UNICAL

Bunker Services
Suite 602 Grindrod Mews 106 Margaret Mncadi Avenue Durban 4001
PO Box 3483 Durban 4000 South Africa
Tel: +27 (0)31 302 7222 Fax: +27 (0)31 302 7223

11 December 2012

Ports Regulator
11th Floor
The Marine Building
DURBAN
4001

Dear Sir

OBJECTION TO THE TNPA PROPOSED 2013 BUNKER FUEL LEVY R15 PER TON IN THE PORT OF DURBAN

Industry Background:

The bunker industry consists of
Oil companies (refiners)
Oil Traders and brokers
Ships Agents
Barge Operators

Marine Bunker (heavy fuel oil – HFO) fuel is a by product of the crude refining process and will always be produced during the refining process. The Oil refiners elect to either sell the product into the local shipping market at a profit or export it at a loss. Bunker fuel is stored at JBS (joint Bunkering Services, which is a participation type joint venture between Shell, BP and Engen. JBS act as the storage and distribution entity for the Durban refineries stocks of Marine Bunker fuels.

Bunker fuel is an essential requirement for all ships and a very high component of ships operating costs, therefore any activity that makes refueling a ship more expensive in Durban will have a negative impact on the attractiveness of Durban as a Bunkering Port.

The introduction of barges was, in the main to provide a more efficient and safer bunkering service to ships calling in the port. The port has benefited in the following ways:

- Bunkering by barge is safer than pipeline in regard to no pipeline interference and maintenance (safer and more efficient) when working on a quay.
- Bunkering by barge can take place whilst working cargo and therefor allow faster turnaround times for cargo working ships. – helps in improving the terminals efficiency.
- Barge companies have created direct employment opportunities and ongoing skills training of some 200 people over the past 5 years.
- Barge companies are level 3 BEE compliant thereby allowing previously disadvantaged individuals to enter into and participate in an industry with very high capital requirements.

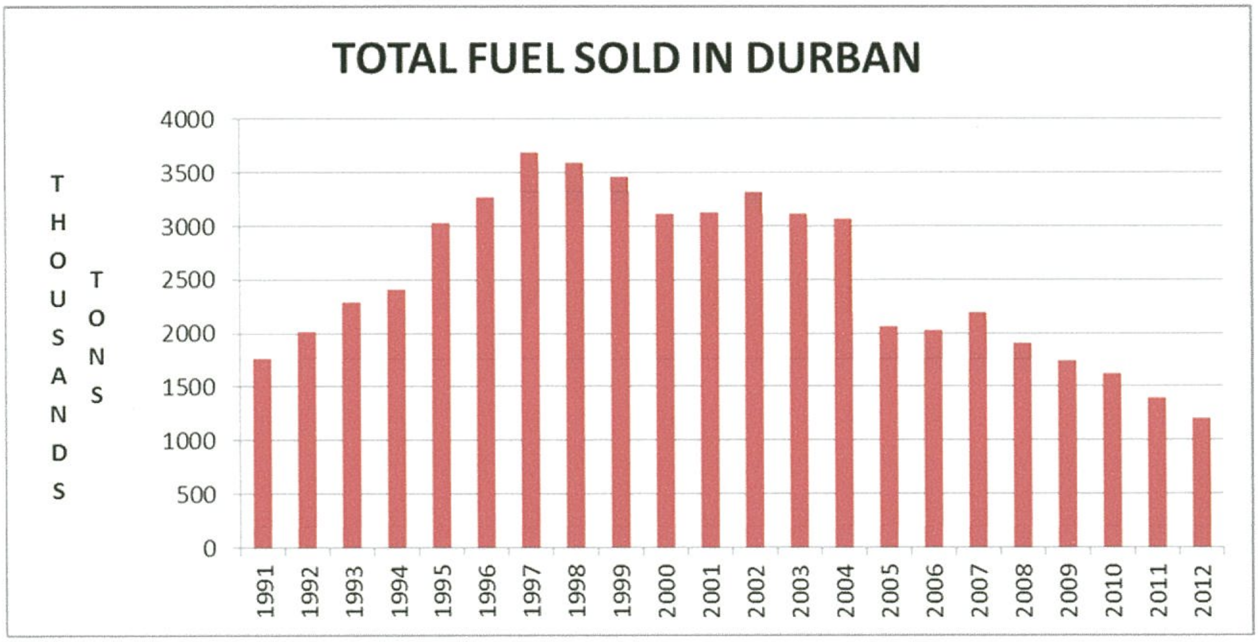
It is therefore incumbent on the port, in terms of its own mandate (pg 13 – Transnet National Port Authority tariff application for the financial year 2013/14 – "The key pillars of the Authorities core strategy which are aimed at *lowering the cost* of doing business and *driving growth* in the economy..") to ensure bunker barge operators / industry have proper and efficient facilities at no cost to the industry to carry out their mandate to the port, as TNPA benefit from better overall port efficiencies.

The Port regulator is asked to consider, when making his determination of a Bunker fuel levy, that the bunker (Marine Fuels) industry in the Port of Durban has suffered a severe downturn over the past 10 years. The port Authority has contributed to this decline in the following way:

1) The exceptionally high port charges. Durban's port charges are amongst the highest in the world. This makes Durban an unattractive port to call on, especially for bunker only callers. (see attached research by T Jones and R Gardner)
2) The lack of a suitable bunkering berth for bunker only callers, leading to unacceptable delays for ships requiring bunkers only, to enter the port, berth take bunkers and leave the port.

It is acknowledged that the current price of crude and the global shipping meltdown has exacerbated the situation with business economics now also playing a part in the shipping downturn with shipping companies laying up vessels and slow steaming to consume less fuel.

The graph below illustrates the volume of marine fuels throughput in Durban over the past 21 years. (source: JBS Durban and the bunker barging companies own records). We understand the significant decline which started in 2005 was due to the desulphurization upgrades of the refineries resulting in less HFO being produced in the refining process. Since then the reasons outlined above have been the driving force in the decline of HFO throughput / demand in Durban.



The above graph reflects the 2012 volume throughput in Durban using accurate actuals from January till November only, however the 2012 average has been extrapolated to December.

COMPETITION

As shipping is a global industry, Durban must compete price wise with other ports in the world to attract ship owners to purchase their bunker fuel in Durban and not in another port on the vessels trading route. Therefore the price of taking bunkers (bunker only callers) in Durban is a combination of:

1) The cost of the port call
2) The delivered cost of the bunkers
3) Demurrage (wasted) costs waiting for a berth

It is therefore essential to:

- Keep the costs of doing Business in the Port of Durban as low as possible.
- Address the excessive port related costs to reverse the declining trend and encourage more bunker only callers to the port.

CURRENT VOLUME THROUGHPUT

2012 annual volume throughput is expected to be about 1,2 million tons. (see table below). It is extremely difficult for the Barge operators to remain profitable with the current tonnage throughput.

OBJECTION

We hereby give notice of our objection to the proposed TNPA bunker levy of R15 per ton for 2013 on the following basis:

1) THE LEVY DOES NOT COMPLY WITH DIRECTIVE 23(1)

- **Applicability on a comparable basis**
  - There are no other tariffs to compare this levy with. Tariffs applicable to the liquid bulk industry, by their nature are import/export related and are based on a transport of commodities, rather than product of a consumable (cost) nature.
- **Fairness**
  - The levy as currently proposed indicates a recovery period for the financial investment of between 2 to 4 years, dependent on the financing structure. This is grossly unfair.
  - Using the figures as provided by the Authority (with no inflationary influence), they will over the 50 year lifespan of the investment recover in excess of R1.5 billion (for an investment of R57.5 million ??)
  - The equity return (IRR) on the investment of 40% is not market or industry related.
- **Transparancy**
  - The Authority has not consulted with the marine fuels industry. No one in the industry was aware of this levy until it was proposed in the latest tariff application for year 2013.
  - The Authority has not disclosed to the marine fuels industry how it has arrived at its proposed levy. Certainly using the numbers as proposed by the Authority, the levy makes no financial sense.
  - There is no stated period of the levy. If it is to recover the Authorities investment, it should have a limited lifespan.

- The Authority has not laid out to the bunker industry how it intends to administratively recover this levy, with a short period to go before the proposed implementation of a levy, the industry has no idea who will be responsible for the payment of this levy.

- **Recover its investment in owning port facilities**...(sub-directive 23(2)
  - The recovery period is not commensurate with industry norms.
- **Recover its costs in maintaining...port facilities**...(sub-directive 23(2)
  - Operating costs are already recovered via monthly port charges and licences
  - The regulator is reminded that the investment is a quay wall which requires very little "maintenance".
- **Profit commensurate with risk**...(sub-directive 23(2)
  - The excessive profit to the Authority the proposed levy will generate is not commensurate with the risk of owning....and of providing port services and facilities.

2) THE LEVY DOES NOT COMPLY WITH THE PORTS CORE STRATEGY

- The stated key pillar of the Authority's core strategy is to..."Lower the cost of doing business and driving growth in the economy".
  - The imposition of a bunker levy does not meet this aim and will in fact have the opposite effect in driving up costs, depressing growth and continue to contribute to Durban being a non bunker friendly port.
  - A bunker levy will hamper the ports ability to deliver on its objectives of lowering cost and driving growth within this industry.

3) THE LEVY DOES NOT COMPLY WITH THE TARIFF APPLICATION APPROACH

- The Authorities stated straight line amortisation of Depreciation over the lifespan of the asset does not align with the proposed levy
  - Depreciation of R57.7 million over 50 years will equate to a depreciation figure of R1,154 million per year
  - The proposed levy (at 2 million tons) will generate R30 million per year.
  - The depreciation component of the proposed levy would equate to 57.7 cents.

4) THE PROPOSAL DOES NOT COMPLY WITH THE AUTHORITIES REASON FOR INTRODUCING THE NEW LEVY

(pg 58 - Transnet National Port Authority tariff application for the financial year 2013/14) – point 8.6 "introduction of a new levy"

Quote

"IN order to deliver the current industry bunker fuel demands of 2 million tons per annum, at the Port of Durban, via barge only, the following is required:

- An increase in the number of barges to handle additional volumes previously delivered via pipeline.
- Provision of supporting infrastructure such as wharf and berthing facilities which will service the elevated demand for barge loading.

Island view berth 10 is planned to be extended in order to accommodate the berthing of two barges with independent simultaneous loading. An amount of R57.5 million for the execution stage of the project has been approved. This initiative is supported by industry and a R15.00 tariff per ton has been agreed in principle with them. The Authority proposes to introduce this tariff of R15.00 per ton in FY 2013/14."

Unquote

- **"In order to deliver the current industry bunker fuel demands of 2 million tons per annum...."**
  - It is further evidence from the statement that the bunker industry was not consulted, certainly not in the past 5 years. The figures as stated of 2 million tons per annum has not been achieved since 2008. The Port Authority would have known this had consultations with the bunker industry taken place (See table below for tonnage throughput in Durban in the past 7 years)

YEAR	TONNAGE '000
2006	2,025
2007	2,194
2008	1,910
2009	1,741
2010	1,623
2011	1,393
2012 - EXTRAPOLATED	1,198

The above table reflects the annual throughput of bunker fuels for the years indicated (source – JBS and barging companies records)

- **"An increase in the number of barges to handle additional volumes..."**
  - The increase in Barges occurred in 2008 (an additional 2) and the final (5^{th}) barge entered service in early 2010, long before the Authority considered extending the quay.
  - There have been no "additional volumes" in the past 5 years

- **"Provision of supporting infrastructure ...will service the elevated demand for barge loading"**
  - With the declining trend of bunker demand there has been no "elevated demand" for barge loading for quite some time.
  - The modified berth is not useable for the purpose it was modified for, as the Durban refineries have not managed to conclude a terminal user agreement with the Port Authorities. Therefore currently there is no benefit to the bunker industry from the modified infrastructure. (It is useless in its current form !).

- **"This initiative is supported by the industry"**
  - As previously stated the Authority did not engage the bunker industry when discussing the levy. This was brought to the TNPA's and the Regulator's attention at the Durban public participation meeting in November 2012. This was disputed and TNPA advised that a Mr George Franklin was the bunker/shipping representative at the forum meetings. It was pointed out to TNPA that Mr Franklin was an expat employed by SAPREF and has not been involved in the industry since moving back to London 3 years ago.
  - It is certainly unlikely that the bunker industry would have indicated (3 or 4 years ago) any support for this levy, and clearly today there is no industry support for it.
  - Certainly it is anticipated the industry <u>will</u> support any initiative that will:
    - Contribute to Durban being a bunker friendly port.
    - Lower the costs of doing business in the port, for both the local industry and vessels calling for bunkers.
    - Increase efficiencies within the port.
    - Drive growth in the industry and the greater economy.
    - Contribute toward job creation and skills development within our industry.
    - Improve communications between the Regulator, the Authority and the bunker industry players.

5) THE REGULATOR IS ALSO ASKED TO CONSIDER

a. The port already enjoys an operational income stream from the 5 barges based in the port for port dues / pilot exemptions / navigation / light dues / bunkering licenses / etc . 5 years ago the port only had two barges, so the operational revenue flow the TNPA receives from the bunkering industry has substantively increased over the past 5 years. With no operational investment in facilities usable to the bunker industry, until now. Barge operators are marginally profitable with the current tonnages and any factors that may further reduce the tonnage throughput, need to be discouraged. Should the bunker barges be withdrawn (or reduced) from the port, due to economic hardship, it will have a negative effect on the operational revenue to the NPA as well as substantively reducing or zeroing the income from the levy as no bunkers will be deliverable in the port. The knock on effect of this will result in less vessels calling, further reducing NPA revenues. The risk of job losses within the maritime industry will also be increased, defeating the Governments call for small business to create employment.

- The effect the imposition of a bunker levy will have on other NPA revenue streams and the greater metropolitan economy. This objection does not deal with the massive loss of economic value the lost tonnage over the past 5 years has had on the GDP of the country and the economic effect on the local Durban Metro. We enclose two studies done on the impact ships have on the economy of the Durban Metro. Both studies deal with bunker callers and the value they add to the Authorities revenue streams and the greater Durban economy. The studies do not look at the impact the loss of tonnage has had on the Countries GDP or foreign exchange flows (bunkers are generally paid in US Dollars)

CONCLUSION

It is clear that the Authority has not considered the impact such a levy will have on an already stressed industry. It can be seen that the bunker market in Durban is extremely fragile and unfair non industry normal excessive levies such as is proposed will in all likelihood cause further damage to the industry.

REQUESTED OUTCOME

IT IS REQUESTED THAT THE REGULATOR REJECTS THIS LEVY PERMANENTLY IN ITS ENTIRETY.

ALTERNATIVELY

the regulator instructs the TNPA to properly engage with the bunker industry (not the liquid bulk industry) on the best method to recover the capital cost of the IV10 extensions with the least damage to the industry.

It is also asked of the regulator that should the outcome of discussions between the Authority and the industry result in a levy being imposed, the regulator determines that any levy so imposed on the bunkering industry does not attract any future inflationary increases (as the investment is not affected by inflation) and is exempt from any increases that may be proposed by TNPA over the life of the asset

AND

That any levy terminates once the investment is recovered by the Authority.

AND

It is also asked of the regulator that he determines that any levy so imposed on the bunkering industry be applicable only when the industry is able to use the quay for its intended purpose.

Yours Faithfully

JR BURNS
Chief Executive Officer