Record of Decision

PTIP Application for the Tariff Years 2019/20

1. Introduction and Background

The Port Tariff Incentive Programme (PTIP) was developed in 2017 as a tool for introducing incentives into the port tariff structure through cross-subsidisation. The *Tariff Strategy for the South African Port System,* published on 31 July 2015 on the Ports Regulator's website (https://www.portsregulator.org/images/documents/PRSA-Tariff-Strategy-2015-2016.pdf), addresses this requirement.

The PTIP sets out the process through which port tariffs, where in the public interest, forms part of an incentivisation scheme. The PTIP was launched on 04 December 2017 in Pretoria at the offices of the National Department of Transport and was developed by the Ports Regulator in consultation and collaboration with the National Ports Authority ("The Authority"), the Department of Transport ("the DoT"), and the Department of Trade and Industry ("thedti"). The Port Tariff Incentive Programme guideline, as well as the application forms and all associated information may be found on the Ports Regulator's website (https://www.portsregulator.org/economic/tariffs/port-tariff-incentive-programme).

A cross-subsidy in the port tariff structure results in a deviation from a cost reflective infrastructure charge based on use and benefit of the provided capacity within the South African port system. A number of complexities are then introduced that require careful consideration when a decision is made to incentivise the trade in a specific commodity or subsidy of a service above another.

The Programme is open to all port users, organisations, industry bodies and industry representatives. The PTIP affords users an opportunity to apply for a reduced tariff as per the official Tariff Book of the National Ports Authority. The reduction will not be granted to a single organisation / industry player. The reduction shall be granted to the entire industry in the form of an **amendment to a line item** within the Tariff Book.

This analysis and all consultations associated with the process fall within the scope and mandate of the Port Tariff Incentive Programme.

Further, the Ports Regulator considered the submissions contained in the Application and all subsequent submissions, written and oral comments received during the consultation process including the responses thereto, as well as the Regulator's own information and research. It must be noted that the information at the disposal of the Ports Regulator postdates the Application and as such some differences in calculation are due to the updating of data and forecasts.

2. The Application Specifics

- One application was received for consideration in the 2019/20 tariff period.

- The Application was received from OSHO Cement (via email) on 26 January 2018 and the hardcopies were received by the Ports Regulator on 29 January 2018. Receipt was duly acknowledged (via email) by the Ports Regulator.
- The Application was forwarded to *thedti* and the Authority as per the requirements of the PTIP process. Both parties are required to conduct an analysis as well as a recommendation (to the Regulator) regarding their endorsement of the Application (in line with various trade policies and State objectives in the case of *thedti*, and in terms of financial and practical feasibility in the case of the Authority).
- OSHO Cement (the Applicant) is a company setting up a cementitious grinding facility in the Coega Industrial Development Zone in Port Elizabeth (Eastern Cape region). The purpose of the R750 million facility is to manufacture cementitious products from imported clinker, limestone, gypsum, and granulated blast furnace slag, for both the local and regional markets.
- The Application requests a beneficiation incentive reduction on import cargo dues for the inputs into the cement manufacturing process, namely clinker, gypsum, limestone, and granulated blast furnace slag.
  - A summary of the application was published on the website of the Ports Regulator on 27 August 2018 and may be found at https://www.portsregulator.org/doc/PTIP-Application-submission-OSHO-Cement-02-2018.pdf .
- At the time of application, the 2018/19 tariff book was not as yet published. In 2018/19 (in the course of the implementation of the Tariff Strategy, the Regulator reduced the tariff category 'other' to R7,40 in order to eventually reach the cost reflective rate.

Tariff Line proposal	**Proposed Tariff**	**Tariff (2017/18)**
7.1. Bulk (dry and liquid) Granulated Blast Furnace Slag	R 1,50	R 68,41
7.1. Bulk (dry and liquid) Limestone	R 1,50	R 68,41
7.4. (2) Dry Bulk, (5) Cement and Clinker	R 5,13	R 25,65
7.4. (2) Dry Bulk, (5) Gypsum & Products thereof	R 5,13	R 25,65

3. The Department of Trade and Industry Analysis

- In correspondence dated 20 April 2018 , Mr. Lionel October, the Director General indicated *thedti*'s non-support for a reduction in cargo dues for the importation of raw materials used in the production of cement. This correspondence further stated that these products (cement inputs) may be sourced locally and that endorsing the application would be contrary to the policy objectives contained in the Industrial Policy Action Plan (IPAP).

4. The National Ports Authority

- The National Ports Authority ("the Authority"), in its tariff application stated:

  > "The application received does fall within the scope of the industrial trade ambit but did not meet the minimum requirements for accreditation as set by the DTI. As a result, the application did not receive endorsement from the DTI and cannot be appraised any further by the Authority within the PTIP framework as part of its FY 2019/10 Tariff Application process."

- The Regulator noted that the Ports Authority raised concerns with the timing and availability of data and information. Subsequent PTIP processes shall address these concerns raised and the Regulator took into account that the Authority did not have the required information to conduct the required analysis and therefore reflected the opinion of the Department of Trade and Industry. This has served as input in the analysis of the Regulator, but did not affect the final decision.

5. Consultation

- The Ports Regulator met with various entities and organisations within the industry during the assessment process.
  - The Ports Regulator met with Natal Portland Cement (the ACMP was present) at the offices of the Regulator on 03 July 2018.
  - The Ports Regulator met with PPC and The Concrete Institute at the offices of The Concrete Institute on 05 July 2018.
  - The Ports Regulator met with OSHO Cement at the offices of OSHO Cement on 23 July 2018.
- The Application was presented to port users at the Tariff Application Roadshows and industry was urged to submit written comments. The Tariff Application Roadshows were held in Durban (14 September 2018), Johannesburg (17 September 2018), Port Elizabeth (18 September 2018), and Cape Town (19 September 2018).
- The following written submissions were received in response to the public process tariff application:
  - A comment was received from OSHO Cement which re-iterated the contents of their application submitted in terms of the Port Tariff Incentive Programme. The submission was received by the Ports Regulator via email on 05 October 2018.
  - A submission from Coega Special Economic Zone (CSEZ) was made in support of OSHO Cement's application for a tariff reduction for certain imported raw materials. The motivation was based on the stimulation of investment and economic growth within the Eastern Cape region. Furthermore, the OSHO project, according to the CSEZ, supported job growth, new skills and training, SMME participation, including that it falls within the prioritised sector, and therefore received the full support of the Coega Development Corporation. The submission was received by the Ports Regulator via email on 02 October 2018.
  - The Association of Cementitious Manufacturing Producers (ACMP) are not in support of OSHO's PTIP application for the following reasons: Production Capacity – the current clinker production in South Africa exceeds the national demands, the process is both capital and energy intensive and current manufacturers have financial obligations regarding these measures. There is already cement price intensity due to cheap imports and increased competitiveness, and the industry would suffer negative consequences similar to that of the retail industry in the event of imports becoming cheaper. The ACMP has listed numerous reasons in motivation of their non-support of the PTIP application. The submission was received by the Ports Regulator via email on 05 October 2018.

- The submission from FPT Group is in favour of the PTIP application received from OSHO Cement. FPT has signed an agreement with OSHO for stevedoring and terminal handling of all bulk imports in Coega and Cape Town. The submission was received by the Ports Regulator via email on 11 October 2018.
- The Concrete Institute does not support the PTIP application as submitted by OSHO cement for the reduction in cargo dues for materials utilised in the input of cement production. The submission was received by the Ports Regulator via email on 10 October 2018.

All submissions received in relation to the Port Tariff Incentive Programme may be found on the website of the Regulator. (https://www.portsregulator.org/economic/tariffs/2019-20-tnpa-tariff-application#responses)

6. Compliance with the Directives, Regulations and National Ports Act

In considering the Applicant's proposed tariffs, the Ports Regulator was guided by the National Ports Act, 12 of 2005, the Regulations issued in terms of Section 80(1) of the Act, together with the Directives[1] and the Regulatory Tariff Manual applicable to the period up to 2020/21 (the manual) (hereinafter jointly referred to as the 'Regulatory Framework')[2]. The relevant directive is set out below.

The Tariff Strategy sets the path towards cost reflective tariffs within the ports system. The Regulator takes cognisance of the fact that cross-subsidies may not be avoided altogether in order to satisfy policy objectives or for the greater good of the country. Directive 23(1) sets out the manner in which cross-subsidies may be utilised as follows:

"In considering the proposed tariffs in terms of directive 22, the Regulator must have regard to whether the proposed tariffs reflect and balance the following considerations:-

(a) A systematic tariff methodology that is applicable on a consistent and comparable basis;
(b) Fairness.
(c) The avoidance of discrimination, save where discrimination is in the public interest;
(d) Simplicity and Transparency;
(e) Predictability and stability;
(f) the avoidance of cross subsidisations save where cross subsidisation is in the public interest; and

[1] The Directives were issued in terms of Section 30(3) of the Act in Government Notice 826 , *Government Gazette* No. 32480 dated 6 August 2009,. The Directives Amendment Notice was published in Government Notice 37, *Government Gazette* No. 32898 on 29 January 2010.

[2] Other policies and legislative instruments that were taken into consideration included the NDP, IPAP, the TPSF and others.

(g) The promotion of access to ports and efficient and effective management and operations in ports."

The Port Tariff Incentive Programme was developed as tool to introduce cross-subsidies in to the tariff structure, cross-subsidies that are both fair and in the public interest. The analysis and industry consultation carried out by the Ports Regulator aims to quantify whether or not the discount will be in the public interest or for the greater good of the South African economy.

7. Application of the Law

- The National Ports Act, 12 of 2005 is the enabling legislation. The Legislative Framework includes the Regulations, the Directives to the Act.
- The Directive requires that cross subsidies be fair and in the public interest.
- The Application requests beneficiation for products that are available in South Africa.
- The Applicant's concerns over the high cost of transporting material from inland to coastal areas is noted.

Tariff Application

- The tariff line 'cement and clinker' exists in the tariff book as well as tariff line 'gypsum and products thereof'.
- The Application calls for a separation into cement as a single line item, and clinker as a separate line item. Further, it calls for the introduction of a limestone tariff line item and a granulated blast furnace slag (GBFS) tariff line item, (these were previously considered as '*other*').
- The cargo is categorised within the dry bulk category.
- The Application was submitted at a time that dry bulk tariffs were R68.41 for both Limestone and GBFS. The applied for tariff is R1.50.
- The tariff for 'Cement and Clinker', and 'Gypsum and Products thereof' was R25.65 at the time of application. The applied for tariff is R5.13.
- The intended Tariff Strategy base rate as calculated for tariff year 2019/20 is R6.01.
- The application applies for a discount for a ten year period.
- The tariff for GBFS and Limestone under "other" decreased from R68,41 to R7,40 in the tariff year 2018/19, resulting in a saving of R61,01.
- The tariff for 2019/20 for the 'other' category is R 6.01, whilst the tariff for the remaining two line items are R 20.00.

8. Conclusion

Tariff Line	Proposed Tariff	Tariff (2017/18)	Tariff (2018/19)	Tariff (2019/20)	Tariff Strategy Base Rate (as per 2019/20 RoD)
7.1. Bulk (dry and liquid) Granulated Blast Furnace Slag (under "other")	R 1.50	R 68.41	R 7.40	6.01	R 6.01
7.1. Bulk (dry and liquid) Limestone (under "other")	R 1.50	R 68.41	R 7.40	6.01	R 6.01
7.4. (2) Dry Bulk, (5) Cement and Clinker	R 5.13	R 25.65	R 27.04	20.00	R 6.01
7.4. (2) Dry Bulk, (5) Gypsum & Products thereof	R 5.13	R 25.65	R 27.04	20.00	R 6.01

The Port Tariff Incentive Programme is aimed at beneficiation, localisation and industrialisation and the programme and serves as a mechanism to introduce cross-subsidies into the port tariff structure, which subsidies are fair and in the public interest.

The application from OSHO cement, and the supporting comments received, highlights the positive impacts that would be experienced by the Eastern Cape through the development of the OSHO cementitious plant and the Ports Regulator is well aware of this. However, it would be irresponsible of the Ports Regulator to ignore the risk of unintended consequences on the South African cement industry as well as the mandate to utilise local raw materials as opposed to importation of same. In addition, the Regulator is cognisant of the progress made in the implementation of the Tariff strategy and foresees a consistent decrease in the relevant tariffs over the implementation period in the normal implementation of the Tariff Strategy. This should provide significant support to the applicant over the period and beyond, whilst allowing the domestic market to adjust to more cost reflective rates in the port system due to the tariff strategy implementation. No cross-subsidies are thus envisaged at this time.

9. Decision

- After due consideration and research, the Ports Regulator has arrived at the following decision:
- **The tariffs as applied for in the Application by OSHO Cement will not be implemented.**
- The Regulator undertakes to implement the principles as contained within the Tariff Strategy.

- The base rate for dry bulk as at 2019/20 is R 6.01. This will be implemented over the course of the near future. However, a significant blanked decrease of the upper limit of dry bulk rates will see the relevant tariff lines reduce by 26%.
- The following tariffs are applicable for the 2019/20 tariff year.

Tariff Line	Tariff (2019/20) Import	Tariff Strategy Base Rate (as per 19/20 RoD)
7.1. Dry Bulk "other"	R 6.01	R 6.01
7.4. (2) Dry Bulk, (5) Cement and Clinker	R 20.00	R 6.01
7.4. (2) Dry Bulk, (5) Gypsum & Products thereof	R 20.00	R 6.01

.... 26 November 2018

Mr. Thabadiawa Mufamadi

Chairperson of the Ports Regulator of South Africa