

**REPORT
OF
THE COMMITTEE
UNDER THE CHAIRMANSHIP OF
SHRI B K CHATURVEDI
MEMBER, PLANNING COMMISSION
GOVERNMENT OF INDIA**

**ON
PORT SECTOR**

(September, 2010)

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EXECUTIVE SUMMARY

Issues relating to Model Concession Agreement (MCA)

To clarify the current provisions, make them more explicit, less prone to litigation and ensure better risk allocation in certain areas, amendments are required in the MCA. These are:-

(i) The concept of 'Actual Project Cost' may be replaced with the concept of 'Total Project Cost'. The **Total Project Cost** may be defined as *the lowest of:*

(a) *the capital cost of the Project, as set forth in the Financial Package,*

(b) *the actual capital cost of the Project upon completion of the Port Terminal, and*

(c) *a sum of [***** crore (Rupees ***** crore)]**

* *Equal to the Cost of Project approved by the Project Approving Authority.*

This amendment is required to make it more specific, instead of keeping it open-ended, since the definition of 'Actual Project Cost' has implications for termination and other payments to the concessionaire.

(ii) Changes in taxes, environment laws or the orders issued by TAMP in relation to performance standards should be brought under the ambit of Change in Law, in the interest of reasonable risk allocation. However, direct taxes, are not included under the scope of 'Taxes' for 'Change in Law' purposes, in the approved MCA of Highway Sector. Clause 13.1(c) dealing with change in law purposes may, hence, be amended as below:

"Provided any imposition of new direct tax shall not constitute a Change in Law"

(iii) The definition of debt due may be amended as follows:

"Debt Due' will exclude "Principal that had fallen due before the Termination Notice"".

This is required to limit the responsibility of the Port Trust. The intention is to ensure that the lenders should have taken responsibility for debts which were due prior to the termination notice as prudent financial managers.

- (iv) In a number of clauses, the terms “Independent Engineer” and “Expert” appear to have been apparently used interchangeably. The word “Expert” wherever used may be replaced by “Independent Engineer” with suitable modifications in language of the corresponding clauses in the MCA, as necessary. Also, suitable provisions in the MCA should be made for ensuring that the Engineer is available for the entire concession period and the scope of work of Independent Engineer is modified accordingly.

This is in line with the practice in highway projects. The Engineer, thus, will fulfill his role during the construction as well as operation stage, ensure proper monitoring and expeditious resolution of the issues arising during this period.

- (v) There is a need to have a redressal mechanism. Accordingly, specific provision may be incorporated as indicated in the Annex-I(A).
- (vi) The provisions of equity holding requirements by the bidder in the Special Purpose Vehicle (SPV) as mentioned in MCA as well as in Request for Qualification (RfQ) should be made consistent and changes in the MCA be made accordingly. The suggested changes are indicated at Annex-I(B) of the Report.
- (vii) In MCA, there is a provision that tariff will be revised as per Appendix-XII and that such revision in tariff is based on changes in WPI. The inclusion of the word “from time to time” should accordingly be deleted, since it is superfluous.
- (viii) As per present provisions, private party is required to meet the ‘Minimum Guaranteed Cargo’ (MCG) requirement, as prescribed in the MCA. A default on this score can trigger termination of the contract. Introduction of concept of ‘Minimum Guaranteed Revenue’ (MRG) in place of MCG may provide some flexibility to the private party in handling business in accordance with the changing trade patterns and business requirements. It, therefore, should be modified to MRG.

(ix) The MCA stipulates SBI-PLR as the benchmark rate for computation of interest for delayed payments. Considering that SBI-PLR regime is no longer in vogue, it is suggested that the rate of interest payable for the delayed period in respect of various payments due as per provisions of the MCA may be linked to a 10-year Gsec instead of SBI-PLR.

(x) A provision may be made in the MCA as follows :

“The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of tariff or other relief from the Trust or any Government instrumentality, except in accordance with the express provisions of Agreement. The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error of facts, assumptions or projections in the tariff order or any other reason issued by TAMP and agrees that the Trust shall not be liable for the same in any manner whatsoever to the Concessionaire.”

This will ensure clarity and avoid litigation based on interpretation of TAMP orders.

(xi) Technical and/or clarificatory amendments have to be made as per list in Para 24/Chapter 2 of the Report.

This is required to clarify the current provisions and any doubts about their implications.

Shortlisting of Applicants

2. Ministry of Shipping has emphasized the need for doing away with shortlisting of applicants to avoid litigation and ensure wider competition. It has already issued orders in February, 2010 to this effect. The Committee suggests that these orders should be implemented with proper safeguards, so as to ensure only competent and well qualified bidders qualify for undertaking projects and best international experience continues to be available.

Conflict of Interest

3. The Committee recommends that in Clause 2.2.1(i) of the RfQ, relating to ‘Conflict of Interest’, the 5% shareholding provision for triggering the conflict provisions may be raised to 25%. Further, shareholding of

Government of India in PSUs be exempted from the provision relating to common shareholding.

Tariff Authority for Major Ports (TAMP)

4. A three-pronged strategy has been proposed:
 - (i) **Short Term (Immediate):** Expediting tariff setting by TAMP through in-house capacity building and streamlining of procedure.
 - (ii) **Medium Term (1-2 years):** Delegating tariff setting functions to respective Port Trusts by making suitable legislative changes with TAMP performing the role of an Appellate Authority. The implementation of this strategy will require necessary amendments in Major Port Trust Act (1963). The MoS, therefore, may take expeditious action to amend the Act.
 - (iii) **Long Term (After 2 years):** Infuse competition in port sector by requisite capacity addition and leave tariff setting to market forces. Terminals where competition has already set in may however be left to market forces immediately, with no tariff ceilings being prescribed. Port Authorities and TAMP to continue to do the oversight. The MoS may monitor the Port-wise position with regard to level of competition and gradually free the individual Ports from regulatory mechanism of fixing the tariff and in reasonable time allow the market forces to determine the tariffs for all Ports.
5. The MoS may monitor the Port-wise position with regard to level of competition and gradually free the individual Ports from regulatory mechanism of fixing the tariffs and in reasonable time allow the market forces to determine the tariffs for all Ports.
6. The procedures for tariff setting by TAMP be streamlined. Supporting staff may be given to it for which they should have the freedom to make appointments on contract basis. Necessary financial allocations to them be earmarked, within which they may get their work done through contracts or by appointing consultants.
7. Use of information and communication technology should be enhanced and the entire application process should be standardized and made web enabled. Necessary procedural changes as mentioned in Para 12/ Chapter 3 of the Report be carried out.

8. After 1–2 years, when Ports start fixing tariffs, they may apply the principles as notified in February, 2008 guidelines for tariff fixation.

9. The revenue share which is the bidding parameter actually goes to the Port trusts. There may therefore be a worry on account of a conflict of interest in case Port Trusts start setting tariff. This may be taken care of by fixing a cap on the revenue share of port. If the cap is 'x' per cent, then the revenue share which is quoted by the bidder, or 'x' per cent, whichever is lower, goes to the Port Trust. If the revenue share which is quoted by the winning bidder is higher than 'x' per cent, the benefit of the same should be passed on to the user by adjusting the tariff by some proposition.

10. TAMP should perform the role of an appellate and monitoring authority, in respect of standards of Port performance for its users.

Environment Clearances

11. Environment is an important issue and the Committee noted the need to balance the interest of environment and requirement of shipping. Considering the wider nature of the issues, it recommends that an Inter-Ministerial Group (IMG) may be set up for simplification of the clearance process for Port projects.

Electronic Data Interchange

12. The Committee endorses the suggestion for Port Community System (PCS) for integrating the electronic flow of member related document/information and function as centralized hub for all the major Ports of India and also stakeholders like shipping lines/agents, surveyors, stevedores, banks, container freight stations, custom house agents, importers, customs etc.

The development of centralized Port community where a large number of functions, including finance have gone live and e-payments with a few banks have been made online with various Ports be continued and strengthened. Messages with customs are being exchanged in a decentralized manner electronically. The Committee suggests that the customs should announce launch of a schedule for integration with PCS enabling a centralized exchange of the messages at the earliest. Further, non-major Ports should also integrate with it gradually.

Setting up of Test Laboratories

13. Test Laboratories to ensure a quick turnaround time for ships and avoiding delays are necessary. Certain measures have been suggested at Para 5/Chapter 5 of the Report for this purpose.

The Committee noted that different agencies have different requirements for scanning of containers. It is recommended that these requirements are properly integrated.

CHAPTER 1

THE BACKGROUND

1. A meeting was taken by the Prime Minister on February 3, 2010 to review the Port Sector. During the meeting, it was, *inter alia* decided to set up a Committee under the chairmanship of Shri B.K. Chaturvedi, Member, Planning Commission [hereinafter referred to as 'BKC Committee'], to address the issues relating to the Port Sector, including the following:

- (i) Model Concession Agreement (MCA), Request for Qualification (RfQ) and Request for Proposal (RfP) for Ports,
- (ii) Tariff Authority for Major Ports (TAMP),
- (iii) Environmental clearance for port projects,
- (iv) Electronic Data Interchange (EDI) between Ports, Customs etc.,
- (v) Setting up of adequate number of test laboratories.

2. The Committee comprises of the following Members:

- (i) Shri B.K. Chaturvedi, Member, Planning Commission - Chairman
- (ii) Shri K. Mohandas, Secretary, Ministry of Shipping - Member
- (iii) Shri Ashok Chawla, Secretary, Ministry of Finance - Member
- (iv) Smt. Sushma Nath, Secretary, Department of Expenditure - Member
- (v) Smt. Vini Mahajan, Joint Secretary, Prime Minister's Office - Member

3. The Committee held three meetings on March 8, 2010, April 15, 2010 and July 27, 2010. These meetings were also attended by senior officials of Ministry of Shipping, Ministry of Finance, Planning Commission and other stakeholders, such as Chairperson of Select Ports, Chairperson, Tariff Authority for Major Ports (TAMP), and representatives of Infrastructure Development Finance Company Limited (IDFC) and Indian Private Ports & Terminals Association.

4. The Committee acknowledges the great deal of assistance from various individuals and organizations. In particular, the Committee would like to acknowledge the support provided by Ministry of Shipping, the

Infrastructure Division in the Ministry of Finance and the Transport Division of the Planning Commission for providing valuable inputs for the drafting of Report and secretarial assistance. The Committee would also like to thank the Members of the Working Group for their valuable assistance.

5. The Committee, also, expressed its appreciation of the enormous work put in by Shri B.N. Puri, Senior Consultant (Transport), Planning Commission and Shri Govind Mohan, Joint Secretary, Department Economic Affairs, Ministry of Finance to help the Committee finalize its Report.

CHAPTER 2

MCA/RFQ/RFP RELATED ISSUES

Background

1. The Model Concession Agreement (MCA) presently in use for the Public Private Partnership (PPP) projects in the Port Sector was approved by the Cabinet on January 3, 2008. This MCA was prepared after extensive consultations amongst the stakeholders as seen from the following chronology:

- (i) A Task Force comprising of the Additional Secretary and Financial Adviser (AS&FA), Ministry of Shipping (MoS), Chairmen of Jawaharlal Nehru Port Trust (JNPT) and Kolkata Port Trust (KPT), Deputy Chairman of Mumbai Port Trust (MbPT) and Paradip Port Trust (PPT), the Managing Director of Indian Ports Association (IPA), and the Joint Secretary [JS] (Ports), MoS, prepared a draft MCA for Ports, with the assistance of the IDFC and M/s. Amarchand Mangaldas, Legal Consultants.
- (ii) The draft was discussed by an Inter-Ministerial Group (IMG) set up in June, 2005 comprising of representatives from MoS, Ministry of Finance (MoF) and Planning Commission. The IMG held sixteen meetings between July 6, 2005 and December 28, 2006, but could not arrive at an agreed document.
- (iii) In the absence of an agreed document, the Empowered Committee of Secretaries, in its meeting on February 23, 2007, decided that the JS in Department of Economic Affairs (DEA) and JS (Ports) would discuss the issues with the Adviser to Deputy Chairman, Planning Commission, and identify the way forward to finalize the MCA. The Legal Consultants of MoS and the Ministry of Law (MoL) were also engaged in these deliberations.
- (iv) As no agreed MCA was still emerging, the Planning Commission identified the still unresolved issues and decisions were taken on them in the Meeting of the Committee of Secretaries held on April 24, 2007.

- (v) The issues relating to MCA were once again discussed in the subsequent meetings taken by Adviser to Deputy Chairman, Planning Commission. On September 15, 2007, the Principal Secretary to the Prime Minister took a meeting and decided that a Group of Joint Secretaries of MoS, DEA, MoL, Planning Commission, Cabinet Secretariat and PMO would be formed to thrash out the issues. The Group flagged the few unresolved issues left, for a final decision by the Cabinet Secretary. Ministry of Law also submitted their comments in the matter.
- (vi) In a meeting held on October 6, 2007, the issues were discussed and the final draft MCA was prepared in the light of the discussions for placing before the Cabinet Committee on Economic Affairs (CCEA), as directed by the Cabinet Secretary,. Keeping in view the comments of Planning Commission, a Supplementary Cabinet Note was also moved and the CCEA approved the MCA for the Port Sector on January 3, 2008.

2. Since its approval, the MCA is being used uniformly by all major ports for their PPP projects. So far, neither has any difficulty been observed in awarding of projects nor have any major issues been raised by bidders in pre-bid meetings. Planning Commission, however, continued to pursue their point of view by way of observations on the Public Private Partnership Appraisal Committee (PPPAC) Appraisal Memos in respect of projects being posed to the PPPAC by MoS. This has led to the same issues being raised and discussed repeatedly in every PPPAC meeting held for considering Port Sector projects. DEA, while forwarding its comments on these issues, observed that there may a case to take a relook at some of the MCA clauses, but restricted its comments primarily to those clauses which significantly impact the Government contingent liabilities and/or skew the risk allocation matrix, in favour of either parties.

3. Given the Terms of Reference of the BKC Committee which includes MCA, RfQ and RfP related issues, the matter has again come up for examination in the Committee. However, keeping in view that the issues had already been discussed amongst the stakeholders in great detail, the

Committee decided to undertake only a limited review of the MCA clauses. The Committee decided to restrict the changes only to issues which have substantial impact on Risk Allocation Matrix and Government contingent liabilities and to those where a broad consensus existed between the Planning Commission, MoS and DEA. A group of representatives of the Planning Commission, Ministry of Shipping and DEA was also constituted to examine each individual issue in the light of these overarching principles.

Recommendations

4. Having considered the views of the Members and other Stakeholders, and after taking into account the suggestions from the group of representatives constituted above, the Committee recommends that the MCA for the Port Sector, presently being used by the Ministry of Shipping, may be amended as per discussion below.

Cost of Project

5. Actual Project Cost has been defined in MCA as under:

“Actual Project Cost’ means the actual project cost incurred by the Concessionaire on the Project and/or the Project Facilities and Services as certified by the Statutory Auditor and if the same exceeds the Estimated Project Cost and/or does not form part of the Financing Plan submitted prior to Financial Close, the amount of Estimated Project Cost or in the Financing Plan as the case may be increased by the amount(s) approved in writing by the Concessioneing Authority”.

6. It was pointed out by Planning Commission that the definition of ‘Actual Project Cost’, which forms a basis for arriving at the compensation to the private party in the event of termination has been kept open, i.e., the concessioneing authority has been empowered to increase estimated project cost in case finance cost/actual cost is higher than the estimated cost. The actual project cost has an impact on termination payments and therefore, keeping it open can lead to disputes and losses to the public exchequer. Planning Commission suggested that the concept of ‘Actual Project Cost’

should be replaced by the concept of 'Total Project Cost' and should be defined as the lowest of (i) capital cost of the Project, less Equity Support, as defined in the Financial Package; (ii) the actual capital cost of the project upon completion of the Project Terminal less Equity support; and (iii) a specified sum which is project specific cost estimates including financing charges, less equity support. DEA, while broadly supporting the Planning Commission, pointed out that the Port projects are not eligible for equity support and did not also support inflation indexing of the Total Project Cost. However, the other stakeholders pleaded for retention of the present position on the grounds that unlike road sector projects, correct estimate of under water conditions cannot be made in advance with the result that actual project cost turns out to be significantly higher when the project is implemented. DEA also proposed that the time lag between approval of the project and its award to the private party should not be more than six months. The MoS was of the view that at present it takes about a year to award a project after DPR is finalized. It may therefore be difficult to complete the process leading to award of the project in six months time. But they would ensure that the cost is updated at the time of appraisal/approval.

7. The Committee observes that the definition of 'Actual Project Cost' is open-ended at present and has implications for termination and other payments to the concessionaire. The Committee observes that it would not be appropriate to leave such payments open-ended. The Committee, accordingly, proposes that the concept of 'Actual Project Cost' may be replaced with the concept of 'Total Project Cost' (TPC). The definition of TPC on the lines already adopted in the approved MCA for Highways may be considered for this purpose, but with removal of the stipulations on Equity Support and variation as per WPI/reference exchange rate. Accordingly, the Committee recommends adoption of the following definition for TPC:

"Total Project Cost" means the lowest of:

- (a) the capital cost of the Project, as set forth in the Financial Package;*
- (b) the actual capital cost of the Project upon completion of the Port Terminal; and*

(c) a sum of [^ ***** crore (Rupees ***** crore)]*

* Equal to the Cost of Project approved by the Project Approving Authority.”

8. The Committee also recommends that the Port Sector Detailed Project Reports (DPRs) which generally define the TPC should be prepared with adequate due diligence and the time lag between the preparation of the DPR and the award of the projects should not be more than six months. This will ensure that the concerns of bidders, highlighted in para 6 above, are adequately take care of.

Change in Law

9. At present, the Change in Law provisions do not cover change in taxes, environment laws or the orders issued by TAMP in relation to performance standards. Planning Commission has pointed out that each of these elements can also significantly increase the costs and obligations of concessionaire. DEA also supported the Planning Commission’s position except for direct taxes, which in their view does not constitute a cost element.

10. The Committee observes that the Change in Law provisions generally seek to provide for compensation (or as the case may be recovery where the concessionaire incurs a benefit) in situations where the Concessionaire’s capacity to respond to or absorb cost increases that result from general legislative changes is limited. Hence the Committee is of the view that these changes should also be brought under the ambit of Change in Law, in the interest of reasonable risk allocation. However, as regards direct taxes, the Committee observes that they are not included under the scope of ‘Taxes’ for ‘Change in Law’ purposes, even in the approved MCA for highways.

11. Accordingly, the Committee proposes that the exclusions in the proviso (dealing with the nature of changes which shall not be considered as Change in Law for compensation) below clause 13.1(c) may be revised as under:

“Provided any imposition of new direct tax shall not constitute a Change in Law.”

Debt Due

12. The present definition of Debt Due in MCA provides that the 'Debt Due' will exclude Principal that had fallen due *after* issue of the Termination Notice. It was explained by MoS that the intention behind the provision is that the lenders could take remedial measures soon after notice of default and therefore the compensation should not include over dues.

13. The Committee observes that the language in the definition does not bring out the said intention and there appears to be a drafting error in the definition of 'Debt Due'. Accordingly, the Committee recommends that the definition should be corrected by providing that the 'Debt Due' will exclude "Principal that had fallen due *before* the Termination Notice".

Independent Engineer and Expert

14. The Committee was informed that the MCA has provisions for appointment of Independent Engineer as well as Expert with mutual consent with essentially same nature of role to be performed. It was also pointed out that at present the scope of work of Independent Engineer is limited to the construction stage only whereas it has an important role during operation stage as well to ensure proper monitoring and expeditious resolution of the issues arising in the period.

15. The Committee observes that in a number of clauses the terms "Independent Engineer" and "Expert" appear to have been apparently used interchangeably. The Committee also observes that in the current MCA, the 'Independent Engineer' will be in place only from date of award of project till six months after the Date of Commercial Operations (COD) whereas the Engineer should be available for the entire concession period as has been the practice in highway projects and as per the provisions in the Model MCA for Ports (Planning Commission).

16. Hence the Committee recommends that the word “Expert” wherever used may be replaced by “Independent Engineer” with suitable modifications in language of the corresponding clauses in the MCA, as necessary. The Committee also recommends incorporation of suitable provisions in the MCA for ensuring that the Engineer is available for the entire concession period and the scope of work of Independent Engineer is modified accordingly

Redressal of Public Grievances

17. At present, there is no specific provision regarding ‘redressal of public grievances’ in the MCA. The Committee recommends that specific provisions may be incorporated for this purpose, on the lines indicated in **Annex-I (A)**.

Equity Holding Requirement

18. It was brought to the notice of the committee that the provisions of equity holding requirement by the bidder in the project Special Purpose Vehicle (SPV) as mentioned in MCA are different from what prescribed in the corresponding provisions in the Request for Qualification (RfQ) being adopted by MoS. The Committee observes that the provisions both in the RfQ and MCA relating to equity holding requirement should be made consistent, and recommends suitable changes in the MCA, on the lines indicated in the **Annex-I (B)**, to bring about such consistency.

Revisions in Tariff and Scale of Rates

19. In clause 8.1, it is prescribed that revision in tariff shall be as per Appendix 12 allows for changes based only on changes in WPI. Hence the Committee recommends that the clause may be amended to omit the words “from time to time” which does not serve any purpose. Similarly, the definition of “Scale of rates” may be amended to delete the provision relating to the framing of rates and conditions from ‘time to time’.

Minimum Guaranteed Cargo

20. As per present provisions, private party is required to meet the minimum cargo requirement (MCG) as prescribed in the MCA. A default on this score can trigger termination of the contract. In the light of discussions in the Inter-Ministerial meeting, it was felt appropriate that some flexibility should be provided on this score as the prescribed MCG may not have been achieved due to a variety of reasons including the reasons beyond the control of the private party. Taking into consideration the fact that it makes no difference to the port if the private party makes up deficiency in one type of cargo by exceeding MCG in other cargo, introduction of concept of minimum guaranteed revenue in place of MCG may provide some flexibility to the private party. Accordingly, the Committee therefore recommends that the Concept of “Minimum Guaranteed Cargo” may be replaced by “Minimum Guaranteed Revenue”.

Interest on Delayed Payment

21. The MCA, at present, stipulates SBI-PLR as the benchmark rate for computation of interest for delayed payments. This provision needs to be revisited in view of the fact that the PLR regime is no longer in vogue. While taking note of the Planning Commission recommendation to use the Bank Rate as the benchmark, the Committee also observes that the Bank Rate does not have direct nexus with the market rates of interest and has remained static at 6% from April 2003. The Committee finds greater force in the DEA view that the more appropriate benchmark interest rate would be the 10-year g-sec yield which generally acts as the benchmark rate for long-term INR denominated debt and also represents the opportunity cost of funds for the Government of India. Accordingly, the Committee proposes that the rate of interest payable for the delayed period in respect of various payments due as per various provisions of MCA may be linked to 10-year Gsec instead of SBI-PLR.

Tariff Rates

22. The committee was informed that the view of Planning Commission is that the existing MCA provisions are not adequate to safeguard Government interest and leave a room for private party to engage in avoidable litigation in the event of basis/ assumptions of TAMP order for fixing tariff ceiling turn out to be substantially different from the actual scenario. The matter was discussed in detail at the 23rd meeting of PPPAC held on February 20, 2009 and it was decided to specifically provide that the Port Trust shall not be liable for any inadequacy, error, assumptions made by TAMP while determining the tariff. The following clause is being incorporated, at present, in the Draft Concession Agreement (DCA) while issuing the Bid Document, though no specifically provided in the MCA:

“The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of tariff or other relief from the Trust or any Government instrumentality, except in accordance with the express provisions of Agreement. The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error of facts, assumptions or projections in the tariff order or any other reason issued by TAMP and agrees that the Trust shall not be liable for the same in any manner whatsoever to the Concessionaire.”

23. The Committee agrees with the above practice and recommends that a specific clause may be added, on the above lines, in the MCA itself.

Miscellaneous Changes in MCA

24. The Committee also recommends the following other technical and/or clarificatory changes, and to bring about completeness of the provisions in the MCA:

- (i) “Project Requirements” as incorporated in Article 1.1 (definitions) and in Appendix 4 may be replaced by “Scope of Work” for better clarification of the provisions relating to change of scope.

- (ii) It may be clearly mentioned in clause 6.8(f) that the amount paid by Concessioning Authority while disbursing the amount of change of scope it shall be net of the advance payment made to the concessionaire.
- (iii) Clause 16.1 may be amended so as to restrict the entitlement to issue Termination Notice only to those Events of Default which have Material Adverse Effect as defined in the Agreement.

Shortlisting of Applicants

25. It was submitted to the Committee by MoS that the provision relating to short-listing of only six/seven applicants with top experience score for the next stage of bidding has been a cause of lot of avoidable litigation, leading to avoidable delay in the award of projects. Further that this provision was restricting competition to only to a few applicants having maximum experience in spite of a number of other applicants having more than the prescribed threshold experience. The Ministry also mentioned that the Indian applicants with adequate experience were including foreign entities with larger experience in their consortium, for name lending, by paying heavy cost, but without commensurate role in implementation of the project.

26. The Committee noted that since the short-listing procedure is leading to delays in award of projects and to avoidable litigations, the cap on the short-listing was done away with and the RFP are now being issued to all responsive bidders meeting threshold technical and financial capability criteria. While endorsing the decision of MoS the Committee further recommended that the Ministry of Shipping may consider making the qualifying criteria more stringent so that competent bidder may qualify.

Conflict of Interest

27. MoS requested for raising the threshold for triggering the 'conflict of interest' from 5% to 25% on the grounds that the 5% equity holder would not in a position to affect the decisions of the management of the company and hence such equity holders cannot be said to have any conflict of interest in

the actual sense. MoS also mentioned that, as per feedback received from applicants, this provision is limiting the competition by reducing the number of applicants.

28. The Committee takes note of these MoS submissions and also the fact that such increased threshold has already been approved in respect of the highway projects and the case for Port projects would not be very different. Accordingly, the Committee recommends that in clause 2.2.1(i) of the RfQ, relating to 'conflict of interest' the 5% shareholding provision for triggering the conflict provisions may be raised to 25%. However, the shareholding of Government of India in PSUs may also be exempted from the provision relating to common shareholding.

CHAPTER 3

TAMP RELATED ISSUES

Background

1. TAMP is the economic regulator for major ports with the key function being tariff determination for major ports and their private terminals¹. TAMP was established in 1997 by an amendment to the Major Port Trust's Act, 1963 with the key objective of determining tariffs for the major ports and also specify the conditionalities governing these tariffs. TAMP is guided by the following principles in determining tariffs²:

- (i) Safeguarding the various port users' interests
- (ii) Ensuring fair and just returns to port operators
- (iii) Considering factors which encourage competition and operating efficiencies
- (iv) Deploy established costing methodologies
- (v) Regard policy objectives of the Government
- (vi) Leverage tariffs to improve operational efficiencies
- (vii) Ensure a fair and transparent tariff fixation

2. The first guidelines on tariff setting were notified on March 31, 2005³. This was a cost plus approach with an assured return on gross capital deployed. It was clarified that royalty/revenue share payable to the land lord port by the operator will not be an admissible cost for tariff computation.⁴ It thus implied that royalty will be paid out of the operating surplus of the concessionaire. The tariff was to be revised at intervals of 3 years. It was made mandatory for the Port Trusts to maintain an escrow account of the

¹ Charter of the TAMP as per its website <http://tariffauthority.gov.in>

² Charter of TAMP as published on its website <http://tariffauthority.gov.in>. RTI document published on the same website which outlines the organization, functions and guiding principles of TAMP

³ Some recommendations on Tariff regulation were adopted in a workshop in February 1998 at Chennai. However, these were not notified in the form of any guideline.

⁴ However, for cases (viz. individual case of CCTL in 2003) where bidding was finalized before July 29, 2003, royalty/revenue share is recognized as admissible cost for tariff computation to avoid likely loss to the operator (subject to the ceiling equal to the amount quoted by the second lowest bidder). Department of Shipping had prohibited royalty/revenue share as admissible cost by its order dated July 29, 2003.

revenue share/royalty received from private operators. At least 50% of royalty was to be used within 5 years for creation/modernization of infrastructure facilities.

3. The Tariff setting guidelines were revised in February, 2008 since it was felt that the bidders were facing difficulties in quoting the revenue share, on account of the tariff being determined after the bidding process was completed. In addition, 'cost plus' basis did not provide any incentive to improve efficiency and reduce costs, as efficiency gains would result in corresponding tariff reduction. As per the February, 2008 guidelines, a tariff cap (defining the ceiling) is set *upfront* by TAMP prior to inviting bids. TAMP follow a normative cost based⁵ approach which recognizes capital and operating costs and allow a reasonable rate of return on capital deployed, which is 16 percent as of now based on a capacity utilization⁶ of 70 percent of the capital deployed. Tariff cap is notified for each Port and each commodity separately. Tariff cap is indexed to inflation but only to an extent of 60 % of the variation in WPI occurring between January 01, 2008 and January 01 of the relevant year.

4. As per the guidelines, the performance norms for a project will be clearly brought out in the concession agreement and will be monitored by TAMP. For any violation, the respective Port Trust will initiate appropriate action as per the provisions of the concession agreement.

5. It has to be recognised that the 2008 guidelines do not supersede the 2005 guidelines. Both the guidelines operate concurrently but apply to different segments viz. – a) Cases involving fixation of upfront tariff for PPP projects and b) General revision of tariff for existing facilities, respectively. Essentially, the 2005 guidelines pertain to general revision of tariff already fixed in the past based on cost plus approach and 2008 guidelines relate to upfront tariff for PPP projects to be fixed based on normative cost.

⁵ Tariff is not fixed with reference to books of accounts of any port or operator.

⁶ Tariff is fixed with reference to the optimal capacity irrespective of traffic forecast.

Issues Involved

6. There have been inordinate delays in tariff fixation by TAMP sometimes ranging upto seven months. This slows down the entire implementation cycle resulting into time and cost overruns. The detailed analysis of the causes and possible solutions of procedural delays in tariff fixation by TAMP is enclosed at **Annex-II**.

7. TAMP exercises its authority only on the Major Ports, which are covered by the Major Port Trust Act, 1963. This excludes around 200 minor Ports which come within the jurisdiction of the respective State Governments. Ennore (which is a corporatized major Port) also fixes its own tariff. Two tariff setting guidelines as indicated above and, separate jurisdictions for the major and minor Ports, make tariff regulation difficult and prone to inconsistent application⁷. This is not conducive for a healthy growth of the Ports Sector.

8. There has been no effective mechanism to ensure performance standards. The performance standards are detailed in Appendix-15 of the Model Concession Agreement (MCA) for the major Ports. There are gaps between the performance norms as adopted by TAMP during tariff determination and the ones indicated in the Concession Agreement. As per the February, 2008 guidelines, if any complaint regarding quality of service is received, TAMP will enquire into such allegations and forward its findings to the Port Trust. If any action is to be taken against the private operators, the Port Trust shall initiate appropriate action in accordance with the provisions of the relevant Concession Agreement. However, TAMP has been mainly engaged in tariff fixation and performance monitoring has been neglected in the process.

Recommendations

9. Based on the analysis as above, a three pronged strategy has been proposed:

⁷ For example, it may so happen that two adjoining ports are guided by different tariff regimes and having divergent tariff structures.

- (iv) **Short Term (Immediate):** Expediting tariff setting by TAMP through in-house capacity building and streamlining of procedure.
- (v) **Medium Term (1-2 years):** Delegating tariff setting functions to respective Port Trusts by making suitable legislative changes with TAMP performing the role of an Appellate Authority. The implementation of this strategy will require necessary amendments in Major Port Trust Act (1963). The MoS, therefore, may take expeditious action to amend the Act.
- (vi) **Long Term (After 2 years):** Infuse competition in port sector by requisite capacity addition and leave tariff setting to market forces. Terminals where competition has already set in may however be left to market forces immediately, with no tariff ceilings being prescribed. Port Authorities and TAMP to continue to do the oversight. The MoS may monitor the Port-wise position with regard to level of competition and gradually free the individual Ports from regulatory mechanism of fixing the tariff and in reasonable time allow the market forces to determine the tariffs for all Ports.

Tariff setting by TAMP in the Short Term

10. The existing professional staff strength available with TAMP is grossly inadequate. TAMP should be supported by adequate number of personnel with necessary qualification for objective analysis of tariff cases and their speedy disposal. It is understood that TAMP has already filed a proposal for creation of additional posts, based on a study carried out by the Indian Maritime University (IMU). The proposal is reportedly being processed in the Ministry of Shipping (MoS) which may be expedited and necessary approval of the Government be conveyed. There is though no need for creation of additional posts. Instead, a lumpsum provision may be given to TAMP with the freedom to hire requisite manpower on fixed term contractual basis. Such hiring of manpower should not lead to any obligation on TAMP to absorb them as regular employees in future.

11. Some important suggestions on process reforms related to Tariff fixation are outlined as below:

- (i) Presently, the application for tariff fixation is sent to TAMP at various points of time. The proposal for tariff fixation should be submitted to TAMP just after the feasibility study is complete without waiting for issuance of RfQ/RfP so that TAMP will get sufficient time to process the proposal and pass necessary orders⁸.
- (ii) If necessary, ports may consult TAMP before filing their proposals in case any deviation from the norms prescribed in the tariff guidelines is to be proposed by them. This will avoid prolonged exchange of correspondence between TAMP and the proposing port.
- (iii) TAMP should be given the power to call for information, documents etc. and enforcement of its orders. Priority may be accorded to upfront tariff proposals over the other proposals. Such proposals should be put on fast-track and it should be endeavored to dispose off such proposals within 90 days from the date of registering the proposal, for which TAMP may set the milestones and advise all concerned for compliance.
- (iv) The entire application process should be standardized and web enabled.

12. Instead of case to case tariff setting, tariff ceiling may be fixed for each cargo category at each port, using standard norms for various components used during tariff fixation, without waiting for specific proposals. MoS will draw up an annual schedule of PPP Projects to be awarded duly providing for timelines of submission of tariff proposals. While drawing the schedule, it should keep in view that there is no bunching of proposals. TAMP will obtain the roadmap for the balance period of Eleventh Five Year Plan and Twelfth Five Year Plan from the MoS and take up the tariff setting exercise accordingly. If there is a difference between the norms adopted for tariff

⁸ Faster means of communication like Fax and Emails should be used for filing of proposals, circulation of proposals to different stakeholders and any exchange of correspondence between a Port and TAMP.

fixation and that actually used for a specific terminal, the same will get reflected in the revenue share at the time of bidding. Thus, for example, a lower revenue share will take care of any norm which is more optimistic compared to ground reality. It is expected that the exercise as above will save time in tariff determination, since common parameters related to a port, which are applicable to all cargo categories will be ascertained in one go in the process.

13. The tariff guidelines of 2008, while mandating TAMP to monitor performance of the port terminal, require to take cognizance of the performance standards to be prescribed in the concession agreement. The Committee recognises that the performance conditions of an individual project may vary from the standards assumed for tariff fixation. Since users pay the charges determined based on the standard operating conditions, it is necessary to minimise the variation between the standard performance parameters and the project specific performance requirement mandated by the Concession Agreement. The performance standards as detailed in Appendix 15 of the MCA need to be updated to keep pace with the technological changes and international best practices. All concession contracts must include provisions making mandatory transmission of comprehensive operational statistics to the Port Authorities and TAMP on a regular interval and also disseminate the same through websites as part of the general public information disclosure policy.

Roadmap to Medium and Long Term

14. A view emerged during the deliberations, strongly supported by MoS, that there is a need to redefine the role of TAMP by relieving it of its tariff fixing functions. This was proposed keeping in view the fact that TAMP is not fixing tariff for private ports as well as for Ennore Port (a corporatized major port) though these ports are operating in the same environment. In that case, ideally, tariff may be left to market forces if competition has set in. Otherwise, tariff may be fixed by the Port Trusts themselves in the interim period while TAMP may become the Appellate Authority for hearing appeals against decisions of port authorities.

15. As per the data of 2008-09, the average traffic in the major ports is around 92 percent of average capacity. Thus, there is serious congestion and the situation appears to be close to monopolistic which generates concern on the tariff levels being fixed at unreasonable rates. The concern is mitigated partly for industrial bulks (ores, cement, grain, petroleum products and other regulated bulks), where the terminals are generally part of integrated industrial processes, which make them natural candidates to be concessioned to the main industrial operators; and, actual competition takes place on the output side. Containers are, however, more subject to direct competitive pressures at the ports' level, provided there is enough traffic through one single port to set up a competitive environment. Normally, if the traffic level goes below 1,00,000 TEUs per year or below – which would support just a single operator – the situation comes close to natural monopoly. The details on capacity of ports vis-à-vis traffic has been enclosed at **Annex-III**. As can be seen, there are six major ports where the containerized traffic is less than 73 percent and there are multiple container berths. One may safely assume that competition has set in these berths and therefore tariff for the same may be left to the market forces. In ports where there is only one terminal whereas traffic has gone much beyond 1 lakh TEU p.a., additional container berth may be planned to infuse competition in due course. As a general principle, the Port Authority should make room for another competitor to step in as soon as the traffic level would make it viable. In case there is already a competition between alternate transport routes, lack of competition within the port itself will not be so much of an issue. Thus, an analysis has to be done for each major port on above lines by MoS to ascertain whether tariff can be left to market forces based on intra-Port and inter-port competition. Till such time that full competition sets in within the Ports Sector, the Port Authorities/TAMP may continue to perform the regulatory role, primarily to ensure uniformity of Performance Standards and a level playing field. Eventually, after onset of full competition, the Port Trusts/TAMP should migrate to performing a role which ensures compliance of existing contracts, optimal utilization of port resources (land and waterfront) and integrated planning for expansion and modernization of ports, including hinterland connectivity.

16. Till such time that competition has not set in, the regulatory mechanism will have to be in place and Port Authority may itself fix the tariff and enforce performance standards. Norms of tariff fixation have already been defined in the February, 2008 guidelines. Port Trusts can also apply the same principles and notify tariff. This is likely to save time since TAMP is presently burdened with tariff setting for all the major ports. However, the revenue share which is the bidding parameter actually goes to the Port trusts. There may therefore be a worry on account of a conflict of interest in case Port Trusts start setting tariff. This may be taken care of by fixing a cap on the revenue share of port. If the cap is 'x' per cent, then the revenue share which is quoted by the bidder, or 'x' per cent, whichever is lower, goes to the Port Trust. If the revenue share which is quoted by the winning bidder is higher than 'x' per cent, the benefit of the same should be passed on to the user by subsidizing the tariff by the same percentage. Port Trusts, in addition should also monitor and enforce performance standards for ports.

17. Based on the analysis as above, the Committee, therefore, recommends that over the next 1–2 years – a reasonable time needed to bring in changes in legislation to delegate tariff setting functions to respective Port Trusts with TAMP performing the role of an Appellate Authority – the port authorities should fix up the tariffs and monitor performance standards. After competition has set up TAMP may function as the Appellate body supervising the trade practices of ports and private operators. It is hoped that in the next few years, enough port capacity will develop and need for tariff fixation will not be there.

18. To give effect to the road map as above, relevant provisions in Chapter-VI of the Major Port Trusts Act, 1963 would need to be suitably amended. The recommendations on this subject are therefore for the interim period till the above framework is put in practice.

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CHAPTER 4

ISSUES RELATING TO ENVIRONMENT CLEARANCE FOR PORT PROJECTS

1. The Committee noted that there is considerable delay in getting environment clearance/Coastal Zone Management Authority's approval in respect of projects in the Port Sector.

2. The Committee noted that prior to 2001, the administrative Ministry was empowered to grant environment clearance for the port projects. MoS requested that the same arrangement may be considered to be re-introduced for some time till creation of capacity in the Port Sector reaches the projected levels of the 11th Five Year Plan both for the major as well as non major ports.

3. Having considered the matter in detail, the Committee recommends that Ministry of Environment and Forests (MoEF) may agree that for Port expansion/modification projects coming up inside existing Harbour areas/within operational Port limits MoEF clearance for the project should be sufficient for execution of the project and a separate requirement of State Coastal Zone Management Authority (SCZMA) clearance from the respective State Governments may be waived/not required.

4. The Committee was further informed that issues pertaining to environment clearance were discussed in a review meeting of the port sector taken by Cabinet Secretary on July 12, 2010 in which Secretary, MoEF agreed to look into specific Port projects for which environment clearance was getting delayed and it was agreed that issues regarding environment clearance will be sorted out mutually between MoS and MoEF.

5. On the issue relating to environment clearance, the Committee noted that clearance of projects from the environmental angle is a complicated issue and it applies to all sectors including ports. It is, therefore, recommended that IMG may be set up which may suggest for simplification of process and procedure for different sectors including ports. The Committee, therefore, refrains from making any recommendation in case of Port Sector.

CHAPTER 5

ELECTRONIC DATA INTERCHANGE BETWEEN PORTS, CUSTOMS, ETC. AND THE SETTING UP OF ADEQUATE NUMBER OF TEST LABORATORIES

Port Community System

1. The Committee was apprised that the Port Community System (PCS) is intended to integrate the electronic flow of member related document/information and function as centralized hub for all the major ports of India and also stake holders like shipping lines/agents, surveyors, stevedores, banks, container freight stations, custom house agents, importers, customs, etc.

2. The Committee noted that the centralized port community web system has been operationalized in the first phase consisting of 31 messages covering vessel and container related messages among the ports, shipping agents, shipping/container lines, container freight station and custom house agents. This phase went live on December 31, 2007. The second phase covering transport and mechanical messages went live on March 31, 2008. Finance (Assessment) related messages went live during March, 2009 and e-payments with a few banks (Axis, ICICI, HDFC and Union Bank) have been made on-line with various ports. However, messages with customs are being exchanged in a decentralized manner electronically.

3. The Committee endorses the request of the MoS that Customs should announce launch schedule for integration with PCS enabling a centralized exchange of the messages at the earliest. It is also recommended that the Maritime States may ensure that the non-major ports integrate with the PCS as the MoS is also planning to bring the non major ports under the ambit of PCS.

Test Laboratories

4. The Committee noted that there is an urgent need for setting up of adequate number of test laboratories in the country. It normally takes 5–7 working days for a sample test clearance in respect of food and edible cargo.

Due to non-availability of laboratory testing facilities in and around major ports at many places, the sample is collected and sent to a centralized laboratory for testing. For example, sample collected by Chennai Port Trust are sent to either Mysore or Pondicherry. Similarly, from Tuticorin Port Trust are being sent to Mysore and Palayamkottai for testing. For want of full fledged testing laboratory in and around Tuticorin a delay of 15 days takes place for clearance of cargo.

5. The Committee recommends taking action as per following options:
 - (i) The Directorate General of Health Services and the Directorate General (Prevention of Food Adulteration) may set up fully equipped laboratories in the port premises itself. The said laboratories should be fully manned and technically equipped to carry out testing.
 - (ii) To authorize private laboratories based in the Port city itself to carry out the necessary testing.
 - (iii) The Port Hospital may be declared to be the competent testing laboratory by the concerned organization.

Scanning of Containers

6. The Committee noted that different agencies have different requirement for scanning of containers. It is recommended that these requirements are properly integrated.

PROVISIONS RELATING TO REDRESSAL OF PUBLIC GRIEVANCES

1. The Concessionaire shall maintain a “Complaint Register”, which should be available to all users of the project facilities who should be duly informed about the availability of register for recording of complaints. Brief particulars of the complaint such as complaint number, date, name address of the Complainant, substance of the complaint and the action taken by the concessionaire should be recorded in the register immediately on receipt of the complaint. Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
2. Port may further specify the procedure for dealing with complaints in electronic form and responses thereto.
3. The representative of concessionaire shall inspect the Complaint Register every day and take prompt action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and concessionaire shall send a reply to the Complainant under a certificate of posting.
4. The Concessionaire shall send to the concessioning authority and to the Independent engineer a true photocopy of the Complaint Register every month within seven days of close of the month. The concessioning authority may advise the Concessionaire to take such a further action deemed appropriate for a fair and just redressal of the grievance, which shall be duly complied by the concessionaire.

PROVISIONS RELATING TO EQUITY HOLDING REQUIREMENT

The Concessionaire shall ensure that the applicant/members of the Consortium maintain their equity holding in the Concessionaire such that:

- (a) The Applicant/members of the consortium legally and beneficially collectively hold not less than 51% (fifty one percent) of its paid up equity capital of Concessionaire until 2 (two) years after Date of Commercial Operations. And
- (b) M/s (“Lead Member”) legally and beneficially holds at all times not less than 26% (twenty six percent) of the paid up and subscribed equity of the SPV.
- (c) Each of the members whose experience has been evaluated for qualification subscribe 26% (twenty six per cent) or more of the paid up and subscribed equity of the Concessionaire and each such member holds for a period of 2 (two) years from the date of commercial operation of the project equity share capital not less than (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the Concessionaire and (ii) 5% (five per cent) of the total project cost specified in the Concession Agreement.

Notwithstanding the aforesaid, the Transfer of shareholding in the Concessionaire and/or direct or indirect change in the Management Control of the Concessionaire, including by way of a restructuring or amalgamation, shall only be with the prior written approval of the Concessioneing Authority which consent shall not be withheld except (i) for reasons of national security; or (ii) [if the Person proposed for assuming such management control would by virtue of the restrictions imposed under the Applicable Law or the conditions of bidding (including restrictions to avoid anti-competitive and monopolistic practice) and or/public policy be disqualified from undertaking the project].

Provided, nothing contained in this Article shall preclude or prevent pledge of shares in Concessionaire in favor of Lenders as security for the Financial Assistance subject to the enforcement and consequent Transfer there of only with the prior written consent of the Concessioneing Authority as stated hereinbefore and in accordance with the Financing Documents.

TAMP'S TARIFF FIXATION PROCESS

1. As informed by its officials, TAMP seek to complete the tariff fixation process within a timeframe of four months⁹. However gaps exist in certain cases. Tariff fixation process at major ports today, for select projects, has been subject to long delays. The problems today are two-fold:

- (i) Delays in tariff fixation
- (ii) Lack of common understanding in the tariff application process observed by the various major Port Trusts leading to delays

Delays in Tariff Fixation

2. The table below summarizes the total time taken for tariff fixation in select BOT projects. As can be seen, the process on many occasions has taken more than 6 months. These delays contrast with the power sector, where the process is completed within 4 months. Such unwarranted delays impact bidders' interest in maritime BOT projects, by delaying the on-going bid process.

3. Timelines for tariff fixation of select BOT projects where delays have been observed:

Port/Project Name	Timelines and Delay (more than 4 months)¹⁰
JNPT (Container Handling Facility)	Start: July 28, 2008 End: Feb 25, 2009 Delay: ~ 3 Months
Vizag (Handling Liquid Cargo for EQ – 10)	Start: April 15, 2008 End: Feb 12, 2009 Delay: ~ 6 Months

⁹ Primary inputs from the officials of TAMP

¹⁰ Four months is the typical timelines taken by TAMP for the other BOT projects.

Vizag (Handling Multipurpose Cargo at WQ-6)	Start: July 10, 2008 End: Feb 12, 2009 Delay: ~ 3 Months
Vizag (Handling Alumina Gypsum & Caustic Soda at WQ 8 Berth)	Start: November 30, 2009 End: April 19, 2010 Delay: ~ 1 Months
Vizag (Coal at the GCB of Outer Harbour)	Start: Dec 29, 2008 End: Nov 27, 2009 Delay: ~ 7 Months
Tuticorin (Multipurpose North Cargo Berth)	Start: August 10, 2008 End: February 23, 2009 Delay: ~ 2 Months

4. On one hand, the time taken by TAMP in seeking information from Port Trust is more than optimal. On the other hand, Port Trusts take large time to frame replies and send it to TAMP. Some of the Port Trusts don't furnish the worksheets which are needed for arriving at the proposed rates. In some cases capacity calculations are not as per the prescribed norms. There is usually a difference between quay and yard capacity which needs closer examination since it has an impact on tariff. As a result, there are repeated interactions with TAMP which delays the process.

Wide variations in application timelines observed by the various ports

5. It also appears that there is lack of common understanding across the major ports with regards to the application process. Some ports have reported filing of the proposal during the RFQ¹¹ stage while the others apply for tariffs during the RFP¹² stage once the technically qualified bidders are short-listed (see below figure illustrating the approach adopted by some Port Trusts).

Fig: Graphical representations of the timelines for tariff fixation mapped to the parallel bid process:

¹¹ Request for Qualification

¹² Request for Proposal

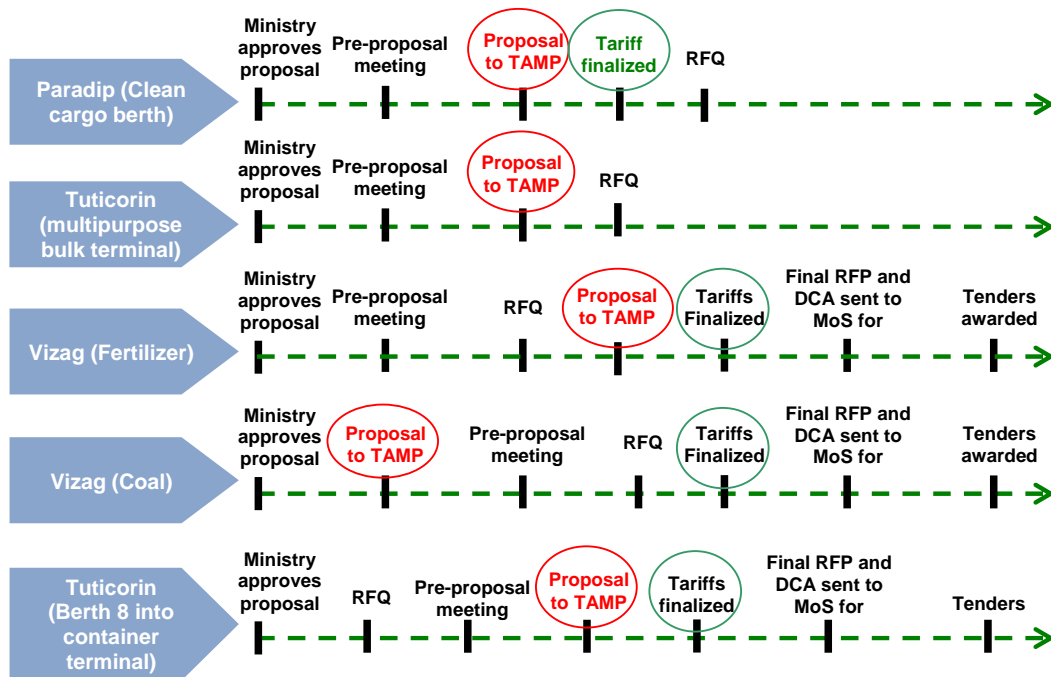
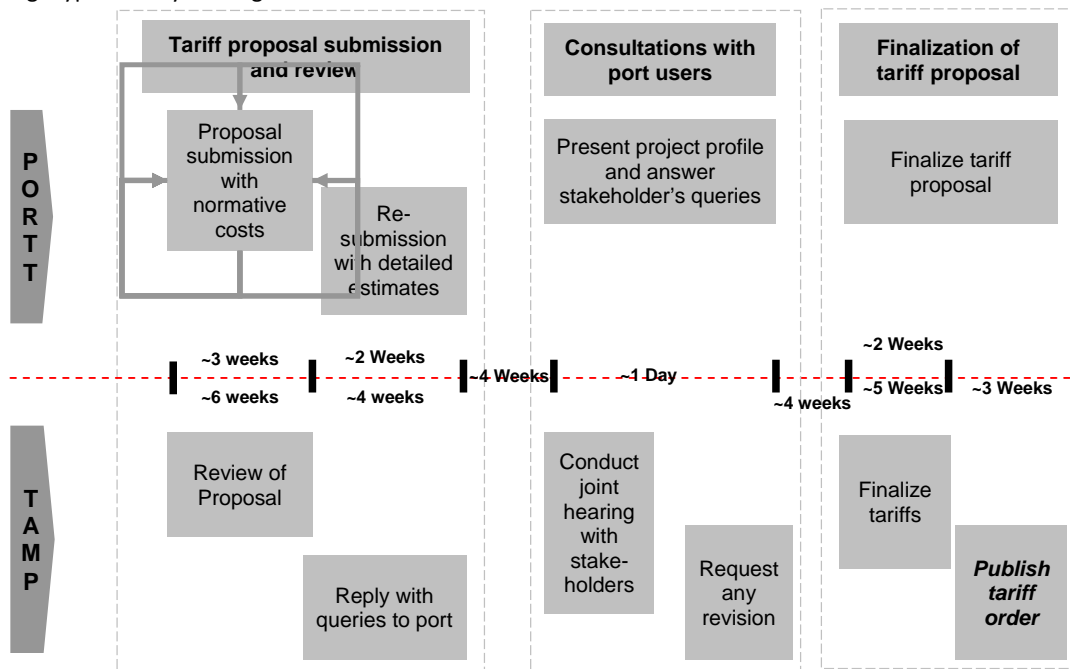


Fig: Typical delays during tariff fixation:



Issues in Tariff-Fixation Process

Paucity of Competent Personnel

6. Tariff fixation could be delayed due to lack of competent personnel to evaluate and validate the information sent by the Port Trusts. As of now, it

has only four officers who are involved in tariff fixation. Regulatory role requires an in-depth understanding of the technical and financial performance of the ports and should be assumed by expert-leadership with such know-how from the maritime space. Such leadership team should also be supported by adequate assisting personnel with necessary qualifications. Indian Maritime University has already studied staff requirement of TAMP. The same may be looked into and a view may be taken on funds required. Funds be given lumpsum & TAMP should decide on contract appointments and their levels etc.

Inadequate Understanding of the Information Requirements

7. The process could be delayed due to lack of adequate understanding of the information requirements. Clarifications sought from the Port Trusts could lead to inappropriate interpretations and hence erroneous information inputs. This could lead to repeated interactions between the applicant and TAMP for clarifications. Provision of well-drafted information formats could be helpful in extracting the right information from the applicants. The entire process can be web enabled. TAMP has issued detailed checklist for submission of proposals. However, incomplete proposals are received in many cases. Much time is lost in dialogue with Port Trusts to ensure that the mismatch between quay and yard capacities is minimized. Shortage of back up area is a standard excuse given for pegging the yard capacity far below the sea side capacity.

“Power sector in India represents a good contra-example. The Electricity Regulatory Commission (both the centre as well as state level) has evolved well-drafted formats for information sharing with the various utilities¹³. This has immensely helped in expediting the information-gathering phase of tariff fixation”

Lack of an Overseeing Authority

¹³ West Bengal Electricity Regulatory Commission, Tariff Order dated 16th October 2009

8. TAMP's charter doesn't mandate a certain timeline for completing the tariff fixation process. There is no supervising authority/Act to oversee the timelines for tariff fixation. TAMP has not been given the power to call for information, document etc., enforcement of its order and notify regulations on tariff setting.

"Here again, power sector in India presents a good example. The ERC's are governed by The Electricity Act, 2003, which clearly specifies the timelines for tariff determination as 120 days¹⁴"

Lack of Onus on Port Trusts to Adhere to Timelines

9. Today, TAMP can only solicit information from the Port Trusts; it cannot mandate or enforce timelines for furnishing the same.

"Quite contrary to this process, the Electricity Act clearly specifies the duty of every utility to furnish information to the Central Electricity Authority (CEA) as well as the ERC¹⁵ in the format and within the timelines notified by the Authority/Commission¹⁶".

10. In view of the above guidelines prescribing time limits be prescribed by the Ministry of Shipping and all ports be mandated to adopt these as norms by which they will be governed.

¹⁴ The Electricity Act, 2003. Chapter IV, Functions of the Electricity Regulatory Commission

¹⁵ Electricity Regulatory Commission

¹⁶ The Electricity Act 2003, Chapter IV, Functions of the Regulatory Commission

Annex-III

Capacity Utilization of Major Ports (2008-09)

Name	Total Capacity (MMT)	Total Traffic (MMT)	% Utilisation	Container Capacity (Lakh TEU)	No. of Container Berths	Container Traffic 2008-09 (Lakh TEU)	% Utilisation (Container)
Kolkata	15.76	12.42	78.8	4.58	4	3.02	65.9
Haldia	46.7	41.79	89.5	3.33	2	1.27	38.1
Paradeep	71	46.41	65.4	0	*		
Visakhapatnam	62.23	63.91	102.7	1.42	1	0.88	62.0
Ennore	16	11.5	71.9	0	*		
Chennai	55.75	57.49	103.1	15.96	4	11.44	71.7
Tuticorin	22.81	22.01	96.5	4.17	1	4.39	105.3
Cochin	28.37	15.22	53.6	3.59	3	2.61	72.7
New Mangalore	44.2	36.69	83.0	0	*		
Mormugao	33.05	41.68	126.1	0	*		
Mumbai	43.7	51.88	118.7	1.58	2	0.92	58.2
JNPT	57.96	57.29	98.8	43.04	9	39.53	91.8
Kandla	77.24	72.22	93.5	6	2	1.37	22.8
Total	574.77	530.51	92.3	83.67			

* No Container Terminal.

Note : Capacity as on March 31, 2009 has been taken.