated below: <table><tr><td colspan="2">Particulars</td><td>Acs. Cts.</td></tr><tr><td>Total land acquired by VPT</td><td>:</td><td>10795.89</td></tr><tr><td>Land alienated to Govt. organisation Defense Department</td><td>:</td><td>3322.00</td></tr><tr><td>Balance land with VPT</td><td>:</td><td>7473.89</td></tr><tr><td colspan="3"></td></tr><tr><td>Existing utilisation of land by VPT</td><td>:</td><td>1931.72</td></tr><tr><td>Hills and Nullahs</td><td>:</td><td>1091.94</td></tr><tr><td>Extent of land leased to Govt. Departments and Private Parties</td><td>:</td><td>2629.63</td></tr><tr><td>Land available for future use</td><td>:</td><td>1771.78</td></tr></table>	Particulars		Acs. Cts.	Total land acquired by VPT	:	10795.89	Land alienated to Govt. organisation Defense Department	:	3322.00	Balance land with VPT	:	7473.89				Existing utilisation of land by VPT	:	1931.72	Hills and Nullahs	:	1091.94	Extent of land leased to Govt. Departments and Private Parties	:	2629.63	Land available for future use	:	1771.78
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(xi).	Furnish documentary support showing the valuation of land of Zone XVI (Bheemili Mandal) at Rs.1,10,000/- per acre for arriving at the proposed lease rental of Rs.6600/-.	The valuation of land on Zone XVI (Bheemili Mandal) at Rs.1,10,000/- per acre is as per valuation report by DRA vide proceedings dated 16 February 2005.																											
(xii).	Furnish comments specifically on the objection raised by the Central Warehousing Corporation on its proposal to reduce the rebate in lease rentals for low lying water logged areas from existing 25% to 10%.	The Rate Fixation Committee noted that the leveling such low lying water logged area by about 1.50 metres will involve an approximate cost of Rs.250/- to Rs.300/- per square meter. Accordingly, the Committee has recommended 10% reduction in lease rentals for such low lying water logged area on a case to case basis.																											
(xiii).	Confirm whether all the provisions prescribed in the revised land policy guidelines announced by the Ministry in March 2004 have been complied while filing its proposal.	It has confirmed that all the provisions prescribed in the revised Land Policy Guidelines dated 8 March 2004 are complied with while recommending the rates.																											

6.1. A joint hearing in this case was held on 24 November 2005. At the joint hearing, the VPT and the concerned users made their submissions. Central Warehousing Corporation (CWC) has made further written submission at the joint hearing.

6.2. At the joint hearing, there was a general complaint from the users that the VPT could have applied the Government guidelines to arrive at the lease rents on the land valuation given by DRA; but, the valuation of DRA is not very scientific. The valuation methodology adopted fails to factor in various peculiarities affecting the lands in different zones. The VPT also confirmed that it has not specifically informed the DRA about the characteristics of different lands and the development activities carried out by VPT in different zones. In view of this position emerging at the joint hearing, the VPT was advised to review its initial proposal and file a revised proposal by 3rd week of March 2006. As decided in the joint hearing, the VPT was advised to initiate action on the following points:

- (i). Revisit the proposal by seeking a review of the valuation of DRA by duly reckoning with all relevant information concerning lands at different zones.
- (ii). Examine the details obtained from DRA by a suitable Committee headed by Chairman (VPT) and ensure that the lease rentals for different zones are proposed bearing in mind optional utilisation of lands and the spin off benefits to the port.
- (iii). Furnish zone-wise details of land utilisation, agreements in force and the facilities provided by the port.

6.3. At the joint hearing, it was also pointed out that the revised rates will be applicable in case of existing leases only if the lease agreement contains a specific provision about such applicability.

7. The further submissions made by the CWC subsequent to the joint hearing were forwarded to the VPT. The VPT was also advised not to levy the proposed rate for the quinquennium 2003-08 till they are approved by this Authority.

8.1. With reference to the advice rendered at the joint hearing, the VPT has made further submissions in piecemeal. The additional information/ submissions made by the VPT are summarised below:

- (i). It has furnished a map showing demarcation of 31 zones and zone-wise area available for leasing alongwith a statement showing details of lessees in each zones.
- (ii). The port has submitted that it invited tenders for allotment of plots in port EXIM park area for construction of warehouses keeping the valuations furnished by DRA for the quinquennium 2003-08 as the reserve price for the year 2005-06. The tenderers have quoted 2.99% to 55% higher than the reserve price fixed by the VPT. It has submitted that the value of land received from the tenders represent market values of the land. In view of this, and also keeping in view the increasing trend of land valuations, it is clear that the valuations in respect of quinquennial and basic values of land submitted to the TAMP in its initial proposal are quite reasonable. It has, therefore, requested to approve its initial proposal in toto.

8.2. The reply furnished by VPT did not specifically mention that the DRA land valuation of various zones have been reviewed with reference to different characteristics at different zones as decided in the joint hearing. It was also pointed out that the tenders obtained by the VPT for the port EXIM Park relate to zone-XI. Comparison drawn between the tender rate quoted for this specific land with the DRA valuation may not be relevant for deciding the reasonability of the DRA valuation of port's other lands at different zones with different characteristics.

8.3. The VPT was, therefore, again advised to revisit the proposal by seeking a review of valuation of DRA by duly reckoning all the relevant information concerning lands at the different zones and this report obtained from the DRA may be examined by the Committee headed by Chairman (VPT).

With reference to the VPT proposal to continue with levy of the lease rental collected by it during 2003-04 for 2004-05 and later as well till the rent at 6% of land valuation (as per the govt. guidelines) matches with the rent levied by it for 2003-04, it was again pointed out that this Authority is bound to follow the government guidelines and the VPT should approach Government for any relaxation. The VPT was therefore, requested to forward the approval of Government for relaxation of the relevant guidelines.

9. After regular follow-up, the VPT has submitted a revised proposal almost eight months beyond the stipulated time limit for submission of the revised proposal. The revised proposal was approved by its Board of Trustees in the meeting held on 28 October 2006. It has also furnished

clarifications on certain points. The submissions made by the VPT in the revised proposal and the clarifications furnished are summarised as follows:

- (i). As directed by the TAMP at the joint hearing, the District Collector, Visakhapatnam was advised to review the land valuations of port lands. The Joint Collector in a meeting with the VPT expressed that a fresh review by DRA would not be possible. It was, therefore, agreed that DRA valuations recommended earlier may be reviewed by the Rate Fixation Committee.
- (ii). In view of the above, the Rate Fixation Committee again reviewed the minutes of the previous meetings of the Committee and other relevant records. After review, the Committee has made the following recommendations for the quinquenniums 1998-2003 and 2003-08:
 - (a). **Quinquennial valuations of existing leases**
 - 1998-2003: The Committee recommended that the hike of 30% for the quinquennium 1998-2003 over the previous quinquennium 1993-98 is reasonable and hence may be approved.
 - 2003-08: The Committee noted that out of 32 zones, 15 zones are having only 30% escalation over the previous quinquennium 1998-2003 and escalation of more than 30% is affecting only few leases and hence the quinquennial valuations furnished by DRA for the quinquennium 2003-08 may also be accepted and approved.
 - (b). **Basic valuation of VPT lands**
 - 1998-2003: The Committee noted that VPT started adopting market valuations of its lands from 2001 onwards for fresh leases. Most of the vacant lands are available in 4 zones viz. IV-A, VII, VIII and IX-B. The Committee noted that though all the 4 zones are having similar nature of land with similar infrastructural facilities like rail and road connectivities, the DRA fixed the basic value of land @ Rs.800/- per sq. yard for zones IX-B and IV-A and @ Rs.2000/- per sq. yard for zones VII and VIII for the quinquennium 1998-2003.

The Committee recommended a uniform rate of Rs.800/- per sq. yard for the land in these 4 zones in view of similar nature and infrastructure facilities. For the remaining zones, the Committee felt that the basic values furnished by DRA may be approved.
 - 2003-08: In respect of IV-A, VII, VIII and IX-B, the Committee relied on the market value as per highest bid obtained for zone IX-B in May 2006 for the quinquennium 2003-08 and recommended for adoption of the same rate i.e. Rs.1270/- per sq. yard for all these 4 zones. For the remaining zones, the Committee recommended adoption of basic valuations furnished by DRA.
 - The modifications suggested by the Rate Fixation Committee in the basic values of the land for these 4 zones vis-à-vis the basic value of land proposed in the earlier proposal is tabulated below:

(Rate in Rs. per sq. yard)

Zone Nos.	Quinquennium 1998-2003		Quinquennium 2003-2008	
	Basic value of land (Initial proposal)	Basic value of land (Revised proposal)	Basic value of land (Initial proposal)	Basic value of land (Revised proposal)
IV A	800	800	1000	1270
VII	2000	800	2400	1270
VIII	2000	800	2400	1270
IX B	800	800	1000	1270

- (iii). To summarise, the VPT in its revised proposal has proposed the following quinquennium valuation and basic valuation of land for the quinquenniums 1998-2003 and 2003-08 based on the recommendations made by the Rate Fixation Committee:

(in Rupees)

Sl. No	Zone	Valuation of land proposed for the quinquennium 1998-2003		Valuation of land proposed for the quinquennium 2003-2008	
		Quinquennium valuation (Rs. per sq. yard)	Basic value of land (Rs. per sq. yard)	Quinquennium valuation (Rs. per sq. yard)	Basic value of land (Rs. per sq. yard)
1.	2.	3.	4.	5.	6.
1.	I-A	187.20	1350.00	307.15	2215.00
2.	I-B	226.20	1350.00	371.14	2215.00
3.	I-C	149.76	1200.00	299.52	2400.00
4.	II-A1	140.40	3000.00	182.52	2800.00
5.	II-A2	140.40	2000.00	196.56	2800.00
6.	II-A3	140.40	800.00	182.52	1000.00
7.	II-B	140.40	800.00	182.52	1000.00
8.	II-C	46.80	800.00	60.84	1000.00
9.	III	140.40	800.00	228.15	1300.00
10.	III-A	140.40	800.00	182.52	1000.00
11.	III-B1	140.40	800.00	184.27	1050.00
12.	III-B2	140.40	950.00	182.52	1050.00
13.	III-B3	140.40	650.00	280.80	1375.00
14.	IV	22.36	1100.00	29.07	1375.00
15.	IV-A	56.16	800.00	73.00	1270.00
16.	V	140.40	950.00	182.52	1050.00
17.	VI-A	37.44	2000.00	48.67	2400.00
18.	VI-B	131.04	1300.00	201.60	2000.00
19.	VII	9.36	800.00	12.17	1270.00
20.	VIII	18.72	800.00	24.34	1270.00
21.	IX-A	37.44	800.00	60.84	1300.00
22.	IX-B	37.44	800.00	48.67	1270.00
23.	X-A	39.31	5000.00	51.10	6000.00
24.	X-B	71.14	5000.00	92.48	6000.00
25.	XI	74.88	450.00	149.76	1500.00
26.	XII	149.76	1500.00	239.62	2400.00
27.	XIII	149.76	2800.00	246.03	4600.00
28.	XIII-A	149.76	800.00	299.52	4125.00
29.	XIV	187.20	1350.00	294.67	2125.00
30.	XV	131.04	800.00	196.56	1200.00
31.	XVI (Bheemili Mandal)	NIL	NIL	NIL	1,10,000.00 (per acre)

- (iv). It has not proposed any modification to the conditionalities proposed in its initial proposal.
- (v). As regards the point made by TAMP to obtain the approval of the Government to set aside the point observed by the Authority with reference to the guidelines issued by the Department of Shipping in March 2004, the port has informed that where lease agreements are binding, VPT will continue charging rentals of 2004-05 till they equalize the rentals worked out by taking 6% of market value and 2% annual escalation as per MOS guidelines of March 2004, because the existing 'rent' clause in the lease agreement specifically states that "the annual rent shall not at any stage be less than the preceding years rent". The approval of Ministry for this point is not found necessary by VPT since the lease agreement itself was framed and approved by MOS. However, in case of Licenses where there is no agreement, the VPT has no objection to pass on the benefit in rentals as per the rate prescribed in the Government guidelines of 2004 to the licencees.

10.1. The VPT again made a presentation of its proposal on 12 June 2007 at the Visakhapatnam Port Trust. During the presentation, the VPT clarified that the quinquennial revision of rates is based on annual escalation factor given by the DRA and is not assessed with reference to the prevailing market value of land. The VPT further informed that the quinquennial valuation is subject to escalation from time to time, based on the market value of land assessed in the year 1952. The VPT also submitted that in the land to land exchange between the State Government and the VPT in 2002 for air port expansion, land measuring 169.12 acres was allotted to VPT which is identified as Zone XVI at Bheemili Mandal. The value of land at this zone is valued at Rs. 110000 per acre (i.e. Rs, 227 per sq. yard) by the DRA based on the basic valuations of 2003-04.

10.2. The VPT was advised to follow the methodology delineated in the Government policy guidelines while proposing lease rentals in respect of these lands. If any deviation from such policy is necessary, then the port should obtain the approval of the Government to that effect.

10.3. During the course of presentation, it emerged that some of the zones like IV-A, VII, IX-B, Bheemili, etc., are not hit by the issues to be resolved with the approval of the Government. The port trust informed that the lease rent proposed for these zones are based on the rates obtained in the tendering process concluded in the year 2006. The port trust was, therefore, advised to appropriately de-escalate the rates to arrive at the basic rate for the years 1998 and 2003. The port agreed to submit a revised proposal in respect of these zones of land within 2-3 weeks and take up the issue relating to the other zones with the Government for obtaining necessary exemption from the policy guidelines of February/ March 2004.

11.1 The VPT has responded to the points that emerged during the presentation. It has submitted that the Rate Fixation Committee has recommended the value of Rs.1270/- per square yard, based on the tender given by port in 2006 for vacant land available in zone IX B. The land of zones IV-A, VII, VIII are contiguous to the land in zone IX-B. Therefore, a uniform value of Rs. 1,270/- per square yard is proposed for all these four zones.

11.2. The market value of land obtained based on tender given by the port in 2006 is de-escalated as given below:

Year	De-Escalation	Rate Per Sq. Yd.
2006-2007	NIL	1270-00
2005-2006	@ 2%	1245-09
2004-2005	@2%	1220-68
2003-2004	@5%	1162-55
2002-2003	@5%	1107-19
2001-2002	@5%	1054-47
2000-2001	@5%	1004-26
1999-2000	@5%	956-43
1998-1999	@5%	910-89

11.3. The VPT has requested to approve the revised basic value of land for the above mentioned four zones as well as land at zone XVI Bheemili Mandal for the quinquennium 1998-2003 and 2003-08. Apart from this, the VPT has also requested this Authority to approve market value of the port lands for other 14 zones. To summarise, the VPT has sought approval of basic value of land of the following 19 zones (out of 31 zones proposed earlier) for both the quinquennium:

Sr.No.	Zone	For the Quinquennium 1998-2003	For the Quinquennium 1998-2003
		Basic value of land (Rs.per sq.yard per annum)	Basic value of land (Rs.per sq.yard per annum)
1	I-A	1350.00	2215.00
2.	I-C	1200.00	2400.00
3.	II-A2	2000.00	2800.00
4.	II-B	800.00	1000.00
5.	III	800.00	1300.00
6.	III-B2	950.00	1050.00
7.	IV-A	800.00	* 1270.00
8.	V (Air Port)	950.00	1050.00
9.	VI-B	1300.00	2000.00
10.	VII	800.00	* 1270.00
11.	VIII	800.00	* 1270.00
12.	IX-A	800.00	1300.00
13.	IX-B	800.00	* 1270.00
14.	XI	450.00	1500.00
15.	XII	1500.00	2400.00
16.	XIII-A	800.00	4125.00
17.	XIV	1350.00	2125.00
18.	XV	800.00	1200.00
19.	XVI	NIL	110000.00 (per acre)

*Revised basic value as recommended by Rate Fixation Committee.

12. 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>

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

- (i). In the matter governing fixation of lease rentals for port estate, this Authority is always guided by the Government policy on land and waterfront management at the Major Port Trusts. Adoption of Government guidelines was an internal decision of this Authority till

the revised tariff guidelines were announced by the Government in March 2005. The revised guidelines, which are the policy direction of the Government, require this Authority to follow the Government policy decisions on land management for the purpose of fixing lease rentals.

- (ii). For the purpose of the exercise in hand, land policy guidelines issued by the Government in the years 1995, 2000 and 2004 are relevant. These policy guidelines specify, among other things, the methodology of determining lease rentals, periodicity of review and the procedure to be followed by the Port Trusts for reviewing the rates. The position regarding review of rates once in five years is consistently maintained by the Government.
- (iii). As has been brought out in the initial part of this Order, except for the four zones II/A3, II/B, IV/A and IXB, the lease rent for other zones are not approved by this Authority. The VPT recovers lease rentals based on a provision in this regard available in the surviving lease agreements.

Even though the correct statutory position regarding framing a Scale of Rates for lease rentals was brought out in the case relating to Andhra Petrochemicals Limited as early as in March 2002, the successive attempts made in that direction did not fructify mainly due to the issues involved in proper valuation of lands and the gaps and contradictions in the proposals of VPT with reference to the applicable Government guidelines.

- (iv). The Government guidelines of April 1995 for land management at major ports prescribe revision of the base rate once in five years. The revised policy guidelines issued by the Government in March 2004 retains the same position. The VPT has sought approval to the revised rates retrospectively for the quinquennium 1998-2003 and partly for the quinquennium 2003-08.

In view of the Government guidelines in this regard, it is inevitable to consider revision of lease rents at VPT retrospectively from 1998. The lease rentals so revised will, however, be enforceable in individual leases depending on the provisions in the concerned lease agreements.

- (v). The initial proposal of the VPT sought approval of two sets of valuation of land i.e. quinquennial value and basic value of land. The quinquennial valuation refers to the values of lands assessed in 1952 which were subjected to adhoc percentage increase recommended by the DRA every quinquennium over the rates prevailing in the previous quinquennium. The VPT has justified the proposed 30% increase in the quinquennium valuation for 1998-2003 suggested by the DRA as reasonable since the compounded increase @ 5% annual escalation in rent as per the Government guidelines will also work out to 27.7%. For the quinquennium 2003-2008, the VPT has proposed 30% to 100% increase in the valuation over the previous quinquennium valuation in proportion to the increase in the basic valuation of land for corresponding quinquennium. The VPT has conceded that no comparison can be drawn between the quinquennium valuation and the basic valuation of land and the proposed quinquennial valuation of land will not truly reflect the market value of lands. That being so, the proposal of the VPT seeking approval of quinquennial valuation of land based on the recommendations of the DRA on the land value assessed in 1952 is not in line with the Government guidelines.

The VPT, in the revised proposal filed in July 2007, has excluded the quinquennial valuation of land by the DRA and instead has sought approval of the basic value of land for 19 zones as against 31 zones proposed in its initial proposal. The proposal for consideration by this Authority is, therefore, limited to fixation of lease rental in respect of the 19 zones as per its revised proposal.

The VPT has reported that in some of the existing long term lease agreements, rent is prescribed as a percentage of the quinquennium valuation suggested by the DRA. The VPT may approach the Government to obtain necessary relaxation from the Government as regards the approach to be followed for fixation of lease rental in respect of such long term lease agreements.

- (vi). The 1995 guidelines issued by the Government requires the major ports to constitute a Committee under the Chairmanship of the respective Chairman and represented by the (then) Ministry of Surface Transport, District Revenue Authority amongst other members for recommending the Scale of Rates of the major Ports. The guidelines of 2004 also require a Committee headed by the Chairman of the port trust to recommend the rates to the TAMP.

As required by the Government guidelines, a Committee including District Collector, a representative from the Department of Shipping amongst other members was constituted by the VPT under the chairmanship of Chairman (VPT) to review and recommend the rates ascertained by the District Revenue Authority. The said Committee after examining the land valuation furnished by the DRA has recommended the basic valuation for the quinquennium 1998-2003 and 2003-08.

- (vii). (a). The Government guidelines of 1995 specify that the Scale of Rates should be fixed taking into account the cost of development of land, various facilities provided by the port, fair rate of return on investment etc. The revised land policy guidelines of March 2004 prescribe that market value of land can be determined taking into consideration any or all the factors like State Government's ready reckoner value on the area, the average rate of actual transactions in last three years for the lands in the port's vicinity, highest accepted tender value of port lands, rate arrived at by the approved value or any other relevant factors.
- (b). The report of the Committee constituted by the VPT for fixation of lease rental, does not explain the basis followed by the DRA for valuation of land for each of the zones.

Most of the users have complained that the valuation of land given by the District Revenue Authority (DRA) is not very scientific as it does not factor the peculiarities of land at different zones and the development activities carried out by the users, port, etc. M/s. K. Ramabrahman and Sons Private Limited have pointed out that the valuation of land by the DRA is based on the market value of the peripheral lands but does not recognise the restriction on use of port land which will reduce the market value of land. In view of the objections raised by the lessees, the VPT was advised to review the valuation of DRA by duly reckoning with all the relevant information concerning the lands at different zones.

The VPT has pleaded that a fresh review by the DRA would not be possible but agreed to re-examine its initial proposal. Accordingly, the valuation of land was again reviewed by the Rate Fixation Committee constituted by the port. After re-examining and reviewing the initial proposal, the port has suggested modifications in the valuation of land of four zones viz. IXB, IVA, VII and VIII based on the price obtained in the tendering process followed in May 2006 which is discussed in the subsequent analysis. For the rest of the zones, the VPT has proposed to retain the basic valuation of land as proposed in its initial proposal.

The VPT has clarified that the value of land cannot be assessed based on the actual transactions as no transaction of buying or selling of port lands takes place. It has certified that classification of land considered by the DRA for valuation of land is logical, as it follows the functional utilisation of land. The port has reportedly ascertained that the DRA has adopted the basic value of land provided in the State Government Ready Reckoner for valuation of port lands at different zones.

As mentioned earlier, this Authority is guided by the Government guidelines for fixation of lease rental of the port lands. As per Government guidelines, the Scale of Rates for land has to be recommended by a Committee headed by the Chairman of the Port Trust following the methods prescribed for valuation of land.

The VPT has confirmed that the basic value of land has been obtained by the DRA from the State Government's Ready Reckoner. This is one of the methods prescribed in the Government guidelines for valuation of land. The Rate fixation Committee which included Chairman (VPT), District Collector and Representative of the Department of Shipping has again reviewed the inputs of DRA and has suggested a few modifications to its earlier recommendations. This Authority therefore, proceeds ahead with fixation of lease rental relying on the basic valuation of land recommended by the Rate fixation Committee for both the quinquennium 1998-2003 and 2003-2008.

- (viii). (a). The land at zone XVI i.e. Bheemili Mandal is reportedly allotted by the State Government in 2002 to VPT in exchange of the land given by the port for expansion of the Visakhapatnam airport.

The land at this zone is valued at Rs. 110000 per acre by the DRA based on the basic valuation of 2003-04. The land valuation provided by the DRA for fixation of lease rental for the quinquennium 2003-08 is relied upon. No rate is proposed for the quinquennium 1998-2003 since at that time this land was not in the possession of port.

- (b). The Rate review Committee of VPT has reviewed the valuation done by the DRA and revised the basic value of the land at zone IX B to Rs. 1270 per sq. yard for the quinquennium 2003-08 based on highest tender given by the port in 2006. The approach followed for valuation of lands at this zone is found to be as per the government guidelines of 2004.

The revised basic value of land proposed for zone IXB is proposed to be adopted for the other three zones viz. IVA, VII and VIII, on the grounds that the lands at these zones are contiguous to lands at zone IX B and more or less in a similar state of development.

It is noteworthy that lands at these four zones were not clubbed together for valuation in the initial proposal. The Committee after review has reported that the land at zones IV, VII, VIII and IX B are of similar nature with reference to the infrastructure facilities provided / available and hence has recommended a uniform rate based on the rate obtained for land at zone IX B. In the absence of anything contrary available on record, this Authority accepts the position brought out by the VPT based on the recommendation made by the Rate review Committee.

The value of land obtained based on the highest accepted tender in 2006 has been de-escalated by VPT by applying a factor @ 5% for the period prior to 2004 and 2% from 2004 onwards as per the applicable Government guidelines. The basic value of the land thus derived after de-escalation is Rs. 1162.55 per sq. yard. which is considered for fixing lease rental for the quinquennium 2003-08 in respect of these four zones which are contiguous in nature.

- (c). With reference to the lands at the remaining 14 zones, the VPT has maintained the basic value of land as proposed in the initial proposal for both the quinquennium, which are relied upon in this analysis.
- (d). The Government guidelines do not indicate a specific preference to any particular method and do not stipulate that the same chosen approach should be adopted for deriving market value of the entire estate. Nevertheless, this Authority is of the view that it would be appropriate for a Port Trust to assess the market value under all the options given in the Government guidelines. The Committee should take into consideration all the factors and decide upon the best value to be adopted.

- (ix). (a). The VPT has sought approval to the basic valuation of land and not the lease rentals on the ground that the lease agreements entered by the port prescribe

lease rentals to be levied at different percentages of the land value. Some of the long term agreements entered prior to May 1987 prescribe rent at 6% of land value and in few other lease agreements entered subsequent to 1986, rent is prescribed at 9% of the value of land fixed by the DRA. It is reported that this provision is based on the sanction obtained from the Government. Notwithstanding this position, this Authority is required to fix lease rental of lands of major ports, as per Major Port Trusts Act and while doing so, is bound by the policy of the Government.

- (b). It is noteworthy that the Government guidelines prior to the 2004 guidelines did not prescribe any specific percentage of land value as lease rent. There was no uniformity in this respect across the Major Ports. The Cochin Port Trust in a case relating to fixing of lease rent of land at Puthuvypu adopted a figure of 3.33% of the land value. In case of Tuticorin Port Trust, lease rent for land allotted for a salt industry was fixed at 6% of the value of the land.

The Kolkatta Port Trust in the case relating to lease rent of land at Haldia adopted 7% to 10% of the value of lands for different zones for fixation of lease rent.

At VPT, the long term lease agreements reportedly prescribe two sets of rate depending on period when they were entered. The enhanced rent from 6% to 9% of the value of land is reportedly based on the sanction obtained from the Government vide letter No PT/17011/2/86-PG dated 18 May 1987. In view of the specific approval granted by the Government to VPT in May 1987, the lease rent for the quinquennium 1998-2003 is prescribed at 9% of the basic value of land in those lease agreements which are covered by the specific sanction from Government in this regard. In respect of all other lease agreements the lease rent is prescribed 6% of the basic value of the land.

- (c). The Government guidelines of March 2004 require fixation of lease rent of port lands @ 6% of the market value of land. That being so, for the quinquennium 2003-08, lease rent in respect of the 19 zones is prescribed at 6% of the basic value of land.
- (x). The VPT has applied the figure of 9% for collection of lease rent on the basic valuation of land given by the DRA in the case of lease agreements entered subsequent to 2000.

The revised guidelines of the Government announced in March 2004, require lease rent to be fixed at 6% on the market value of land and moreover, the annual escalation earlier prescribed at 5% has been also reduced to 2%. As a result, the VPT apprehends drop in the lease rent from 2004 onwards in comparison to the lease rent collected in the immediate previous year.

The VPT has, therefore, based on the recommendations made by the Rate Fixation Committee, proposed to continue to collect lease rent levied by it during the year 2003-04 till such time it matches with the rent at 6% of market value with appropriate escalation as per the Government guidelines. The proposal of VPT to continue to levy the lease rental of 2003-04 for subsequent years as well is not found to be in line with the Government guidelines of March 2004.

The VPT initially agreed to our advice to seek approval from the Government to the proposed approach since it was found to be not in line with the Government guidelines of 2004. Subsequently the VPT, contended that approval of the Ministry on this point is not necessary since the lease agreement framed and approved by the Ministry of Shipping specifically state that the annual rent shall not be at any stage be less than the preceding year's rent. The VPT however agreed to comply with the Government guidelines and levy lease rental @ 6% in case of leases where there is no agreement.

In some relevant cases decided earlier, this Authority has held that in those cases where the leases have already been granted should be governed by the provisions prescribed in the respective lease agreements. Any changes made in the rates or the guidelines issued after execution of the lease agreement cannot be seen to alter the provisions in

the lease agreement unless it is contradictory to any of the provisions / guidelines of the Government or to the overall tariff setting principles followed by this Authority.

- (xi). As per the Government guidelines, the lease rents fixed is subject to an automatic annual escalation. In terms of 1995 guidelines, the annual escalation in lease rent is @ 5% (compoundable). In the revised guidelines of 2004, the quantum of annual escalation is reduced to 2%. The annual escalation of lease rental is accordingly to be computed at 5% p.a. (compounded) for the period upto 31 March 2004 and thereafter @ 2% p.a.
- (xii). The VPT has proposed to reduce the rebate in lease rent for low lying water logged areas from the existing 25% to 10%. Most of the users have objected to this proposal. It is significant here to note that this Authority had prescribed the rebate at 25% in the 1999 Order for low lying areas based on the request made by some of the lessees. The reduction in the rebate proposed by the VPT citing cost involved for filling up such low lying areas which is estimated at Rs. 250 to Rs. 300 per sq. metre approximately does not appear to be fully relevant as it did not take into account the cost already incurred by the lessees in land filling and its contribution in the consequent appreciation in the land value. In view of the above position, the existing rebate of 25% as prescribed by this Authority in the earlier Order is continued.
- (xiii). In case of long term lease on upfront basis, the VPT has proposed a nominal annual rent of Re.1/- per sq. mtr. and upfront fee based on the discounted value of annual rent calculated at 6% of the basic value of land with 2% annual escalation.

Though the VPT confirms that the proposed provision is in line with the Government guidelines of March 2004, it not found to be exactly in line with the Government guidelines.

It will be sufficient if a condition is incorporated in the Scale of Rates stating that all terms and conditions governing the lease rent shall be as per the guidelines of the Government, instead of listing them down once again.

- (xiv). The VPT has proposed a conditionality to collect one year non-refundable rent as premium and refundable security deposit of five years or 25% of total rent for the duration of the lease whichever is lower in case of long term lease of land on annual lease rental mode. The wordings of the proposed conditionality is found to be at variance with the provisions prescribed in the Government guidelines of March 2004 and hence the condition as stipulated in the Government guidelines of March 2004 should be applied by the VPT.
- (xv). The VPT has introduced a conditionality offering 30% reduction in lease rents in respect of larger extents of land of 50 acres and above subject to the conditions that road, drainage, illumination, etc., developed by the lessees in the periphery of the leased plots is for common usage by other lessees and the VPT. Recognising that the proposed conditionality will incentivise the users / lessees who develop the common plot area, the proposed conditionality is incorporated.
- (xvi). As regards the other zones for which the lease rentals could not be fixed in view of the gaps observed in the proposal, the VPT is allowed to submit a separate proposal for both the quinquennium after obtaining necessary exemptions from the Government to the extent the proposal is inconsistent with the Government guidelines.

The VPT is advised to follow a more scientific and rational approach while formulating the proposal for revision of the lease rentals for different zones at the time of next revision in consistent with the applicable Government guidelines and also keeping in mind the various observation made by the users and this Authority in this Order.

- (xvii). The revised lease rentals provisionally approved by this Authority will come into effect retrospectively for quinquennium 1998-2003 and also for the quinquennium 2003-2008.

As already mentioned earlier, the revised lease rental will be applicable in case of existing leases / licenses and in those cases renewed / allotted after 1 April 1998 for the

quinquennium 1998-2003 and 1 April 2003 for the quinquennium 2003-08 only if the respective lease agreement or letter of allotment, if no lease deed is still executed, explicitly provides for revision of lease rentals during the currency of the lease period.

14. In the result, and for the reasons given above, and based on a collective application of mind, this Authority provisionally approves the following revised lease rate for lands at the following 19 Zones belonging to the VPT for the quinquennium 1998-2003 and 2003-2008 subject to the condition that the port would review the basic valuation under all the methods prescribed in the Government guidelines and derive lease rentals based on the one which would be most beneficial. Consequent upon such review, the port should also review/readjust the billings made.

“Schedule of Lease rate of land belonging to the Visakhapatnam Port Trust

Sr. No.	Zone	Rate in Rs. per sq. yard per annum		
		With effect from 1 April 1998 upto 31 March 2003		With effect from 1 April 2003 upto 31 March 2008
		For the Quinquennium 1998-2003		For the Quinquennium 2003-08
		In case of lease agreements covered by the specific sanction from the Government for levy of lease rent at 9% of land value	For the other lease agreements not covered by the specific sanction from the Government	
1.	I-A	121.50	81.00	132.90
2.	I-C	108.00	72.00	144.00
3.	II-A2	180.00	120.00	168.00
4.	II-B	72.00	48.00	60.00
5.	III	72.00	48.00	78.00
6.	III-B2	85.50	57.00	63.00
7.	IV-A	72.00	48.00	76.20
8.	V	85.50	57.00	63.00
9.	VI-B	117.00	78.00	120.00
10.	VII	72.00	48.00	76.20
11.	VIII	72.00	48.00	76.20
12.	IX-A	72.00	48.00	78.00
13.	IX-B	72.00	48.00	76.20
14.	XI	40.50	27.00	90.00
15.	XII	135.00	90.00	144.00
16.	XIII-A	72.00	48.00	247.50
17.	XIV	121.50	81.00	127.50
18.	XV	72.00	48.00	72.00
19.	XVI	NIL	NIL	6600.00 Rate per acre per annum

Notes:

- (i). The rates prescribed in the third column shall be applicable with effect from 1 April 1998. The rate prescribed in the fourth column will be applicable with from 1 April 2003 till 31 March 2008.

- (ii). The lease rent shall bear an escalation @ 5% (compoundable) per annum for the period 1 April 1999 to 31 March 2004. Thereafter, the rates shall be escalated by 2% per annum till such time the rate is revised with the approval of the competent authority.
- (iii). The other conditions governing the lease rental shall be as per the guidelines issued by the (then) Ministry of Shipping vide its letter No. PT-17011/55/87-PT dated 8 March 2004, as may be amended from time to time.
- (iv). In case of low lying and water logged areas, a reduction of 25% shall be granted in the lease rent prescribed in the above schedule.
- (v). A reduction of 30% in lease rents is will be granted in respect of larger extents of land of 50 acres and above subject to the conditions that road, drainage, illumination, etc., developed by the lessees in the periphery of the leased plots is for common usage by other lessees and the VPT.

(Brahm Dutt)
Chairman

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/41/2005-VPT

- **Proposal from the Visakhapatnam Port Trust for revision of lease rentals of its lands.**

1. A summary of the comments received from the various lessees and the response of the VPT thereon is given below:

Para No.	Comments of the users / user organisations	Reply of VPT
V. Dhana Reddy & Company		
(i).	Sizeable quantity of cargo which should have been handled at Visakhapatnam Port, has already been diverted to Kakinada due to high expenditure incurred by importers / exporters at VPT. This has resulted in under utilisation of port facilities at Visakhapatnam. Thus, any further increase in expenditure at this stage due to upward revision of lease rental would result in more diversion of cargo and it would be difficult to attract additional cargo items (except from ore, liquid cargo and cargo of NALCO and CFL).	No comments furnished.
(ii).	Revision of lease rental should not be examined in isolation without taking into account the impact of the revision on port trade and traffic. The principle of 'what trade can bear' should be the prime criteria.	
(iii).	Major portion of cargo is moved by rail but, wagons are not supplied as per the requirement. This leads to longer storage period and use of additional space. Hence, C&F Agents are charging very high storage charges. If lease rental is increased the same will also be passed on to the port users. Since land is allotted only for a maximum period of 30 years, huge expenditure incurred by C&F Agents for developing this land may also have to be taken into account while working out the storage charges.	
(iv).	Procedure followed in fixing rates based on quinquennial valuation by the Revenue Authority needs to be revised. Land valuation should also take into account the value of marshy land. Division of 31 zones may be examined by an independent body and reduced to two or three and the lowest rate presently prescribed could be adopted. District Revenue Authorities take up development works done by Port in fixing rates. To meet this development expenditure, port increases the wharfage charges. So it need not be taken into account while fixing rentals.	

(v).	Land lease could be utilised only for handling import/export cargo and cannot be used for any other purpose even if it is under utilised. Since users like to have long term contract with C&F Agents for providing storage facilities, there is strong justification to take up review once in 10 years. There is ample justification to reduce the rentals. Since port may find it difficult to reduce, TAMP is requested to pass necessary order to maintain the status quo (i.e. continue the existing rate) at least for next 10 years.	
Vizag Seaport Private Limited (VSL)		
(i).	It has no specific comments to offer on the proposal. It has confirmed that the land provided to it is as per License Agreement entered with the VPT, which attracts lease rentals as per the rates prescribed in the Scale of Rates.	No comments.
Hindustan Shipyard Limited (HSL)		
(i).	It is not clear whether the recommendation made by the Committee is also applicable for the lands taken on lease after 1 April 1995.	The Committee has examined the rates furnished by DRA and recommended the rates for approval of TAMP. The rates so approved by TAMP shall be applicable to all the leases including the lands taken on lease after 1 April 1995 but subject to the terms and conditions existing in the leases concerned including the rate of rent applicable.
(ii).	An extent of 3.238 acres of land allotted to it fell due for renewal during 1995. The rent paid to the port was Rs.31,363/- per acre per annum before revision of policy. After revision, the rent paid by it during the year 2004-05 is Rs.4,67,002/- per acre/per annum. The port needs to clarify the lease rental applicable in respect of the above land.	The increase in lease rent after renewal of lease is due to adoption of basic value of land for computation of lease rentals as per the Government Policy Guidelines dated 15 February 2000 which envisages the adoption of said rate for new allotments as well as renewal cases on fresh terms and conditions.
(iii).	The renewals of land on lease should be for a minimum period of 30 years instead of 10 years in respect of PSUs who are utilising the port land for the last 25 years and above. The port is charging one year lease amount as non-refundable premium at the time of each renewal lease of land. It has suggested removal of the said clause.	The renewal period has now been allowed for 30 years period as per the latest Government guidelines dated 8 March 2004 and VPT will be complying with the same accordingly for all the latest renewals if the PSUs are fulfilling the prescribed conditions. As per the Government Guidelines, the renewal of lease should be treated on fresh terms and conditions. Charging of premium is one of the conditions, and VPT is implementing only the Government Guidelines.
Central Warehousing Corporation (CWC)		
(i).	The DRA has to determine the land value based on the previous 5 years sale deeds transaction of lands in that particular zone/vicinity/survey number as the case may be. In the present proposal the material evidence in this regard is not furnished. Moreover, it appears that there are no sale transactions of industrial land during the last 5 years and in such case, how the DRA has arrived at the land value for such land and proposed hike, is not clear.	The DRA has divided the VPT lands into different zones based on the developments taken place like Rail & Road connectivity, Drainage system, Street Lighting system, etc. On this basis, DRA has fixed the values for different zones. VPT is implementing the DRA recommendations as per Government policy.
(ii).	During the joint hearing in respect of earlier proposals of VPT, the port had expressed its intention to recast the proposals in line	VPT lands are valued quinquennially i.e. once in every 5 years. By the time of the joint meeting of the TAMP was held in January 2003, the quinquennial

	with the procedure prescribed in the guidelines given by the Government and requested three months time for submission of the revised proposal. The port has, however, taken abnormal time and submitted the proposal only on 29 July 2005, which may kindly be taken notice of and also that it has submitted the same earlier proposal. Then where is the question of revision of proposals as stated by the port before the TAMP and how the present proposals can be treated afresh?	period had already come to an end and rates for new quinquennium i.e. 2003-08 were also required to be fixed. Therefore, DRA were approached again for fixing the valuations for the present quinquennium i.e. from 1 April 2003 to 31 March 2008. The valuation proceedings of DRA were received on 16 February 2005. After taking the necessary approvals of Rate Fixation Committee & VPT Board, the proposals are placed before TAMP.
(iii).	There are no instructions for submission of the proposals clubbing both quinquenniums.	TAMP issued order dated 17 March 2003 for furnishing the rates within 3 months, for TAMP's approval, by which time the new quinquennium (1 April 2003 to 31 March 2008) started. Hence, the quinquennial values for 1998-2003 could not be submitted. Meanwhile, submission of rates for next quinquennium also fell due for approval by TAMP. Hence, the valuations of both quinquennium 1998-2003 and 2003 –2008 are submitted to TAMP together.
(iv).	For the quinquennium 2003-08, initially the land values have been fixed by the Joint Collector at 100% hike over the previous quinquennium and subsequently reduced to the ceiling of 30% fixed by the Ministry. The DRA has not followed the procedures for fixation of land values to an extent of 100% hike. Moreover, the said fixation is also silent on the issue of previous 5 years land sales transactions.	The DRA has divided the VPT lands into different zones based on development taken place like rail and road connectivity, drainage system, street lighting system etc. Based on that, DRA has been fixing the values for different zones. Accordingly, VPT is implementing the DRA recommendation as per Government policy since 1953.
(v).	Inspite of TAMP's Order No. TAMP/3/98-VPT dated 29 October 1999 regarding 25% discount in the lease rents, in the low lying areas, the rate fixation Committee of VPT, in its minutes, have recommended only 10% reduction in the lease rents, which is not justified. CWC has taken over very low lying area and spent huge amounts for its leveling and construction. Even then, the floor of the godowns is at a depth of nearly 3 to 4 feet. Hence the discount of 25% in the lease rents should be allowed to CWC also.	CWC were allotted land way back in 1977-81 and are bound by the terms and conditions of the lease agreement. TAMP vide its Order dated 29 October 1999, decided that reduction @ 25% in lease rental will be appropriate for the low-lying and water logged areas leases which is prior to the lease agreement signed with CWC and same concession cannot be made applicable.
Rain Calcining Limited (RCL)		
(i).	The land leased to RCL is a reclaimed marshy land. It has developed the site and other infrastructure e.g. roads, drains, lighting, water supply etc., at its own cost, spending huge amounts. Substantial amounts have been spent by RCL for construction of the plant and buildings by way of special foundations. It may not be proper to compare the lands at par with other commercial lands for fixing of market value and Schedule of Rates. As the lease is being increased every year, it may not be proper again to re-fix the valuation every 5 years by comparing it with other commercial lands.	Rain Calcining Limited was well aware of the site conditions prior to the allotment of land by VPT in as much as the site was requested and chosen by them. Moreover, the firm has accepted the terms and conditions of lease agreement at the time of allotment. Hence it is not proper on their part to comment at this stage on this aspect.
(ii).	The lease rent in its case is revised every 5 years and is charged @ 9% of the basic	(a). Lease rentals are payable as per the terms and conditions of respective lease agreement.

	value. There is compoundable increase of 10% per year in the lease rentals. The rent paid by RCL is substantially higher compared to others and the same may be rationalised.	(b). The VPT has enhanced the rental values of its lands in the year 1985 from 6% to 9% per annum on the value of land fixed by the DRA for which the Government has accorded its sanction. Accordingly, the lease rentals are being implemented at 9% instead of 6%. (c). The lease rent for RCL is increased at 10% per year (compoundable) based on the Government sanction communicated vide MOST letter No.PT-17011/52/94-PT dated 28 August 1995 and this has been agreed to by RCL vide its letter dated 3 November 1995.
The Andhra Petrochemicals Limited (APL)		
(i).	The land allotted to APL is undeveloped and is predominantly saline, marshy and not even put in use since 1928. The land did not have proper approach when it was allotted. It has spent Rs.357 lakhs to raise the ground level, for doing piling work on major and minor structures.	The site is preferred by the lessee. Before the allotment, the prevailing conditions of land were well known to the lessee, as such, the comment of the lessee are deplorable at this stage, and not acceptable to VPT. The lease of land to M/s. APCL was confirmed to the lessee vide this office letter No.EM/APCL/SA/1736 dated 22 June 1985 and the terms and conditions were agreed upon by the lessee vide its letter No.APL/89/GM (P) dated 24 June 1989. Therefore, the contention of the lessee at this stage cannot be admitted.
(ii).	The port has not spent any amount towards the development of land but has simply allocated the land and subsequently increased the valuation by 30% every 5 years. The District Revenue Authorities are increasing the value on the representation of the port which is far from reality without having any transaction value.	Subsequent to the allotment of land to APCL, the port has implemented various developmental works viz. formation and resurfacing of approach road, creation of railway sidings, construction of bridge/culverts, etc., around the area where APCL is located. Further, as per the terms of the lease, the VPT has clearly spelt out that the land will be allotted on "as is where is basis". Further, it was agreed by the lessee that the enhanced rates are as per revised version of quinquennial values fixed by the District Revenue Authority and have to be paid by the lessee without any contest/protest. Hence, the allegation of the lessee is not appropriate.
(iii).	The port has to encourage the industries, so that volume of business at the port increases. The lease rentals should facilitate development of industries which is paramount to generation of wealth, employment, etc. in line with the Government policy. The lease rentals which are high should be reduced keeping in view low lying and water logged land allotted to it and also considering the large extent of land leased to it.	The VPT has been always encouraging its lessees to build up volume of business. Its premier position for last 5 years by standing number one Port among the Major ports of the country in terms of volume of cargo handled clearly reflects the same. The lease rentals implemented by VPT from time to time are based on the DRA fixation quinquennially. The rates adopted by VPT are in line with Government policy. Hence, the lessee's allegations are not correct.
Food Corporation of India (FCI)		
(i).	When there was the need of importing and storing huge quantities of food grains, under Buffer storage, the port's land was taken on long term lease for a period of 99 years in 1961 at Visakhapatnam and the godowns were constructed. The organisation is run purely on subsidy basis on 'no profit no loss' analogy.	In this context it is also to mention that VPT is also a service organisation under the control of Ministry of Shipping, Government of India and is governed by directives and guidelines issued by MOS from time to time.
(ii).	Comparison of port's land at par with other commercial areas where lease rentals are paid by commercial organisations is not justified. The port lands are utilised only for storage of food-grains. At the port's request, it has already handed over 2 blocks in the	The District Revenue Authorities vide their proceedings dated 18 September 2004 assessed the values for all the Zones for the quinquennium 2003-08. When the rates were submitted to the Rate Fixation Committee for making recommendations to TAMP, the Committee found

	godowns. This has proved detrimental to its operations consequently resulting in payment of demurrages to VPT Railways, excess wages to its workers, etc. Moreover, the area under Zone IC is a low-lying area and water is stagnated even during moderate rains.	that the values proposed by DRA were on higher side and recommended for review of the rates again by the DRA. The DRA in its further proceedings dated 16 February 2005 duly reviewed the rates furnished and revised the valuations by reducing to a large extent. In the proceedings, the DRA stated that the quinquennial values for the quinquennium 1 April 2003 to 31 March 2008 are fixed in proposition to the increase in the basic values from 1998-2003. The quinquennial revision in rates are enhanced in a such a manner that the values do not exceed 100% and also should not be less than 30% in the respective zones over the previous quinquennium i.e. 1 April 1998 to 31 March 2003.
(iii).	The proposed hike of 100% over the 1998-2003 rates based on the recommendation of DRA hike is extremely high for a non-commercial zone running purely on subsidy basis. The proposal may be reviewed in the light of the above facts and only a nominal hike of below 30% for the quinquennium 2003-08 may be allowed as was done for the period 1998-2003.	The Government Guidelines do not discriminate between public and private sectors or commercial and non-commercial organisations. The rents are calculated on values communicated by DRA for the respective quinquennium, uniformly for all the lessees.
K. Ramabrahmam & Sons Private Ltd.		
(i).	The lease of well developed lands are treated at par with underdeveloped marshy lands at the time of valuation. The tenure of lease being frozen at 30 years in most cases, it results in differential initial costs being amortised. This aspect is being fully ignored by revenue authorities while determining the land value.	The entire port land is divided into 16 zones and 15 sub-zones by DRA according to the developments taken place in the respective zones for ascertaining the quinquennial valuations. These are also agreed upon by the lessees in the lease agreements. Therefore, the contention of the lessee is not correct. Regarding the tenure of lease it is clarified that in terms of Government Guidelines, Port Trust Board is competent to allot land upto 30 years and if the land is required by the lessee beyond 30 years, lease can be renewed for a further period as per Government Guidelines in force.
(ii).	The port lands are mostly given on lease for storage of cargo or for setting up port based industries. In both cases, being commercial ventures, wherein huge investments are being made, the uncertainties in lease rentals hampers the very viability of the concerned project.	Valuation of lands is being done by DRA as per respective zonal developments. The 'quinquennial' period adopted in fixation of land valuation is a standard method.
(iii).	The revenue authorities are only taking the market value of the peripheral land based on registered rates. They are not considering the restriction on land use, which drastically reduces the market value of land.	The DRA is the authority to fix up the land values in accordance with the Government Guidelines. The quinquennial valuations arrived by DRA are based on the developments of area locational criteria, etc., but not the prevailing market rates. The market rates as per registration deed executed in the neighbouring / periphery area are multifold higher.
(iv).	Port lands are being leased out mainly to improve the infrastructure of the ports to enhance their capacities to handle greater volumes of cargo items. If this fundamental aspect is accepted, the rentals will not be based on market prices as is being done at present. If there were to be a restriction on privatisation and ports were not allowed to lease lands, they would still have to develop this infrastructure on their own and build warehouses for storage of cargo. In such an event, while fixing the rentals for the warehouses, the market value of the lands is	It is inevitable for the VPT to generate adequate resources not only for their own developments, but also for protecting the vast area of 10796.00 acres of land. Therefore, it is necessary to improve the infrastructure and become more self-reliant and competitive to attract more business thus earning foreign currency. Improving infrastructural facilities will enhance its volume of cargo capacities in the present global scenario. The VPT does not have storage warehouses in its lands except limited sheds in the dock area meant for transit cargo.

	not being considered. This would also keep the transaction costs of handling at the ports low and make the ports more competitive to attract more cargo.	
(v).	Why are ports considering land leases as major sources of revenue when they are being used for providing infrastructure? This aspect needs to be examined in the light of overall business strategy of ports.	The land rentals form a minimal part of the total revenue of port as per statistics of VPT irrespective of whether land is leased or not. The VPT is striving for the development of infrastructure in all its lands.
(vi).	Some ports are even planning to sell lands to raise revenue. In such cases, port should ensure that they are properly auctioned to obtain maximum revenue.	With reference to ensuring auction on sale of land to obtain maximum revenue, it is stated that this is not applicable to VPT, as neither sale of land has taken place so far nor are there any such proposals.
(vii).	The lease rentals approved by the Board of Trustees of the VPT are unrealistically high and merit considerable downward revision. The rates may be fixed on reasonable level to make the investments made on them viable without dramatically increasing the cost of storage of cargo at the port. This additional burden will have to be necessarily passed on to the importer/exporter, thereby increasing the overall cost of handling at the Port. If the law permits, periodical review of land valuation should be abolished and rentals over the full lease period should be known upfront at the time of signing the lease deeds. Rentals with predetermined escalations should be built into the lease deeds. If this were not possible, at least the period of lease should be increased to 50 years, to decrease the annual amortisation costs and the valuations should be made once in 15 or 10 years and definitely not 5 years.	The quinquennial valuations arrived by DRA are based on the developments of area, locational criteria etc., but not the prevailing Market Rates. The Market Rates as per registration deed executed in the neighbouring / periphery area are multifold higher. The rate fixation committee after considering all the facts made certain recommendations to TAMP which are already placed before TAMP. The VPT has been following the guidelines issued by MOS from time to time. The periodical revision of lease rentals followed by port is also as per guidelines issued by MOS, Government of India.
(viii).	Fresh tenders now being floated by the port reflecting these very high values of land, which are not as yet approved by TAMP. The port may be directed to postpone such tenders till this case is disposed off by TAMP.	The values denoted in the tenders now floated are arrived based on valuation of DRA and as recommended by the Rate Fixation Committee duly mentioned therein that the rate indicated are provisional and subject to approval by TAMP. The differential rentals will be regularised after receipt of approval from TAMP.
Coromandel Fertilisers Limited (CFL)		
(i).	The leased lands are all marshy and low lying. Huge amounts of expenditure have been incurred for the developmental activities of these lands.	The CFL have entered into a lease agreement in an extent of acres 490.52 on 30 December 1964 and the prevailing conditions of land were well known to the lessee. As per the agreement, the lessee has to develop the land at their own cost as per the requirement of their project / industry.
(ii).	In earlier quinquennium periods, a uniform percentage hike for different zones was fixed but for the quinquennium period of 2003-08, the percentage hike is not only uniform but also exorbitant, particularly 100% in Zone III B3. The present rates charged @ 30% over the last quinquennium itself is exorbitant in the prevailing business context.	The contention of the lessee that the rates charged @ 30% over the previous quinquennium is exorbitant, is baseless. In fact CFL vide their letter dated 1 July 2002 has expressed that the increase in rentals for the quinquennium 1998-2003 are in accordance with the conditions laid down in the lease agreement with VPT. The Joint Collector while furnishing the revised rates stated that the quinquennial values for the quinquennium 1 April 2003 to 31 March 2008 are fixed in proposition to the increase in the basic value of land from 1998-2003. The quinquennial revision rates are enhanced in such a manner that the values do not exceed 100% and also not less than 30% in the respective

		zones over the previous quinquennium i.e. 1 April 1998 to 31 March 2003. The VPT is only implementing the rates fixed by DRA, as per the Government of India guidelines.
(iii).	In a meeting, where users of port lands were invited to give their views and comments on the rates fixed by DRA, all the major lessees of the port lands have unanimously requested and indicated that their trade and volumes have increased multifold resulting in substantial increase of revenue to port and hence the lessees should not be further burdened by abnormal increase in the lease rentals. Instead, the port should help the industry by reducing the lease rentals further in order to sustain the industry in this present global scenario.	After obtaining the views from the port users on the rates fixed by the DRA for the quinquennium 2003-08, the Rate Fixation Committee have forwarded the rates to DRA to review the rates proposed for the quinquennium 2003-08. The District Revenue Authorities have reviewed the rates downwards wherever possible and furnished the rates for the quinquennium 2003-08. Hence, the contention of the lessee for further review at this stage is not justified.
(iv).	While fixing the land rates for the purposes of calculating lease rentals, it is not fair to apply the registration land values of residential / commercial lands as the basis since there are no transactions of registration of lands leased to the industries in the near vicinity. In view of the above points, the rates proposed by the VPT for the quinquennium 2003-08 should be reviewed and the industry should be helped by further reducing the rates fixed for the period 1998-2003 from the current levels to support its survival in the volatile market condition.	It is not correct to say that for the purpose of calculations of lease rentals, DRA has applied the registration land values of residential commercial lands as basis. The rates fixed by DRA are much lower in comparison to the prevailing market value.
The India Cements Limited (ICL)		
(i).	The land allotted to us is far away from the port. and was lying vacant during the time of allotment by the port. There is no infrastructure developed by the port in this particular zone.	The allotment of land to the lessee was done in 1999, since then VPT has taken full efforts to develop infrastructure. Adequate road connectivity has been developed by VPT. The land allotted to this firm is well connected to NH-5, Industrial area and port. The port has taken up various developmental schemes in and around this land of lessee, viz. formation of direct connectivity road, industrial by pass road for connecting port area from NH-5 via shortest route of about 7 km of internal roads to respective plots. Subsequently, the two lane IBP road is made into 4 lanes in phases including rail sidings including a 3.5 km stretch being developed by NHAI.
(ii).	The utility value of land is very limited and restricted as this land was allotted to facilitate only to store the material for export or import purposes. Thus, the proposed increase in lease rental is not justified.	The lessee has requested for allotment of the land for the purpose of construction of warehouses and according to the covenant made by the lessee with VPT he should use the land for the purpose for which it is leased. Therefore the question of restriction of utility of land does not arise.
(iii).	Since the land was allotted with specific purpose for construction of a godown, it is not engaged in any trading or any other business activity.	The ICPL states that they are using land allotted for export and import in port. In another line they content that they are not doing any trading or business activity. These are conflicting statements. Any trade or business activity to be carried out in VPT land should be as per the land policy and in accordance with the purpose mentioned in the lease agreement. The land should not be used for any other purposes except for which the allotment was sought.
(iv).	As per the present terms of lease, the port is	The lessee before entering into the agreement is

	increasing lease rentals by 5% every year which itself is on higher side and there is absolutely no need to increase the same any further.	clearly aware of the fact that as per the rents clause, rentals are revised quinquennially and will have escalation of 5% every year compoundable. The land values are not static hence static valuations cannot be expected with a uniform rent. The rent clause of the lease agreement, clearly stipulates that the rentals are revised quinquennially.
(v).	The proposal made by the port is contrary to the Law.	As per Government of India Guidelines, a Rate Fixation Committee has to be constituted to make recommendations to TAMP and accordingly the Rate Fixation Committee made certain recommendations which are placed before TAMP for approval. Hence, it is not correct to say that recommendations are contrary to Law.
Visakha Container Terminal Private Limited (VCTPL)		
(i).	It is a BOT operator and is governed by provisions of the Concession License Agreement (CLA) with VPT. The VPT lands in this case are outside the purview of Concession License Agreement (CLA). However, with reference to the proposal on discount for low lying/water logged areas, it has stated that more than 50% of VPT lands are low lying and water logged such that these are unattractive for investors. The 10% discount as suggested by the VPT may not be enough to attract investors. It has recommended to consider offering better incentives for low lying and water logged areas.	No comments furnished.
Hindustan Petroleum Corporation Limited (HPCL)		
(i).	HPCL Visakha Terminal has taken 8 plots on lease from Visakha Port Trust at various intervals of time out of which, three are on long lease and five are on short lease. The agreements of long term leases are renewed as and when they expire. For short term leases, the agreements are renewed every three years.	No comments received.
(ii).	In case of long terms leases, VPT revises rental rates every 5 years on the basis the quinquennial valuation advised by DRA. However, for short term leases, the VPT not only fixes the lease rental on the basis of prevailing quinquennial land cost at the time of renewal but also enhances the rates by 5% every year.	No comments received.
(iii).	There is an exception to Plot No. III which though taken on long term basis, the lease rental of this plot is enhanced by 5% every year as if it is a short term lease.	No comments received.
Indian Oil Corporation Limited (IOCL)		

(i).	The 45 acres of land in which the Terminal and allied facilities, such as Storage Tanks, Pipelines from Port Jetties and Refinery Tanks are situated was taken on lease from the VPT for a period of 38 years from 1 April 1969 to 31 March 2007. It has approached VPT for renewal of the lease for a further period of 39 years and also requested for the commercial Terms and Conditions.	The IOCL had requested for renewal of lease for a further period of 30 years from 31 March 2007 on the existing terms and conditions. The IOCL were informed that renewal of the lease for a further period of 30 years will be considered on fresh lease terms and conditions subject to payment of rentals as per the prevailing schedule of rates i.e. market value of land. As per Clause No. 5.2.1.2 (b) of the Govt. of India guidelines on the land policy dated 8 March 2004, the Port Trust Board is authorised to renew the existing leases for a period not exceeding 30 years if renewal clause is provided in the lease agreement. The guidelines also stipulates ay that lease rent / upfront premium should not be less than the prevailing schedule of rates approved by the competent authority.
(ii).	The VPT vide their letter dated 11 May 2007 has agreed to renew the lease for a period of 30 years only. Moreover, the port has advised, to make a payment of Rs. 10,46,88,920.00 towards advance rent for one year, non-refundable premium equivalent to one year's rent and security deposit @ 25% of total lease amount. The Annual rent has been increased from Rs.27,24,846/- (2006-07) to Rs. 1,49,55,560 i.e., a hike of almost 500%.	In accordance with the above guidelines, it has proposed to renew the lease for a further period of 30 years in favour of IOCL, subject to payment of rentals as per the basic valuation of land proposed for the quinquennium 2003-08 submitted to TAMP for approval. Accordingly, provisional lease rentals was computed on DRA valuation of Rs. 55,00,920.24 per acre (i.e. Rs. 1050 per sq. yard with annual escalation @ 2% for the years 2004 to 2007). Thus applying 6% on the basic valuation of land, the lease rent worked out to Rs. 3,30,055.21 per acre (i.e. Rs. 68.19 per sq. yard). The total rent payable at the proposed basic value of land is Rs. 1,44,55,560 per annum.
(iii).	In view of the very steep hike in rentals, the matter was taken up with the VPT. The VPT has clarified that the land value fixed by the District Revenue Authorities and the TAMP Authorities are provisional and subject to revision.	(a). It has submitted that the lease rentals charged upto 31 March 2007 were based on quinquennial valuations given by District Revenue Authority (DRA). The quinquennial valuations for Port lands were being obtained from the year 1953 onwards for every five years. The quinquennial valuations furnished by District Revenue Authority (DRA) in 1953 were based on the sale transactions of lands in the vicinity of Port lands, and for the subsequent quinquenniums, a small increase of rates over the valuations of 1953 were made.
(iv).	Being a Public Sector Unit guided by the Ministry of Petroleum & Natural Gases, it has requested to review the rentals fixed by VPT.	(b). The valuations applicable for the renewal are based on valuations done by the District Revenue Authority (DRA) as per the ready reckoner available with the State Government for the year 2003-2004. Hence the valuations of land for the quinquennium 2003-04 are based on the market value of the land. In view of the variation in the land valuations, there is a steep increase in the rentals payable by IOCL in case of renewal from 1 April 2007 onwards for a period of 30 years.

2. A joint hearing in this case was held on 24 November 2005. The VPT made a slide presentation of its proposal. At the joint hearing, following submissions were made:

Visakhapatnam Port Trust

- (i). We have followed the government guidelines and the DRA valuation.

- (ii). We will furnish zone-wise details of land showing the extent of unused land.
- (iii). We will furnish the details of agreements zone- wise.
- (iv). We agree to furnish the characteristics of the different zones and the developments made by VPT on different zones to the DRA.
- (v). Going back to DRA will involve more time. We will constitute a Committee of Trustees and review the proposal. We will submit revised proposal in four months time.

Visakhapatnam Chamber of Commerce and Industry

- (i). The valuation of lands should capture the restrictions placed on the land. Further, the investment made by users which contribute to appreciation of land should also be recognised.

East India Petroleum Corp. Limited

- (i). The method of charging for way leave should be reviewed. We will look at TAMP's Order in JNPT case and pursue further with VPT.

Godavari Fertiliser

- (i). Our land is low lying and prone to flooding. There is no justification for 100% increase.

Food Corporation of India

- (i). We have 10 acres of land allotted in 1962 as per the lease agreement approved by the Ministry. The increase is not justified.

2.2. Subsequent to the joint hearing, the Central Warehousing Corporation (CWC) has made further submission. The points made by CWC are summarised below:

- (i). In the joint hearing held on 24 November 2005 the Authority has clarified that all the leases which are covered by agreements, prior to the appointment of the Authority, would be governed by the lease agreements signed by them and TAMP has no role to play.
- (ii). The CWC has taken over land from VPT on long term lease and entered into a Registered Agreement which provides for escalation every quinquennium. This escalation is to be governed by the land rates fixed by the Revenue Authorities and accordingly the hike in lease rentals have been paid upto 31 March 2003. The lease rents have been paid upto 31 March 2006 at the prevailing rates. However, the VPT based on the oral ruling given by TAMP at the joint hearing as stated in (i) above is demanding the payment of lease rentals at enhanced rates and threatening to charge interest @ 18% per annum on the differential lease rentals. Please clarify whether the request of VPT for payment of lease rentals at enhanced rates without approval of TAMP can be entertained or not.
- (iii). It is further submitted that CWC has taken over the lands in a very low lying position and has incurred huge expenditure to develop the site to suit its requirements. As already mentioned earlier, the Revenue Authorities are fixing the land rates based on the registration of sale deeds for the last 3 years in that area as per the procedure, whereas the area in particular is not having any sale transactions. It appears that the registration of sale deeds pertaining to the nearby house plots are considered for fixing the land values, which is not appropriate.
- (iv). In view of above, it is requested that the lease rents at existing level may be allowed to continue without enhancement. The interest notice served by the VPT may not be applied till the matter is clarified by the Authority.
