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Tariff Authority for Major Ports

G.No.190 **New Delhi,** **05 May 2017**

NOTIFICATION

In exercise of the powers conferred by Sections 48 and 50 of the Major Port Trusts Act, 1963, Tariff Authority for Major Ports hereby disposes of the review application filed by the Cochin Steamer Agents' Association (CSAA) and the Cochin Customs House Agents' Association (CCHAA) in compliance with the direction given in the Judgment dated 18 November 2016 by the Hon'ble High Court of Kerala on the Writ Petition (C) NO.37111 of 2016 filed by CSAA and the CCHAA to this Authority as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/85/2016-IGTPL

Cochin Steamer Agents' Association and
The Cochin Customs House Agents' Association ----- Applicants

QUORUM

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

O R D E R

(Passed on this 12th day of April 2017)

This case relates to the direction given in the Judgment dated 18 November 2016 by the Hon'ble High Court of Kerala on the Writ Petition (C) NO.37111 of 2016 filed by Cochin Steamer Agents' Association (CSAA) and the Cochin Customs House Agents' Association (CCHAA) to this Authority to take a decision on the review application filed by petitioners viz., CSAA and CCHAA.

2.1. This Authority has passed an Order No.TAMP/81/2015-IGTPL dated 17 September 2016 disposing of the proposal received from the India Gateway Terminal Private Limited (IGTPL) for general revision of its Scale of Rates (SOR). Considering the time involved for notifying (Speaking) Order along with the Scale of Rates, approved by this Authority, this Authority decided to notify only the revised Scale of Rates immediately. Accordingly, the Scale of Rates approved on 17 September 2016 was notified in the Gazette of India on 14 October 2016 vide Gazette No.380. It was stated in the said Notification that this Authority will notify the Speaking Order, in due course of time. Accordingly, this Authority notified the reasoned Speaking Order connected with disposal of the proposal of the IGTPL for general revision of its SOR in the Gazette of India on 15 November 2016 vide Gazette No.408.

2.2. A copy of the said Order notifying the SOR and reasoned Speaking Order was also forwarded to IGTPL, COPT and the stakeholders including CSAA and CCHAA vide our letters dated 19 October 2016 and 18 November 2016 respectively.

3. In this connection, it is relevant here to state that the CSAA vide its email dated 17 November 2016 has forwarded a review application of CSAA and CCHAA for review of Notification No. 380 dated 14 October 2016 notifying the revised of Scale of rates of the India Gateway Terminal Private Limited (IGTPL).

4.1. Subsequently, with reference to the notification of the SOR of IGTPL in the Gazette of India on 14 October 2016 vide Gazette No.380, the Cochin Steamer Agents' Association (CSAA) has, vide its letter dated 24 November 2016 (received by us on 28 November 2016) forwarded the Judgment Order passed by the Hon'ble High Court of Kerala on the W.P. (c) No.37111 of 2016 filed by the Cochin Steamer Agents' Association and the Cochin Customs House Agents' Association (CCHAA) along with a copy of its review application dated 17 November 2016 before this Authority to review the said Order.

4.2. Enclosing a copy of the Judgment Order dated 18 November 2016 passed by the Hon'ble High Court of Kerala, the CSAA stated that based on the High Court Order (page no.3 of the Judgment Order), the matter under the W.P. (C) No.37111 of 2016 has to be considered/ reviewed by TAMP within a month from the date of receipt of the judgment Order and accordingly, requested for personal hearing.

5.1. It is understood from the copy of Judgment dated 18 November 2016 on the Writ Petition (C) No.37111 of 2016 filed by CSAA and CCHAA that the CSAA and CCHAA have impleaded the Tariff Authority for Major Ports (TAMP) as Respondent No.1, Directorate General of Shipping as Respondent No.4, IGTPL and Cochin Port Trust as other Respondents.

5.2. The operational part of the Judgment dated 18 November 2016 passed by the Hon'ble Shri Shaji P. Chaly in connection with the W.P. (C) No. 37111 of 2016 filed by the CSAA and CCHAA is reproduced below for ease of reference:

> *"6. Therefore, there will be a direction to the 1st Respondent to take a decision on Ext.P7* ***review after providing sufficient opportunity of hearing to the petitioners as well as all concerned within a month from the date of receipt of a copy of this judgment.*** *During the interregnum 50% of the enhanced rate alone shall be charged from the traders, and the balance 50% shall be collected by the 3rd Respondent and kept in an escrow account, which payments shall be guided by the Orders passed in the review."*
>
> (Ext.P7 is true copy of the review petition filed before this Authority to review the Notification of Scale of rates vide Gazette No. 380 dated 14 October 2016 notifying the Order dated 17 September 2016.)

5.3. It is seen from the Judgment forwarded by CSAA that the Hon'ble High Court of Kerala vide its Order dated 18 November 2016 has disposed of the Writ Petition (C) No.37111 of 2016 filed by CSAA and CCHAA on 18 November 2016 on its admission itself.

6. Since the Hon'ble High Court of Kerala vide its Order dated 18 November 2016 has directed this Authority to review the tariff Order dated 17 September 2016 after providing sufficient opportunity of hearing to the petitioners as well as all concerned within a month from the date of receipt of a copy of this judgment, the review petition of CSAA and CCHAA dated 17 November 2016 to this Authority to review the IGTPL Order No. TAMP/81/2015-IGTPL dated 17 September 2016 for notification of Scale of rates vide Gazette No. 380 dated 14 October 2016 was taken up as a separate tariff case.

7. The main points made by the CSAA and CCHAA in the review petition dated 17 November 2016 are summarized below:

(i). The Scale of Rates notified in August 2009 are applied to the IGTPL till date. However, the IGTPL has arbitrarily and unilaterally demanded revision of Scale of Rates. The IGTPL has proposed 6.98% increase over the existing tariff from 1 January 2016 with an annual increase of 6.98% from 1 April 2016 for each year 2016-17, 2017-18 and 2018-19.

After joint hearing held on 7 June 2016, IGTPL has proposed 9.12% annual increase with effect from August 2016.

(ii). The assessment of traffic estimate was less due to the under performance of IGTPL. The container terminal handling charges were already high at IGTPL and hence, the traffic is diverted to other ports like Tuticorin (PSA) and Chennai (DPW) as their terminal handling charges was 54% and 38% cheaper compared to IGTPL. Further increase in rates will further increase the migration of traffic. The IGTPL have not identified the real reason for their under performance. It is lack of marketing of services of IGTPL and high terminal handling rates. Absorption of cost by increasing the claim would only decrease the existing traffic in IGTPL.

(iii). The IGTPL has failed to get any volume in transshipment business which was entirely the responsibility of IGTPL. IGTPL has only attained 2% of volume as against projected 25%.

(iv). IGTPL has not disclosed the value of the Business related Assets which are entitled to a lower ROCE thereby claiming a higher ROCE on Business related Assets. Any compensation to IGTPL by way of ROCE above 5.72% be not extracted from the trade but settled by the Government out of its own funds in accordance with any bilateral agreement.

(v). The Authority has passed a non-speaking order disposing of the proposal filed by the IGTPL for general revision of its SOR under Tariff Policy Guidelines, 2005 and allowing the tariff increase of 4.5% over the existing rates. The Authority while passing the impugned Order has failed to come to reasoning on why such a conclusion of allowing the revision of tariff is allowed and on why the objections raised by the COPT and the petitioners, were not considered. The impugned Order only has the concerns raised by the various parties including the petitioners and COPT and other associations and the reply comments given by the IGTPL to the said concern. The Authority failed to give the justifiable reasoning on why the view of the IGTPL was preferred to that of the petitioners and COPT and other associations.

(vi). The container handling charge is already very high compared to all other neighboring ports. Summary of comparison of per container handling cost in each of the Major Ports in the country:

(in ₹)

Sl. No.	Name of the Port	Existing container handling charges per container 20' container	Container handling charges per 20' container at IGTPL	Existing container handling charges per container 40' container	Container handling charges per 40' container at IGTPL
1.	GTIPL, Mumbai	3551.00	6637.00	5384.00	9955.00
2.	JNPT, Mumbai	3935.00	6637.00	5960.00	9955.00
3.	NSICT, Mumbai	3706.25	6637.00	5616.87	9955.00
4.	CITPL, Chennai	3785.11	6637.00	5621.95	9955.00
5.	CCTPL, Chennai	3785.11	6637.00	5621.95	9955.00
6.	PSA Sical Terminal, Tuticorin	3220.24	6637.00	4557.00	9955.00
7.	DBGTPL, Tuticorin	3157.24	6637.00	4735.56	9955.00
8.	VCTPL, Vizag	4222.00	6637.00	6334.00	9955.00
9.	KOPT	4287.00	6637.00	6431.00	9955.00

The terminal handling charges at the IGTPL is as follows:

	20dv Actual	40dv Actual	20ref Actual	40hcr Actual
Pre-trip inspection			950.00	1300.00
Monitoring Charges			7930.00	11928.00
Wharfage	883.83	1325.73	883.83	1325.73
Lift Off at CY"	848.49	1272.73	848.49	1272.73
Lift On at CY"	848.49	1272.73	848.49	1272.73
Transport to HK	397.71	596.59	397.71	596.59
Gantry	3658.20	5487.00	3658.20	5487.00
Grand Total	6637.00	9955.00	15516.00	23183.00

Enforcement of Order passed by the Authority at this stage will further increase the terminal handling charges at the Port which will lead to further diversion of business from Kerala to other states.

(vii). While passing the impugned Order, the Authority has failed to cross check on the genuineness of the assessment provided by the IGTPL. There was a specific contention raised by the CSAA in the reply dated 22 January 2016 challenging the assessment made by the IGTPL which was not considered by the Authority while passing the Order.

Assessment made by the CSAA in its letter dated 22 January 2016 is summarised below:

(a). Actual realisation of traffic for the period 2010 to 2015 is only in the region of 31% of the projection made in 2009 considered for tariff fixation. IGTPL has not identified the reason for under performance in its tariff revision proposal.

(b). Actual transhipment traffic for the period 2010 to 2015 was in the range of 2% to 8% as against the projection of 25%. If 25% volume of transhipment traffic was achieved, the revenue would have been much higher.

(c). The ICTT deficit for the period April to December 2015 has been computed by taking the ROCE at 16% of the capital employed of ₹73,681 Lakhs for the whole year at ₹11,788.96 Lakhs whereas it ought to have been only for nine months period amounting to ₹8841.72 Lakhs resulting in an overstatement of deficit by ₹2947.27 lakh. There is computational error.

(d). Deficit for the period December 2009 to December 2015 aggregating to ₹240.80 crores has been factored in as an expenditure to be recovered from the trade in future by way of increase in tariff. Past deficit now sought to be recovered from the trade who will constitute a totally different segment is unreasonable and illegal.

(e). As per the data sourced from public domain of DP World, the ROCE to the IGTPL would be, restricted to the mean of the average ratios of return on Assets employed (4.56%) and Return on capital employed (6.87%) which is 5.72% [(4.56% + 6.87%)/2 = 5.72%].

(viii). Cochin Port is of the considered view that one of the critical reasons for non-realization of volumes at ICTT is the exorbitant Terminal Handling Charges (THC) levied by the IGTPL." When the 2nd respondent / Cochin Port trust as the licensor itself claims that the non-realization of volumes at ICTT is due to higher Terminal Handling charges, further increasing the Terminal handling Charges without address the issue on merits is arbitrary and this would directly affect the Exim trade in Cochin.

8.1. Since the Hon'ble High Court of Kerala vide their Order dated 18 November 2016 directed this Authority to take a decision on Ext. P7C review application filed by CSAA and CCHAA after providing sufficient opportunity of hearing to the petitioners as well as all concerned within a month from the date of receipt of a copy of this judgment, the request made by the CSAA along with a copy of the Judgment dated 18 November 2016 of the Hon'ble High Court of Kerala was registered as a separate tariff case and consultation process was initiated as directed by the Hon'ble High Court of Kerala. In accordance with the consultative procedure prescribed, a copy of the CSAA letter dated 24 November 2016 along with a copy of review application dated 17 November 2016 and a copy of Judgment dated 18 November 2016 of the Hon'ble High Court of Kerala was circulated vide our letter dated 2 December 2016 to the COPT, IGTPL, concerned users/ user organisations seeking their comments by 7 December 2016.

8.2. We have received comments from the COPT and other users/ user organisations. The comments received from all users / user organisations were forwarded to the CSAA, CCHAA and IGTPL as feedback information. A summary of the comments received from the COPT, users/ user organizations and reply furnished by the IGTPL are tabulated below:

Sl. No.	Comments of the COPT and users / user organisations	Reply given by IGTPL
1.	**Cochin Port Trust (COPT)**	
(i)	In response to the TAMP letter dated 13 June 2016 for additional information/ clarifications, the COPT has already furnished its comments on the proposal of IGTPL for general revision of SOR fixed by IGTPL vide letter dated 16 June 2016.	COPT has contented that ICTT has been envisaged as a Transshipment hub, the 2009 TAMP Order –ref clause 20 (xx) (a) records "Even the Cochin Port has agreed that ICTT operations is primarily to develop it as a transshipment hub…'. Without exceeding the ceiling rates which are determined by TAMP, we are offering competitive tariff by offering discounts/rebates for transshipment as well as OD Cargo. Further, we promote regional and hinterland cargo by general and specific/targeted discounts. IGTPL has been giving various discounts and incentives to the local Kerala trade such as extended free storage
(ii).	COPT is of the view that, volumes at ICTT can grow only if competitive Tariffs are ensured. The ICTT has been envisaged with three distinct roles; a Hub Port for Transhipment, a Regional Terminal and a Sub Continental Gateway; promoting Regional and Hinterland cargo through competitive Tariff is a prerequisite for attracting Transhipment cargo.	
(iii).	The COPT requested the Hon'ble Authority to review the Tariff Proposal submitted by the IGTPL	

for the operation of ICTT, and not to allow the hike in the Tariff sought. It was also requested that the Hon'ble Authority may impress upon the IGTPL to reduce their Proposed Tariff by at least 30% before approval so that the Terminal Handling Charges (THC) at ICTT is competitive with that of the ports in the region.

days for import /export containers, additional free days for cashew cargo, additional free days for containers moving through main line vessels or rail. The local trade has also benefited from the increased mainline/direct vessel calls as it brings down the transit time and overall cost for the exporter/importer. The Kerala state has a limited industrial base and there has been very slow growth of Kerala market/cargo base. For IGTPL to improve the volumes and make the port an attractive port call option for a mainline vessel, we have to look at cargo from hinterland in Tamilnadu and Karnataka. In order to divert such cargo IGTPL has deployed its marketing team in Tamilnadu and Karnataka to meet the customers in the hinterland and provide solutions to them. There were many challenges highlighted by the customers like Walayar check post crossing delays, higher cost of transportation to Cochin viz a viz Tuticorin, higher freight cost of shipping lines compared to other ports like Chennai and Tuticorin, etc. With assistance from the appropriate authorities, the Walayar check post issue for sealed containers was sorted. Further, in order to mitigate the overall cost differences we have offered rate equalization scheme to these customers so as to persuade them and get their supply chain readjusted towards Cochin from other ports and we have met with great amount of success as evidenced by our growth rate. Details of IGTPL growth in comparison to the South India market growth is given below:

	ICTT Cochin		**South India Market**	
Financial Year	**TEUs**	**YoY Growth**	**TEUs**	**YoY Growth in %**
2009-10	289,380		1,866,851	
2010-11	312,189	7.9%	2,025,647	8.5
2011-12	337,053	8.0%	2,336,892	15.4
2012-13	334,925	(0.6)%	2,338,687	0.1
2013-14	346,204	3.4%	2,325,049	(0.6)
2014-15	366,376	5.8%	2,519,960	8.4
2015-16	419,550	14.5%	2,708,676	7.5
Apr-Dec-2015YTD	306,264		2,001,104	
Apr-Dec-2016YTD	366,859	19.8%	2,225,546	11.2

As the aforesaid table demonstrates, the volumes at ICTT have shown constant growth. IGT is in a position to attract additional cargo from the hinterlands of Tuticorin and Chennai by offering excellent quality of service and products besides rate equalization measure schemes. The detailed comments on the various marketing efforts of IGTPL have been given in our earlier letters. The volume handled by ICTT is steadily growing and it may be noted that IGTPL is successful in diverting cargo originally routed through Chennai/Tuticorin. As given in above table the comparative growth in the recent past is proof of the efforts in attracting and promotion of regional and hinterland cargo. Therefore, the allegation that THC is not competitive is not correct.

Tariff at Major ports is regulated and is fixed by TAMP as per applicable Guidelines. The guidelines prescribe the methodology of computation of permissible tariff. For IGTPL tariff is determined by the Tariff Authority for Major Ports under the 2005

		guidelines after considering the investment made / capital employed and the projections of volume handled. COPT has commented that the ICTT tariff should be competitive with that of the ports in the region. In may be noted that all the ports in region are regulated by TAMP. The tariff for each port is fixed by the authority based on its applicable tariff guidelines and deployed infrastructure/capital employed. Hence, it is natural that the tariff of each port would be different. The comparison made are therefore not valid, more over the terminals are completely different in terms of facilities provided, infrastructure, operational productivity etc. CoPT's request for 30% reduction of tariff is neither substantiated by any logical reasons nor substantiated with reference to any provisions under the applicable guidelines. As mentioned earlier the tariff of IGTPL is competitive and trade friendly as evident by the growth in volumes. It may not be out of place to point out that while on the one hand COPT challenges THC charged by IGTPL as being on the higher side, on the other hand COPT continues to levy vessel related charges at rates which are one of the highest in the region. In fact, with effect from 3rd June 2016 COPT further enhanced the vessel related charges by another 5%. Thus, it is submitted that COPT's objections to the THC charged by IGTPL at ICTT is counter-intuitive.
2.	**Indian Chamber of Commerce and Industry (ICCI)**	
(i).	The IGTPL container handling charges at Vallarpadam with the Handling Charges in Major Ports elsewhere in the Country has been numbered and pointed out in the writ petition filed by CCHA and CSAA.	Points raised by Indian Chamber of Commerce & Industry confirm to the points raised by CSAA and CHAA in their petition dated 17/11/2016. We reiterate our comments given to the petition vide our letter dated 12/01/2017 as and request to you to treat the same as response to the letter dt. 08/12/2016 of Indian Chamber of Commerce and Industry also.
(ii).	It is a known fact that a large number of businesses are opting to use Tuticorin Port (PSA) and Chennai port (DPW) which charges 54% and 34% less respectively as compared to Vallarpadam. The port has already lost a considerable number of businesses due to this and an additional increase in the charges will not only bring the business even lower but also put the future and existence of this natural port in jeopardy.	
(iii).	We firmly believe that, TAMP aims at the betterment of Ports in every possible way that it could and treat every single major port in the Country with equal importance. Unfortunately the decision of increasing the Charges again to an already uncompetitive and limping port (based on Handling Charges) gives the impression of a complete disregard and lack of intent.	
(iv).	The decision has not only made the port users question the credibility of the port but also has thrown the possibility of requesting TAMP to reduce the already existing rates, out of the window. In this regard we hereby confirm our stand with CCHAA and CSAA.	
(v).	Also we request you to do the needful so that the concerned authorities show justice to the clause held by the Supreme Court in Assistant Commissioner Tax Department, Works Contract & Leasing Kota Vs. M/S Shukla and Brothers (2010) 4 SCC 785, that ***"The orders passed by the authorities should give reason for arriving at any conclusion showing proper application of mind"***	

<table>
<tr><td>3.</td><td>Cashew Export Promotion Council (CEPC)</td><td></td></tr>
<tr><td>(i).</td><td>The cashew exports are mostly taking place through Cochin, Tutucorin, Mangalore, Chennai, Goa and Visakhapatnam. While comparing the handling charges of major ports, it could be seen that the charges in Cochin are very high (almost double in most cases) compared to Tuticorin or any other ports. This is detrimental to the industry. We therefore request that the IGTPL may be directed to lower their handling charges on par with other major ports like Tuticorin, Chennai, etc.</td><td>We confirm that the charges applicable at ICTT are fixed and approved by TAMP as per guidelines and IGTPL is not levying any charge for the services rendered at ICTT without the approval of TAMP.</td></tr>
<tr><td>(ii).</td><td>Since Kerala is the major cashew processing centre, naturally cashew products were exported / imported through Cochin. Due to high charges, many of the exporters / importers have shifted their transactions to nearby ports. Considering this fact, IGTL has to charge reasonable rate from the users. It is evident from the table submitted by the Petitioners that IGTL is charging an exorbitant rate when compared to the other nearby ports i.e. the terminal handling charges levied at IGTPL are about 54% to 38% higher comparing to the other nearby ports like Tuticorin and Chennai, respectively.</td><td>Faced with an unfavourable Industrial climate cashew factories in Kerala have been shutting down and moving to Kanyakumari over the years. Once the Industries shifted and the larger share of the requirements were towards the Kanyakumari factories the cargo from Cochin port began to shift to Tuticorin due to proximity which is just 133 kms, whereas the distance to Cochin is approx 300 kms and lesser transportation rates. West Africa Cashew sometimes needed drying and the climatic condition in Tamilnadu were favourable as well as the cost of warehousing was also high in Kerala compared to Tamilnadu which led the traders to shift their warehousing to Tamil Nadu.

To reduce the impact of the lower warehousing costs at Tamil Nadu , IGTPL has been providing 14 days free storage for all cashew imports .Besides ,we have been working with shipping lines to bring direct main line services to Cochin so that Cochin trade can benefit from better freight rates and transit time as the feedering and transshipment is eliminated from the cost of a shipping line and also transship cashew cargo to other ports like Mangalore, Tuticorin etc. In 2017 Jan we attracted the first direct vessel of CMA (the third largest carrier in the world) from Africa to Cochin which discharged 900 TEUS of cargo for local delivery and transshipment.

IGTPL is levying the charges fixed and approved by TAMP after due review process and as per applicable guidelines.

The CEPC is comparing the tariff with the tariff of other ports. Such comparisons are not valid as the tariff for each port have been fixed by the Authority based on its deployed infrastructure/capital employed and the applicable tariff guidelines.

The growth in volumes at IGTPL has been significant. The growth in the last few years in comparison with the South India growth is as below:
<table>
<tr><th></th><th colspan="2">ICTT Cochin</th><th colspan="2">South India Market</th></tr>
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		Apr-Dec-2016YTD	366,859	19.8%	2,225,546	11.2

4.	**Federation of Coir Exporters Association (FICEA)**	
(i).	With deep regret, we wish to inform you that the cost of handling cargo through IGTPL is going up every day. We the Coir Exporters based in Alleppy. Located 60 kms away from Cochin are purely dependent upon the Cochin Port for our exports and imports. With wafer thin margins, high production cost and militant labour forces makes the survival of the coir industry in Kerala questionable. Also we are left with no option, but to ship through the Cochin Port (IGTPL), the only port in Kerala.	We confirm that all the charges applicable at ICTT are fixed and approved by TAMP as per guidelines and IGTPL is not levying any charge without the approval of TAMP. Please note that the Tariff fixed by TAMP is the ceiling limit and IGTPL can offer discounts on the tariff for attracting customers. Commercial calls as required are taken from time to time and certain considerations like discounts /rebates/extra free period for import/export/mainline.
(ii).	On several occasions, we have requested IGTPL to reduce handling charges but all were turned fertile under the pretext of TAMP's Orders. We are very sure that TAMP will help us by instructing IGTPL to lower their rates. In addition to the TAMP approved rates, IGTPL is also charging us on various heads, such as SSR (Special Service Request) which are also increased along with the TAMP notifications.	
(iii).	We also understand from the notification that IGTPL is permitted to increase their charges by 4.5% every April, for another 3 years. We would also like to bring to your kind notice that due to heavy charges in Cochin Port, IGTPL is offering special discounts to shippers of Coimbatore, Thirupur and Bangalorearea. This is highly discriminatory to when they collect higher charges from regular exporters of Kerala who supports the Cochin Port fully. This is an act of injustice to the EXIM trade in Kerala which will propel the Kerala Entrepreneurs to cross borders, set up factories there to do business profitably.	
(iv).	In these circumstances, we strongly appeal that the TAMP will consider our request to withdraw the increase in handling charges and will take necessary steps to refund the excess amount the Cochin Port have already collected.	
5.	**Coimbatore Custom House and Steamer Agents Association (CCHSAA)**	
(i).	Cochin is the only port in the south where THC is on the upswing every year.	No comments.
(ii).	When compared to Chennai and Tuticorin the THC as of now is the highest while IGTPL is increasing the THC every year. They are also reimbursing as an incentive to shippers from the revenue accrued as THC. Increasing THC on one side and passing on the same on the other side is unproductive.	
(iii).	Cochin is turning uncompetitive on account of the high THC.	
(iv).	Volumes can increase only on a competitive tariff and currently the tariffs are uncompetitive. This is primarily because there is only single terminal with a monopoly whereas if there are multiple terminals there would be competition and rates would be reasonable as in other locations.	
(v).	Custom Brokers throughout India could not revise their service charges for decades together and are running slow by increasing their volumes only and similarly terminal operators should focus on new business to increase their revenue instead of keeping on burdening the existing users which is not at all an acceptable approach.	

(vi).	We are also given to understand that they are applying for another upward revision during the next financial year 2017-18 which will compound matters further.	
6.	**Seafood Exporters Association of India (SEAI)**	
(i).	Day by day the cost of handling cargo thru IGTPL – Cochin is going up. The Seafood Exporters Association of India, Kerala Region are based in Cochin and are utilizing the Facilities of Cochin Port for many years. While the international market remains stagnant, we are compelled to compromise on our product cost. There are Free on Board Cargo as well as prepaid cargo for which we are forced to depend on the Cochin Port Trust due to the nature of the commodity which is perishable in nature and we are left with no option but to load only thru IGTPL.	We confirm that all the charges applicable at ICTT are fixed and approved by TAMP as per guidelines and IGTPL is not levying any charge without the approval of TAMP. Please note that the Tariff fixed by TAMP is the ceiling limit and IGTPL can offer discounts on the tariff for attracting customers. Commercial calls as required are taken from time to time and certain considerations like discounts/ rebates/extra free period for import/ export/mainline extra are offered to various customers.
(ii).	Apart from this SEAI has reiterated the comments made by FICEA brought out earlier.	
7.	**Emirates Cement Limited (ECL)**	
(i).	We are a white cement manufacturer based in Kerala. We are importing raw materials from abroad and processing and packing in our factory. We are importing on an average of 25*20' containers every month from various countries. Our two major competitors are located in Kerala Border/Tamilnadu. They are also procuring raw materials from the same source and clearing it through Tuticorin and Chennai ports. Since these commodities are essential for consumers of Kerala, the margins are maintained with very minimum levels, and we have to be very serious on every expenses. The only option for us is to make use of the facilities in Cochin port/IGTPL and by making this choice we are compelled to pay higher charges to Terminal.	We confirm that the charges applicable at ICTT are fixed and approved by TAMP as per guidelines and IGTPL is not levying any charge for the services rendered at ICTT without the approval of TAMP.
(ii).	Since the clearing charges at Chennai and Tuticorin ports are low our competitors are gaining the advantage and selling across Kerala state we are unable to improve our products selling in Kerala, jeopardizing the Kerala industry itself. The above issues are pointed out many times to Cochin Port Authorities and IGTPL authorities and on various occasions, but did not fetch any positives results. There is no one to compete with terminal activities in Cochin region, unlike Chennai or Tuticorin, and IGTPL being the monopoly operator, EXIM trade in Kerala are forced to pay and abide by the Charges levied by Terminal authorities.	
(iii).	Therefore, we humbly request you to direct IGPTL to equalize the tariff with other major port to safe guard the interest of business community in Kerala and to promote EXIM trade in this region.	
8.	**Federation of Indian Cashew Industry**	
(i).	We, are a national association of the Cashew Industry in India, with its head Quarters in Kollam, Kerala with members in all cashew processing states of India. Cashew exports are mainly from Kerala through Cochin and Tuticorin ports. After shifting the container terminal to Vallarpadam, our members had to bear additional costs of transportation and other charges in Cochin compared to Tuticorin / Mangalore.	We confirm that all the charges applicable at ICTT are fixed and approved by TAMP as per guidelines and IGTPL is not levying any charge without the approval of TAMP. Please note that the tariff increase of 125% is spread over a period of more than 12 years and similar to the increase in tariff of ports in South India over that period. We further submit that the nature of the investment as well as the time of investment at Chennai port is different when compared to the expenditure incurred
(ii).	Our members are made to incur additional expense for both imports and exports. Our markets purely depend on international prices and every cost added adversely to operate from neighboring states. This	

<table>
<tr><td></td><td>also creates heavy loss to the cashew industry in Kerala.</td><td rowspan="7">at ICTT for which reason Chennai port charges a lower tariff. At Chennai, the investments in the wharf & yard were made by the port trust much before handing over to the operators. Besides, the investments at Chennai were made by the operators much prior in time to the investments made in Cochin. These facts have contributed to lowering of costs at these ports which in turn has resulted in lower tariff.

IGTPL and DP World have been taking all efforts globally as well as regionally to promote ICTT and convince shipping lines to make direct calls to ICTT. Since the commencement of operations at ICTT 6 mainline services started calling at ICTT providing direct connections with Australia, Europe, South East Asia, Far East, Middle East, East & West Mediterranean etc.

Please note that the duty exemptions received by IGTPL had resulted reduced cost of capital employed and resultant reduction in tariffs approved by TAMP.</td></tr>
<tr><td>(iii).</td><td>Please find herewith details of imports to Kerala via Cochin and Tuticorin.
<table>
<tr><th></th><th>IMPORTS</th><th>EXPORTS</th></tr>
<tr><td>2014-15</td><td></td><td></td></tr>
<tr><td>Cochin Port</td><td>2,13,106 M.T (12,535 TEU Approx.)</td><td>68,150 M.T (4369 TEU Approx.)</td></tr>
<tr><td>Tuticorin Port</td><td>4,63,279 M.T (27,251 TEU Approx.)</td><td>22,169 M.T (1,421 TEU Approx.)</td></tr>
<tr><td>2015-16</td><td></td><td></td></tr>
<tr><td>Cochin Port</td><td>1,57,905 M.T (9,289 TEU Approx.</td><td>50,652 M.T (3,246 TEU Approx.)</td></tr>
<tr><td>Tuticorin Port</td><td>4,51,593 M.T (26,564 TEU Approx.</td><td>17,503 M.T (1,122 TEU Approx.)</td></tr>
</table></td></tr>
<tr><td>(iv).</td><td>The imports through Cochin has dropped down by 25.9% against 2.52% through Tuticorin, while the exports have gone down by 25.7% and 21% respectively.</td></tr>
<tr><td>(v).</td><td>The THC at Cochin Port during the year 2005 was about ₹2950/20’ and now it has reached to ₹7500/- approx. It’s more than 125% and it is surprising for us to know that while IGTPL keeps on increasing their charges to customers across Kerala, they are giving incentives to customers in other state, means that they themselves realize that their costs are higher.</td></tr>
<tr><td>(vi).</td><td>We stress a point that charges levied by the subsidiary of DPW in Chennai, (CCTPL – DPW) is only 40% of the charges in Cochin. It should also be noted that attracting new services to U.S- that contributes to more than 22% of the total trade- could not be met by IGTPL. We understand that the cost structure in operating through IGPL is the major cause for shipping lines to avoid Cochin in their US trade calls.</td></tr>
<tr><td>(vii).</td><td>After considering IGTPL as SEZ unit, none of the shippers or importers are benefited in anyway, but for the duty exemptions received by IGTPL for their equipments brought from other countries.</td></tr>
<tr><td>(viii).</td><td>We strongly condemn the recent hike imposed by IGTPL in the behest of TAMP order and request your goodselve to kindly reconsider our request to maintain the old existing rates of 2015 at least.</td></tr>
<tr><td>9.</td><td>The Cochin Chamber of Commerce and Industry</td><td></td></tr>
<tr><td>(i).</td><td>We, the Cochin Chamber of Commerce & Industry represent the major shipping community in Kerala and write to you requesting you to re- consider the order revising the Terminal Handling Charges at the IGTPL, Cochin w.e.f. 20th November 2016. Since the inception of the International Container Transhipment Terminal at Vallarpadam, our members have had to bear the additional costs of Transportation and the increased handling charges in Cochin. A comparison of the rates with those of the nearby ports at Tuticorin and Mangalore have forced many of our members and the trade to operate from neighbouring ports which is seriously affecting the prospects of the Cochin Port.</td><td>IGTPL is levying the charges fixed and approved by TAMP after due review process and as per applicable guidelines.

The CCCI is comparing the tariff with the tariff of other ports ,such comparisons are not valid as the tariff for each port have been fixed by the authority based on its deployed infrastructure / capital employed and the applicable tariff guidelines .

The allegation of the petitioners that business is moving away from IGTPL is not supported by the actual facts of the volumes .As mentioned in our earlier letters the growth in volumes at IGTPL has been significant .The growth in the last few years in comparison with the South India growth is as below:
<table>
<tr><th></th><th>ICTT Cochin</th><th>South India Market</th></tr>
</table></td></tr>
</table>

Financial Year	TEUs	YoY Growth	TEUs	YoY Growth in %
2009-10	289,380		1,866,851	
2010-11	312,189	7.9%	2,025,647	8.5
2011-12	337,053	8.0%	2,336,892	15.4
2012-13	334,925	(0.6)%	2,338,687	0.1
2013-14	346,204	3.4%	2,325,049	(0.6)
2014-15	366,376	5.8%	2,519,960	8.4
2015-16	419,550	14.5%	2,708,676	7.5
Apr-Dec-2015YTD	306,264		2,001,104	
Apr-Dec-2016YTD	366,859	19.8%	2,225,546	11.2

(ii). This diversion of trade has resulted in great difficulties to our traditional industries like Coir, Cashew, Tea, Coffee, Spices & Extracts whose exports are mainly from Kerala through the Cochin Port. Our markets are purely dependent on international prices and any additional cost incurred affects the competitiveness of our products in the International market.

Given below are the container volumes of these commodities at Cochin from 2011 to 2016 in TEU's as given in Cochin Chamber of Commerce Statistics. The 2016 Figures include actuals from Jan-Nov and estimates for December

Commodity	2011	2012	2013	2014	2015	2016
Coffee & Coffee Product Exports	5,193	4,445	3,690	3,366	3,346	3,265
Raw Cashew Imports	17,693	15,950	13,600	12,477	9,874	5,935
Coir & Coir Product Exports	11,068	11,069	11,247	13,812	13,694	21,879

Coir & Coir Products Volume: As can be seen from the above, the volume of Coir & Coir products exports have actually increased. We have improved our volumes of Coir and Coir Products by 60% through our aggressive marketing efforts by deploying our marketing people in the coir cargo generating areas and offering a very competitive supply chain solution.

Coffee Volume: Coffee is produced largely in Karnataka i.e. in Chikmaglur, Kodagu and Hassan and they account for 72% of coffee production, followed by Kerala at 20% and Tamilnadu 5% and Andhra 3%.
Earlier part of the Coffee cargo from Karnataka used to come to Cochin as the roads to Mangalore port was not good and the frequencies of feeder vessels were low.
The comparative distance of the coffee production areas to Mangalore and Cochin port is as below:

Distance in KMs	Mangalore	Cochin	Variance
Chikmagaluru	153	494	341
Kodagu	153	346	193
Hassan	174	464	290

The slot rates charged by the feeder vessel operator from Mangalore were also high making the ocean freight rates higher at Mangalore compared to Cochin. Thus the overall cost including transportation, freight etc., Cochin was at an advantageous position. With new feeder services starting at Mangalore, the vessel class have now improved further the feeder slot rates dropped to less than half, which resulted in drop of shipping line ocean freight rates. The resulting effect was that due to a reduced ocean freight difference and higher transportation rate (to higher distance), coming to Cochin was no longer financially favorable as the cost

		difference in transportation for a TEU is in the range of INR 17,000-18000/- (INR 43000 to Cochin and INR 25,000 to Mangalore from Chikmanglur for a 20ft). However, IGTPL still gets volumes from the Karnataka Coffee producing belt and has more or less maintained volumes over the past few years. <u>Cashew Volume</u>: Faced with an unfavorable Industrial climate cashew factories in Kerala have been shutting down and moving to Kanyakumari over the years. Once the Industries shifted and the larger share of the requirements were towards the Kanyakumari factories the cargo from Cochin port began to shift to Tuticorin due to proximity which is just 133 kms, whereas the distance to Cochin is approx. 300 kms and lesser transportation rates. West Africa Cashew sometimes needed drying and the climatic condition in Tamilnadu were favorable as well as the cost of warehousing was also high in Kerala compared to Tamilnadu which led the traders to shift their warehousing to Tamil Nadu. To reduce the impact of the lower ware housing costs at Tamil Nadu , IGTPL has been proving 14 days free storage for all cashew imports .Besides ,we have been working with shipping lines to bring direct main line services to Cochin so that Cochin trade can benefit from better freight rates and transit time as the feedering and transshipment is eliminated from the cost of a shipping line and also tranship cashew cargo to other ports like Mangalore, Tuticorin etc. In 2017 Jan we attracted the first direct vessel of CMA (the third largest carrier in the world) from Africa to Cochin which discharged 900 TEUs of cargo for local delivery and transshipment. We are also enclosing the relevant newspaper articles for your records as evidence supporting the same. <u>Tea Volume</u>: Our volumes have been stable from 2011 to 2015. 2016 saw a drop of 9% and this is due to a drop in production in South India which increased purchase price for the exporter and at the same time an over-supply in international market caused a drop in international prices the combined effect of same drove down exports. Tea production and exports through Cochin from 2011-16

	2011	2012	2013	2014	2015
Tea Production South India (MKgs) (Source Tea Board)	240	239	242	242	228
Exports Through Cochin (Teus)	7,922	7,279	7,145	7,223	7,199
	2016	Drop 2016 Vs. 2015	2015-16 (Apr-Sep)	2016-17 (Apr-Sep)	Drop
Tea Production South India (MKgs) (Source Tea Board)	NA	NA	130	114	12%
Exports Through Cochin (Teus)	6,557	9%	3559	3265	8%

The article in Economic times dated 14/11/2016 may be referred here wherein for the period of Apr-Sep 2016-17 Financial year there has been a drop in production in South India.

http://economictimes.indiatimes.com/news/economy/agriculture/tea-production-in-india-increases-by-18-74-per-cent/articleshow/55416724.cms
Quote

The estimated tea production during 2016-17 (Apr-Sep) is arrived at 795.89 M. Kgs., as against 795.86 M. Kgs of corresponding period. Production in North India is at 681.54 M.Kgs., an increase of 15.71 M.Kgs while South India production is at 114.35 M.Kgs., a decline of 15.68 M.Kgs. The estate factory production in North India increased by 1.57% while it declined by 9.51% in South India, thereby all India decline of 0.04%.BLF production in North India increased by 4.07%, while it declined by 15.78%.
Unquote

The article in Economic times dated 10/01/2017 may be referred here wherein it has been mentioned that production in Kenya had improved by 50% thereby creating over supply in the international market
http://economictimes.indiatimes.com/markets/stocks/news/tea-stocks-perk-up-but-experts-remain-cautious/articleshow/56437587.cms
Quote

Kenya saw an over 50% increase in production in the last year which was responsible for an oversupply and fall in tea prices in the international market.
Unquote

Chart below shows the steep drop in prices in 2016
https://ycharts.com/indicators/world_tea_price

Spices Volume:

	2011	2012	2013	2014	2015	2016
Spices	6,223	6,897	7,131	7,235	8,101	7,227

2011-2014 Volume of spices has been stable over the years. As per data of CCCI there is a drop in volumes in 2016 however when we checked the exporter wise details we could find that all the major exporters volumes have grown and it was noted as exports of Eastern Condiments was updated under cargo: foodstuff. If this volume of approx. 400 TEUs is added to the 2016 spices volumes then there is

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<tr><td></td><td></td><td>very less difference in the 2015 and 2016 volumes of spices.

Balance difference is in the pepper exports as the pepper production has been very low with a negative growth of 47% as estimated by Spices Board for the period Apr-Sep 2016 vs 2015. This has had an impact on spice exports from India.</td></tr>
<tr><td>(iii).</td><td>The IGTPL has issued a notice for increased Terminal Handling Charges (THC) and other charges in Vallarpadam terminal w.e.f. 20th November, 2016. In effect, the THC at Cochin Port which, in the year 2005 was about Rs. 2950 and has steeply risen to approximately Rs. 7500/- today.</td><td>CCCI has wrongly mentioned the tariff , the correct tariff for a 20ft container is as under, taking common exchange rate of 1USD =Rs 67

Scale of Rates applicable As on 21 October 2005 Gaz. No. 145-Rs 3544/
Scale of Rates applicable As on 15 November 2016 Gaz. No. 408- Rs 6480/

IGTPL is charging tariff as determined by TAMP. The service levels /quality of service received by the Customers at ICTT is not comparable to the services provided at RGCT. All stakeholders have benefitted from the increased berth productivity, lower truck turnover time, faster vessel turnaround etc. at ICTT. The benefits are evident from the increased volumes</td></tr>
<tr><td>(iv).</td><td>Although the TAMP had approved these ceiling rates after a joint hearing with the stakeholders, we feel that the representations and suggestions from Exporters, Importers and trade bodies like ours have been not taken into consideration while arriving at these increased rates.</td><td>The TAMP Notification dated 24 October 2016 vide which the Speaking Order was notified gives the details of the various consultations done by TAMP.</td></tr>
<tr><td>(v).</td><td>It is also alarming to note that while the IGTPL has been steadily increasing the rates to the existing customers of Cochin Port in Kerala, they have been providing incentives or discounts to their customers in ports like Tuticorin, Chennai and Mangalore which is a further acknowledgement of their own higher rates in Kerala.</td><td>The Kerala state has a limited industrial base and there has been very slow growth of Kerala market/cargo base. For IGTPL to improve the volumes and make the port an attractive port call option for a mainline vessel, we have to look at cargo from hinterland in Tamilnadu and Karnataka. The infrastructure such as rail connectivity and four lane highway connectivity have also been provided recognizing the need to attract cargo from areas beyond Kerala. In order to divert such cargo IGTPL have deployed its marketing team in Tamilnadu and Karnataka to meet the customers in the hinterland i.e. trade outside Kerala and work out solutions for them. There were many challenges highlighted by the customers like Walayar check post crossing delays, higher cost of transportation to Cochin viz a viz Tuticorin, higher freight cost of shipping lines compared to other ports like Chennai and Tuticorin, etc. With assistance from the ministry the Walayar check post issue for sealed containers were sorted and in order to mitigate the overall cost differences we have offered rate equalization scheme to these customers so as to persuade them and get their supply chain readjusted towards Cochin from other ports and as may we have met with great amount of success as evidenced by our growth rate. Details of IGTPL growth in comparison to the South India market growth is given below

<table>
<tr><th></th><th colspan="2">ICTT Cochin</th><th colspan="2">South India Market</th></tr>
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<tr><td>2012-13</td><td>334,925</td><td>(0.6)%</td><td>2,338,687</td><td>0.1</td></tr>
<tr><td>2013-14</td><td>346,204</td><td>3.4%</td><td>2,325,049</td><td>(0.6)</td></tr>
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<tr><td>Apr-Dec-2015YTD</td><td>306,264</td><td></td><td>2,001,104</td><td></td></tr>
<tr><td>Apr-Dec-2016YTD</td><td>366,859</td><td>19.8%</td><td>2,225,546</td><td>11.2</td></tr>
</table>
The cargo from hinterland is crucial for increasing the volumes, as only significant volumes can create interest in shipping lines to begin mainline vessels calls at Cochin. Hence we offer some rate equalization measures to divert business to the terminal looking at the long term prospect and benefit to trade despite the present financial burden on IGTPL. Presently the hinterland volumes comprise of 9% of the total volume handled, we have projected this will grow to 13.5% in 2017. It should be noted that TAMP has not considered these projected rate equalization measures as deductions from its estimation of projected revenue for tariff revision.
IGTPL has been giving various discounts and incentives to the local Kerala trade also, such as extended free storage days for import /export containers, additional free days for cashew cargo, additional free days for containers moving through main line vessels or rail. The local trade also benefits from the increased mainline/direct vessel calls as it bring down the transit time and overall cost for the exporter/importer.
The CCCI contention that proving of ‘incentives or discounts to their customers in ports like Tuticorin, Chennai and Mangalore which is a further acknowledgement of their own higher rates in Kerala” does not recognize the need for rate equalization measures nor has CCCI acknowledged the various discounts and incentives also being given to local Kerala along with the benefits of having increased mainline/direct vessel calls.
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<td>(vi).</td>
<td>Declaration of the IGTPL as a SEZ unit has not been beneficial for the shippers or exporters in any way other than for the duty exemptions received by the IGTPL for their equipment brought in by them.</td>
<td>It is true that IGT had availed of duty exemption for import of equipment etc. in accordance with the Law. However, it should be noted that the duty exemptions received by IGTPL had resulted in reduced cost of capital employed and tax exemptions have reduced the operating costs, the resultant reduction in tariffs approved by TAMP which benefitted the trade. The CCCI contention that the declaration of IGTPL as SEZ has not been beneficial for shippers or exporters is not correct.</td>
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<td>(vii).</td>
<td>The proposed rate of increase of 4.5% till 31st March and a further increase of 4.5% will make Cochin the port with the highest Terminal Handling Charges in India. The direct effect of enforcing the increased THC will be that the exporters / importers would be compelled to move their containers to other neighbouring ports to avoid the high Terminal Handling Charges at Cochin resulting in loss of business to the trading fraternity in Cochin / Kerala.</td>
<td>It is submitted that Terminal Handling Charges by the Operator is only one of factors considered by shippers for movement of containers. In spite of the allegation that THC is on the higher side, IGT is in a position to attract additional cargo from the hinterlands of Tuticorin and Chennai by offering excellent quality of service and products.</td>
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8.3. In response to our request for sending comments on the review application filed by the CSAA and CCHAA, the IGTPL has, vide its letter dated 10 March 2017 forwarded its comments. A summary of the points made by the CSAA and CCHAA in its review application and response of IGTPL are tabulated below:

Sr. No.	Points made by the CSAA and CCHAA in review application	Reply given by IGTPL
(i).	The 1st petitioner is the association representing the Steamer Agents representing the shipping lines operating in Cochin Port through whom the containers are imported / exported. The petitioner is represented by its President, Mr Prakasan K, who is competent to file this writ petition. The 2nd petitioner is the body representing the interest of the Customs House Agents (CHA), who are the clearing and forwarding agents of importers and exporters functioning in Cochin Port and protect the legitimate interest of its members in discharging their duties and responsibilities as licensed Custom House Agents at the Sea Port and Air Port of Cochin and to promote over all export/import trade through Cochin Sea Port & Airport. The 2nd petitioner is represented by its secretary, Mr Andrew Antonio Fernandez	We have no comments.
(ii).	The 2nd respondent is Cochin Port Trust, a Major Port functioning under the Major Port Trusts Act, 1963. As per a BOT (Build Operate Transfer) license agreement with the 2nd respondent Cochin Port, the 1st respondent /India Gateway Terminal Pvt. Ltd constructed an International Container Transhipment Terminal (ICTT) at Vallarpadam and the same is now being operated by the 1st respondent at Vallarpadam, which is notified as a Special Economic Zone (SEZ). The 3rd respondent is the statutory Maritime authority, appointed by Govt. of India under the Merchant Shipping act 1958 and is responsible for implementation of the provisions of the act including implementation of various international Conventions, relating to safely requirements and other mandatory requirements of International Maritime Organization.	We have no comments.
(iii).	After the 3rd respondent came into existence, this Hon'ble Authority/TAMP vide its Order No TAMP/25/2008-IGTPL dated 5th August 2009 had passed an Order approving the Sale of Rates (SOR) applicable to the 3rd respondent and the same was notified on 11/08/2009. The said SOR of IGTPL which was notified on 11 August 2009 and the said sale of rates are being applicable to the 1st respondent till date. However, the 1st respondent has now arbitrarily and unilaterally demanded revision of Scale of Rates and sends a letter dated 16/12/2015 with a proposal for general revision of its SOR. In the said proposal, the IGTPL has proposed 6.98% increase in the existing tariff from 1 January 2016 with an annual increase of 6.98% from 1 April 2016 for each years 2016-17, 2017-18 and 2018-19.	we state that the petitioners have mentioned "The 1st respondent has now arbitrarily and unilaterally demanded revision of scale of rates …" We would like to point out that the scale of rates approved vide TAMP Order ref. TAMP/25/2008-IGTPL dated 5th August 2009 was valid only upto 31st December 2015. For the foregoing reason and in accordance with the TAMP Guidelines we filed an application for revision of tariff. Thereafter TAMP extended the validity of expired tariff from time to time till conclusion of the tariff revision proceeding. The tariff as applicable on 1st January 2015 continued to be applicable upto 20th November 2016. We state that the application for revision of scale of rates was made as per TAMP Guidelines and is subject to review and verification by TAMP. Thus, the same was not an arbitrary or unilateral demand as alleged by petitioners.
(iv).	A joint hearing was conducted on 07/06/2016 and the 1st respondent has furnished a letter dated 30/06/2016 with the revised cost statement and has proposed 9.12% annual increase in tariff with effect from August 2016. Further, the 3rd respondent has proposed an annual increase of 9.12% from 1 April 2017 onwards for the years 2017-18 and 2018-19.	We submit that our application made on 16/12/2015 was circulated by the tariff authority to all stakeholders. The comments received by TAMP from the stake holders was forwarded to us for our comments. Vide our letter dated 23rd March 2016, we responded to comments of all stakeholders, except comments of Coimbatore Custom House and Steamer Agents Association whose comments we had not received then. TAMP has recorded receipt of IGTPL's response in Clause 5.1 of the Speaking Order. TAMP held a joint hearing on 7 June 2016 and a summary of comments received from stakeholders

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<td>and arguments made in relation to the revision application is appended to the Speaking Order. Importantly the stakeholders requested that the then existing tariff be maintained for a year. Since the then existing tariff rates expired in December 2015 but the revised tariff rates came into effect only from 20th November 2016, the stake holders request of maintaining the then existing tariff rate for a year was in fact met with. Based on TAMP's direction to update the actual performance upto March 2016 and to adopt the prevailing exchange rate, giving effect to the TAMP order TAMP/4/2004-Genl dated 19th May 2016, appropriate revision in estimates based on actuals upto March 2016 and the opinion given by Attorney General on the applicability of surplus/deficit of previous cycle, IGTPL revised the tariff revision application and submitted the same on 28th June 2016. Based on the revision in IGTPL's application and given that the earliest date of applicability of tariff revision would be 1st August 2016, the proposal put a request for tariff increase of 9.12% w.e.f from 1st August 2016, thereafter proposed YOY increase 9.12% from 1st April onwards for 2017-18 and 2018-19 respectively. It should be noted that the Speaking Order in clause 10 records that a conclusion has been arrived at based on the totality of information collected during the processing of the case and its analysis. It must be noted that the petitioners have also confirmed that TAMP has given proper and sufficient opportunities to all stake holders to express their concerns.</td>
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<td>(v).</td>
<td>The petitioner have submitted a reply dated 21/01/2016 against the proposal of the 1st respondent for the Sale of Rate. The true copy of the reply dated 21/01/2016 issued by the petitioner to the 1st respondent is produced herewith and marked as Exhibit P1. In the said reply, the petitioner had stated that the assessment for generating traffic was less due to the under performance of IGTPL as the container terminal handling charges were already high at IGTPL and hence the goods and traffic are diverted to other ports like Tuticorin (PSA) and Chennai (DPW) as their terminal handling charges was 54% and 38% cheaper compared to IGTPL. It was further contented that further increase in rates will further increase the migration of traffic and that IGTPL have not identified the real reason for their under performance which is lack of marketing of services of IGTPL and high terminal handling rates and absorption of cost by increasing the claim would only decrease the existing traffic in IGTPL. It was further stated that IGTPL has failed to get any volume in transhipment business which was entirely the responsibility of IGTPL and that IGTPL has only attained 2% of volume as against projected 25%. The petitioner further disputed the computation of deficit in actual returns and also the fact that IGTPL have not disclosed the value of the Business Related Assets which are entitled to a lower ROCE thereby claiming a higher ROCE on Business Related Assets and any compensation to IGTPL by way of ROCE above 5.72 % be not extracted from the trade but settled by the Government out of its own funds in accordance with any bilateral agreement. It was also contended that a proper Business Plan must be implemented to substantially increase the revenues of IGTPL by</td>
<td>We state that we submitted to TAMP on 23rd March 2016 a detailed reply to the 1st petitioner's letter dated 22 January 2016 and 2nd petitioner's letter dated 12 January 2016. Since we have not been given a copy of the referred letter dated 21 January 2016, we presume that petitioners are referring to the letter dated 22 January 2016. Copy of our reply to TAMP are enclosed herewith and marked as Annexure A.
<table>
<tr><th></th><th colspan="2">Chennai</th><th colspan="2">Tuticorin</th><th colspan="2">Cochin</th></tr>
<tr><th>Year</th><th>Volume</th><th>Growth%</th><th>Volume</th><th>Growth %</th><th>Volume</th><th>Growth%</th></tr>
<tr><td>2014</td><td>1,532,723</td><td>3.86%</td><td>545,605</td><td>10.52%</td><td>362,590</td><td>5.43%</td></tr>
<tr><td>2015</td><td>1,535,800</td><td>0.20%</td><td>598,239</td><td>9.65%</td><td>391,951</td><td>8.10%</td></tr>
<tr><td>2016</td><td>1,517,168</td><td>-1.21%</td><td>638,345</td><td>6.70%</td><td>480,145</td><td>22.50 %</td></tr>
</table>
IGTPL and DP World have been taking all efforts to market ICTT globally as well as regionally/locally. It should also be noted that historically the market and hinterland at Cochin has been smaller as compared to that available to the ports at Chennai and Tuticorin. Further, it should be noted that the volumes, cargo mix and investments at each of these ports are different hence not comparable. In any event, notwithstanding the various allegations made by the petitioners, the fact is that volumes have/ are growing at ICTT as indicated in the table above. The volume for the period January to December 2016 is 480145 Teus as compared to 391,951 Teus for the period January to December 2015, which is a growth of 22.5%. The corresponding growth at Chennai port is 0.60% and at Tuticorin port is 6.95%.

Further, TAMP has approved the tariff being charged at Chennai, Tuticorin and Cochin and the approval</td>
</tr>
</table>

	increasing the volume of traffic by better utilization of available facilities, an aggressive marketing of the terminal and offering very competitive rates of tariff and thereby making IGTPL the First Choice Terminal and to drop any proceeding for increasing the rates at IGTPL.	are based on the same guidelines i.e. TAMP Guidelines. As can be seen from the volume growth at Cochin in the table above we state that the petitioners' contention that increase in tariff will divert traffic to other ports is flawed. After commencement of ICTT, several mainline services have started calling at ICTT; contributing to the volume growth. Our volume estimates for future periods also indicate growth of 12.38% to 17.55%. CoPT has also indicated that the estimates are reasonable as recorded in clause 6(A)(4). The volume growth also supports our views (as stated in our reply dated 23rd March 2016) that container traffic is dependent on several factors including, mainline connectivity, terminal productivity etc. Non realization of volumes were and are mainly due to growth of capacities at Colombo, non availability of draft, poor feeder connectivity due to comparatively higher VRC, sluggish South Indian market with growth of 0% to 8%, non availability of adequate CFS facilities and also other cost factors outside/beyond IGTPL control but which influence the shipper's/consignees' decision of which port to use. It is also surprising that the 1st petitioner (Steamer Agents), who represent the Shipping Lines (who actually move the containers) view bringing of volumes to ICTT as "entirely the responsibility" of IGTPL. This is despite the fact that the 1st petitioner is well aware that IGTPL is offering the most competitive TP tariff and (because the tariff fixed by TAMP is the ceiling limit) IGTPL has, for attracting customers, been offering discounts to transshipment as well as OD Cargo. The petitioner has also contended that the computations submitted by IGTPL do not disclose the value of Business Related Assets. These assets are explained under TAMP Guidelines clauses 2.9.7 & 2.9.8 more particularly stated in Form 4 as "Assets created for supporting business i.e. Hospitals, Schools etc." Since IGTPL does not have any asset in this category, IGTPL is not required to disclose the same in the computations. Petitioners' demand that returns in excess of ROCE of 5.72% (recommended by the petitioners) settled by Government of India out of its own fund is not in accordance with the existing guidelines. TAMP may appropriately advise the petitioners.
(vi).	Whereas this authority has passed a non- speaking order disposing of the proposal filed by the 1st respondent for general revision of its SOR under Tariff Policy Guidelines, 2005 and allowing the tariff increase of 4.5% over the existing rates. The True copy of the order dated 17/09/2016 passed by TAMP is produced herewith and marked as Exhibit P2. The Exhibit P2 order was published in Government Gazette as Gazette Notification No 380 on 17/10/2016. Based on Exhibit P2 order, the 1st respondent has issued Trade Notice No 16 dated 20/10/2016 informing that the new scale of rate will be applicable for all containers arriving at terminal operated by the 1st respondent with effect from 20/11/2016. The true copy of the trade notice No 16	We deny that TAMP has passed a non speaking order disposing of our application for revision of scale of rates. While we confirm the issuance and notification of the Order and the issuance of trade notice bearing no. 16 dated 20 October 2016 (on the basis of the scale of rates as approved by TAMP in the Order)we submit that after the notification of the Order, the Speaking Order was also notified. We reiterate the contents of paragraph 2 hereinabove. A copy of the Speaking Order is enclosed herewith and marked as Annexure B.

<table>
<tr><td></td><td>dated 20/10/2016 is produced herewith and marked as Exhibit P3.</td><td></td></tr>
<tr><td>(vii).</td><td>It is respectfully submitted that the impugned Exhibit P2 order was passed by this Hon'ble Authority without considering the facts stated by the petitioner and 2nd respondent / Cochin Port and other trading bodies. If the operation of Exhibit P2 comes into effect, it will affect the Exim trade in Cochin as operational cost and the terminal handling cost in Cochin will further increase resulting in loss of business to the shipping trade at Cochin as the IGTPL itself has admitted that their charges are much higher than that of Tuticorin and Chennai. Further the container handling charges is already very high at the 1st respondent port / terminal compared to all other neighbouring ports and imposing further charges is an additional burden on the shippers / exporters which will detrimentally affect the trade bodies and affect the EXIM operation of Cochin / Kerala as the Shippers/ exporters will prefer other Indian ports which are charging much less charges than doing shipment through 3rd respondent. The below is a comparison of per container handling cost in each of the Major Ports in the country.
<table>
<tr><th>Sl No</th><th>Name of the Port</th><th>Existing Container handling charges per container 20 ft container</th><th>Container handling charges per container 20 ft container at IGTPL</th><th>Existing Container handling charges per container 40 ft container</th><th>Container handling charges per container 40 ft container at IGTPL</th></tr>
<tr><td>1</td><td>Gateway Terminal India Pvt. Ltd, Mumbai</td><td>3,551.00</td><td>6637.00</td><td>5,384.00</td><td>9,955.00</td></tr>
<tr><td>2</td><td>Jawaharlal Nehru Port Trust, Mumbai</td><td>3,935.00</td><td>6637.00</td><td>5,960.00</td><td>9,955.00</td></tr>
<tr><td>3</td><td>Nhava Sheva International Container Terminal, Mumbai</td><td>3,706.25</td><td>6637.00</td><td>5,616.87</td><td>9,955.00</td></tr>
<tr><td>4</td><td>Chennai International Terminal Private Ltd, Chennai</td><td>3,785.11</td><td>6637.00</td><td>5,621.95</td><td>9,955.00</td></tr>
<tr><td>5</td><td>Chennai Container Terminal Pvt. Ltd, Chennai</td><td>3,785.11</td><td>6637.00</td><td>5,621.95</td><td>9,955.00</td></tr>
<tr><td>6</td><td>PSA SICAL Terminal Limited. Tuticorin</td><td>3,220.24</td><td>6637.00</td><td>4,557.00</td><td>9,955.00</td></tr>
<tr><td>7</td><td>Dakshin Bharat Gateway Terminal Pvt. Ltd, Tuticorin</td><td>3,157.24</td><td>6637.00</td><td>4,735.56</td><td>9,955.00</td></tr>
<tr><td>8</td><td>Visakha Container Terminal Pvt. Ltd, Vizag</td><td>4,222.00</td><td>6637.00</td><td>6,334.00</td><td>9,955.00</td></tr>
<tr><td>9</td><td>Kolkata Port Trust</td><td>4,287.00</td><td>6637.00</td><td>6,431.00</td><td>9,955.00</td></tr>
</table>
</td><td>We deny that TAMP passed the Order without considering the facts stated by the Petitioner and 2nd Respondent. It may also be noted that whilst we had made an application requesting 9.12% increase in tariff, after considering and rationalizing all the facts and figures, TAMP permitted an increase of only 4.5%. This sanctioned increase translates into a nominal increase of ₹298 per 20ft and ₹448 per 40ft. Further, the stakeholder's request that the then existing tariff be maintain for a year was also met with as the revised tariff rates came into effect only from 20th November 2016.. Further, in relation to the THC at ICTT, it should be noted that the investments and costs at ports of Chennai and Tuticorin are different; hence not comparable. In any event, the tariff at Chennai, Tuticorin, and Cochin are determined by TAMP based on TAMP Guidelines in a transparent method. TAMP's attention is drawn to the DG Shipping advisory to shipping lines dated 7 September 2016 for bringing transparency in transaction costs in EXIM trade and restricting certain charges from being levied.

We further submit that the nature the investment as well as the time of investment at Tuticorin and Chennai ports are different when compared to the expenditure incurred at ICTT for which reason Tuticorin and Chennai ports charge a lower tariff. At Tuticorin and Chennai, the investments in the wharf & yard were made by the port trust much before handing over to the operators. Besides, the investments at Tuticorin and Chennai were made by the operators much prior in time to the investments made in Cochin. These facts have contributed to lowering of costs at these ports which in turn has resulted in lower tariff. Further, as mentioned in paragraph 7D above, various factors arising from the terminal and other trade stake holders also contribute to the growth or decline of container traffic.</td></tr>
</table>

The terminal handling charges at the 3rd respondent terminals is as follows:

	20dv Actual	**40dv Actual**	**20ref Actual**	**40hcr Actual**
Pre-trip inspection			950.00	1300.00
Monitoring Charges			7930.00	11928.00
Wharfage	883.83	1325.73	883.83	1325.73
Lift Off at CY”	848.49	1272.73	848.49	1272.73
Lift On at CY”	848.49	1272.73	848.49	1272.73
Transport to HK	397.71	596.59	397.71	596.59
Gantry	3658.20	5487.00	3658.20	5487.00
Grand Total	6637.00	9955.00	15516.00	23183.00

(viii).	The container handling charges for shipment of container at the 3rd respondent is ₹6637.00 for 20ft containers and ₹9955.00 for 40 ft containers which is already higher compared to the other ports and the neighbouring ports like Chennai and Tuticorin are handling containers at a fairly lower price. Enforcement of Exhibit P2 order passed by this authority by the 1st respondent at this stage will further increase the terminal handling charges at the Port which will lead to further diversion of business from Kerala to other states.	
(ix).	It is respectfully submitted that the Exhibit P2 order dated 17/09/2016 passed by this authority is a non speaking order and hence in violation of the principal of Natural justice. It is held by the Supreme Court in Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota v. M/s Shukla & Brothers (2010) 4 SCC 785 that “the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind”. In the present case, this authority while passing the impugned order has failed to come to reasoning on why such a conclusion of allowing the revision of tariff is allowed and on why the objections raised by the 2nd respondent/Cochin Port Trust and the petitioners, were not considered. The impugned order only has the concerns raised by the various parties including the petitioners and 2nd respondent and other association and the reply comments given by the 1st respondent/IGTPL to the said concerned. Whereas while passing the impugned order, this authority failed to give the justifiable reasoning on why the view of the 1st respondent was preferred to that of the petitioners and 2nd respondent / Cochin Port and other association.	It is once denied that the Order is a non speaking order and / or against the principles of natural justice. Contents of paragraph 7E hereinabove are reiterated.
(x).	Further, while passing the impugned order, this authority has failed to cross check on the genuineness of the assessment provide by the 1st respondent/IGTPL. There was specific contentions raised by the 1st petitioner in the Exhibit P1 reply dated 21/01/2016 challenging the assessment made by the 1st respondent which was not considered by this authority while passing the order.	
(xi).	In view of the same and various other contentions to be raised at the time of hearing, this petitioners are	

	filing this review petition for the consideration of this authority to review its order dated 17/09/2016 and to and re-hear the matter and to pass an order on merits after considering the contentions taken by all the parties, in the interest of justice.	

8.4. Subsequently the CSAA has, vide its email dated 6 January 2017 forwarded additional points and documents to be considered by this Authority along with the review petition and requested that this additional points and documents may be treated as a part of review petition filed by the petitioners. The additional points and documents forwarded by the petitioners vide email dated 6 January 2017 have been forwarded to IGTPL, COPT and all the concerned users vide our letter dated 1 February 2017 seeking their comments by 4 February 2017. A copy each of their letters were endorsed to CSAA and CCHAA. The main points made by CSAA and CCHAA in the said additional points to its Review Petition and replies of IGTPL thereon are summarised below:

<table>
<tr><th>Sl. No.</th><th>Points made by CSAA and CCHAA</th><th>Reply given by IGTPL</th></tr>
<tr><td>(i).</td><td>The Hon'ble High Court of Kerala while disposing the Writ Petition No. 37111/2016 filed by the petitioners challenging this Authority's above order dated 17/10/2016 and the trade notice No. 16 dated 20/10/2016issued vide, IGTPL Vallarpadam, Terminal Operators has directed TAMP who appeared before the Hon'ble High Court through Central Government Standing Counsel that the Review Petition dated 17/11/2016 filed by the Steamer Agents Association and Custom House Agents Association who are petitioners in the writ petition may be considered / reviewed after giving a reasonable opportunity to take all contentions, produce documents and personal hearing. Even though the Order of the Hon'ble High Court of Kerala was dated 18/11/2016 the certified corrected copy was received on 21/11/2016 and our office has forwarded a copy of High Court order along with the copy of the review petition dated 17/11/2016 by email and later by registered post for your kind consideration.</td><td>The Hon'ble High Court of Kerala on 18/11/2016 gave a specific direction to TAMP to take a decision on the review petition filed by petitioners after providing a sufficient opportunity of hearing to the petitioners as well as all concerned within a month from the date of receipt of a copy of the judgment. The direction was to review the petition already filed. However, the petitioners are raising additional points to prolong the finalization of the issue, which is adversely affecting IGTPL as well as against the specific time line provided in the said High Court Order.</td></tr>
<tr><td>(ii).</td><td>We are forwarding additional points and documents to be considered by the Authority along with the review petition and these additional points may be treated as a part of the review petition filed by the petitioners.</td><td>These points are already raised by the petitioners before TAMP vide their letters dated 12/01/2016 and 22/01/2016 and replied by us vide our letter dated 23/03/2016.</td></tr>
<tr><td>(iii).</td><td>Whether the IGTPL is justified in further increasing the rates when they have failed continuous to achieve the projected volume of business through IGTPL and when there is no necessity for further enhancement of infrastructure as claimed by them?</td><td>No Comments.</td></tr>
<tr><td>(iv).</td><td>It is respectfully submitted that the IGTPL is making illegal gain all throughout its inception and by virtue of the Order obtained through TAMP vide Order No TAMP/25/2008-IGTPL dated 5th August, 2009. At the time of passing the said order, the Hon'ble Authority has decided an annual escalation of 3.48% every year till 31st December, 2015 based on the projection of volume provided by IGTPL. The said projection of volume which is provided by IGTPL is as given below:
(In TEUs)
<table>
<tr><td>2010</td><td>2011</td><td>2012</td><td>2013</td><td>2014</td><td>2015</td></tr>
<tr><td>4,78,000</td><td>5,88,000</td><td>6,84,456</td><td>7,52,902</td><td>8,28,192</td><td>9,11,011</td></tr>
</table></td><td>IGTPL is levying charges fixed and approved by TAMP after due review process and as per applicable guidelines. IGTPL is not making any illegal gain.</td></tr>
<tr><td>(v).</td><td>It is submitted that IGTPL as an operating terminal has failed miserably in achieving the targeted projected volume which was submitted before this Hon'ble Authority at the time of passing the Order No TAMP/25/2008-IGTPL dated 5th August, 2009</td><td>The volume projected by IGT were dependent on various factors.

At the time of projections in 2009, it was expected that ICTT will be operating with the entire required</td></tr>
</table>

but they have reaped the benefit of an annual escalation of 3.48% every year till date without achieving the desired volume of business and without any additional cost spend on the infrastructure. The volume which has been realized by IGTPL till date is as follows:

(In TEUs)

2010	2011	2012	2013	2014	2015
3,12,189	3,37,053	3,34,925	3,46,204	3,66,376	3,06,324 (Apl-Dec)

infrastructure/ Cabotage relaxation etc. required for a transshipment terminal as planned in mid-2010. In and around 2009-2010, customers were looking for an alternative to Colombo Port on account of capacity issues prevailing there .This was the opportune time for ICTT to get commissioned and the feedback from customers was extremely positive as they were looking for alternate comparable ports to bring their business to. However, the scheduled shift to ICTT actually happened in Feb 2011 (instead of 2010). Even in Feb 2010 COPT did not provide a four lane national highway connectivity and 14.5m draft at ICTT. Lack of draft meant deep draft vessels could not call ICTT. Further, relaxation of Cabotage restriction, clarity on customs procedure etc. were also notified much later. Only in April 2013, COPT completed the 14.5 mtr draft was provided and in May 2015 COPT provided the four lane national highway connectivity. All the foregoing factors, basis which the volumes were projected by IGT in 2009, were delayed and were beyond the control of IGTPL.

We state that our senior management and commercial teams were marketing the services provided by ICTT at the Indian and International offices of the various shipping lines such as MSC, Wan Hai Line, Maersk Line, Evergreen, MOL, CMA, CSAV, ZIM etc. Including conducting road shows for few such shipping lines. We approached various feeder operators including OEL, Xpress and BTL to connect the Indian east coast to ICTT. We also contacted exporters /importers for example Jindal Steel, TNPL etc. During our foregoing efforts we were constantly confronted by customers with questions about the inadequate draft, four lane highway connectivity and cabotage relaxation. The common perception about the facilities at ICTT was poor due the absence of adequate draft, road connectivity, cabotage restrictions and thereafter lack of clarity on customs procedure w.r.t. to cabotage relaxation.

It may be noted that further to the downturn of the shipping industry in 2008 the volumes had dropped ,for the period 2010 to 2015 the All India container growth is an average 7%.These coupled with growth of capacities at Colombo, development and expansion of ports in South India, poor feeder connectivity due to comparatively higher VRC, low South Indian market growth of 0% to 8%,border check post bottlenecks, non-availability of CFS also other cost factors outside IGTPL control but influencing the shipper/consignees decision on which port to use. It would be pertinent to mention that in the meantime Colombo commissioned a new terminal in Aug 2013 and the trade's urgency for an alternative port to Colombo ended.

Had ICTT been commissioned as per schedule in 2010 with above mentioned infrastructure /cabotage relaxation, as originally planned, it could attract customers and volume.

In any event, the projections made by IGTPL in 2009 for the earlier order based on multi fold factors as mentioned above, were discussed and accepted by all; no objections were then raised by the trade.

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<td>In order to convert volumes which were going through Tuticorin & Chennai, IGTPL had deployed focused marketing team at various locations in Tamil Nadu and Karnataka to facilitate direct contact with actual cargo controllers .These efforts, aided by completion of the infrastructure and other enablers such as draft, clarity on customs procedures w.r.t., cabotage, highway connectivity etc. have gradually begun the conversion of cargo through ICTT as stated below:
<table>
<tr><th></th><th colspan="2">ICTT Cochin</th><th colspan="2">South India Market</th></tr>
<tr><th>Financial Year</th><th>TEUs</th><th>YoY Growth</th><th>TEUs</th><th>YoY Growth in %</th></tr>
<tr><td>2009-10</td><td>289,380</td><td></td><td>1,866,851</td><td></td></tr>
<tr><td>2010-11</td><td>312,189</td><td>7.9%</td><td>2,025,647</td><td>8.5</td></tr>
<tr><td>2011-12</td><td>337,053</td><td>8.0%</td><td>2,336,892</td><td>15.4</td></tr>
<tr><td>2012-13</td><td>334,925</td><td>(0.6)%</td><td>2,338,687</td><td>0.1</td></tr>
<tr><td>2013-14</td><td>346,204</td><td>3.4%</td><td>2,325,049</td><td>(0.6)</td></tr>
<tr><td>2014-15</td><td>366,376</td><td>5.8%</td><td>2,519,960</td><td>8.4</td></tr>
<tr><td>2015-16</td><td>419,550</td><td>14.5%</td><td>2,708,676</td><td>7.5</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Apr-Dec-2015YTD</td><td>306,264</td><td></td><td>2,001,104</td><td></td></tr>
<tr><td>Apr-Dec-2016YTD</td><td>366,859</td><td>19.8%</td><td>2,225,546</td><td>11.2</td></tr>
</table>

The actual volumes stated by petitioners are correct except for the period Apr-Dec 2015, which is 306,264 TEUS instead of 306,324 TEUS.

We would reiterate that our tariff review application has been made as required under the tariff guidelines and charged as per the approval order by TAMP. It must be noted that the tariff escalations approved by TAMP is based on the deployed infrastructure /capital employed as at 2010, TAMP order of 2009 records the average deficit of around 57.85% for the years 2010 to 2012 for ICTT operations over the operating revenue estimated at rates approved for RGCT. In order to reduce the burden on the users an analysis was done by TAMP for six years i.e. two tariff cycles ,the revenue requirement for 2010 was achieved by allowing an increase of 20%over the tariff prevailing at RGCT .The base rates applicable for 2010 was approved with annual escalation of 3.48%. (ref Clause 20.I.xxi & clause 20.I.xxiii of the TAMP Order 2009)</td>
</tr>
<tr>
<td>(vi).</td>
<td>A mere analysis of the volume achieved with the volume projected would bring out the failure of IGTPL in doing proper marketing and to bring business up to the desired volume and it clearly shows that IGTPL has no justification in further enhancing any rates. In fact IGTPL has failed to achieve even half of the projected volume / traffic till date and there is no additional infrastructure and costs which has been brought in by IGTPL to increase the tariff every year.</td>
<td>No Comments.</td>
</tr>
<tr>
<td>(vii).</td>
<td>Now IGTPL has come up with a new fancy figure of business volume projection without any valid basis and without any explanation on how they intend to achieve the volume which they could not attain all these years. A mere looking back to the volumes on what they have achieved till date from 2010 to 2016 would give a clear hint that whatever that was projected by IGTPL now cannot be achieved in the near future and the said projection is given only to</td>
<td>The present traffic projections for 2016-17 to 2018-19 have been arrived after giving due consideration to the current market scenario and historical volume growth in South India and ICTT. IGTPL has maintained a realistic approach in projecting the volumes for the period. It should note that the Year on Year growth taken for the traffic projections ranges from 13% to 18%.The actual volumes for period April to Dec 2016 YTD is 366,859 TEUs against the forecasted volume of 353,475 TEUs (FY2016-17</td>
</tr>
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<table>
<tr><td></td><td>mislead this Hon'ble Authority and to obtain an order for further escalation of rates without any valid basis. The present projection given by IGTPL is as follows:-
(In TEUS)<table><tr><td>2016-2017</td><td>2017-2018</td><td>2018-2019</td></tr><tr><td>4,71,300</td><td>5,54,400</td><td>6,22,200</td></tr></table></td><td>forecasted 471,300 TEUs prorated for 9 months-April-Dec YTD) and IGT is expecting to maintain the growth at the forecasted levels and is continually making all efforts to achieve the same.</td></tr>
<tr><td>(viii).</td><td>The projection shows that IGTPL is projecting an increase of an average of 80,000 TEUs every year, whereas the figures in the past shows that the annual increase in TEUs is not more than 20,000 TEUs at any given point of time. Hence the projection given by IGTPL is without any valid basis and they have not provided any scheme or study report as to how they intend to achieve the projected volume of cargo. Hence further increase in the tariff cannot be allowed unless and until there is any substantial increase in the volume and IGTPL has already increased the tariff at 3.48% every year till date without achieving the intended volume or without any additional infrastructural developments which has to be reviewed and reduced in tally with other Indian Ports.</td><td>The projections are based on our assessment of the present market scenario and there is a well-documented internal plan/scheme for achieving these volumes. CoPT has agreed with the projected volume growth, as recorded in TAMP 2016 order clause 10.(iii)(II)(xvi).The Trade or trade organizations had also not raised any concerns or objection to the projected volume in the public hearing or their submitted comments before passing of the order. The various allegations and objections now raised by the petitioners are an afterthought and intended to delay the smooth application of TAMP order. As demonstrated in para 5 above, the current actual volume levels are in line with the forecasted volumes.

Tariff at Major ports is regulated and is fixed by TAMP for IGTPL as per the 2005 Guidelines. The guidelines prescribe the methodology of computation of permissible tariff. For IGTPL tariff is determined by The TAMP under the 2005 guidelines considering the investment made / capital employed and the projections of volume handled. Under these guidelines the surplus or deficit of the earlier tariff cycle is permitted to be set off while revising the tariff. Tariff at various ports are regulated by applicable guidelines based on their investments made/capital employed and cost applicable to that Port.</td></tr>
<tr><td>(ix).</td><td>As clearly mentioned in "Guidelines for regulation of Tariff at Major Port, 2004" which is notified by the Central Government as per Section 111 of the Major Port Trust Act, "TAMP will examine the reasonableness of the various items of Working Capital, like, inventory, sundry debtors, cash balances, etc., to ensure that it is not unjustifiably expanded and will, from time to time, set limits up to which such balances will be considered admissible for computing working capital and return thereon. ....". Hence this Hon'ble Authority as a statutory authority safeguarding the interest of the shipping trade and public money should look into the previous performances of the terminal - IGTPL before blindly granting permission for any escalation of tariff by IGTPL. As already stated, IGTPL has already increased the tariff at 3.48% every year till date without achieving the intended volume or without any additional infrastructural developments has also to be reviewed and reduced in tally with other Indian Ports.</td><td>IGTPL submitted complete details of its past performance as required by the guidelines and the authority has passed the order after evaluating the past performance and future projections, as also giving due consideration to the view raised by all the stakeholders. The petitioners allegation that the authority has "blindly granting permission for escalation of tariff "is not justified as the entire process and explanations are comprehensively dealt in the Order.</td></tr>
<tr><td>(x).</td><td>It is respectfully submitted that one of the primary reasons why IGTPL is not able to achieve the desired result is due to the factor the container terminal handling charges were already high at IGTPL and hence the goods and traffic bound to Kochi- IGTPL are diverted to other nearby ports like Tuticorin (PSA) and Chennai (DPW) as their terminal handling charges was 54% and 38% cheaper compared to IGTPL. Cochin Port Trust</td><td>The petitioner has wrongly submitted that the Commissioner of Customs has opined that the present rates are high, to our knowledge there has been no such letter /communication by the Commissioner of Customs. It is submitted that Terminal Handling Charges by the Operator is only one of factors considered by shippers for movement of containers. There are many costs associated with movement of containers which are outside the control</td></tr>
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<td>which hold 33% stake in IGTPL has already put in writing their comments given before this Hon'ble Authority before passing the impugned order. The Commissioner of Customs and all trade bodies and terminal users have highlighted in strong words in their letters addressed to this authority that the present the rates are already on the higher side and any further enhancement have to be dropped. Cochin Port a Major Port licensor of the IGTPL Terminal has further contended that further increase in rates will further increase the migration of traffic and that IGTPL have not identified the real reason for their underperformance which is lack of marketing of services of IGTPL and high terminal handling rates and absorption of cost by increasing the claim would only decrease the existing traffic in IGTPL.</td>
<td>of IGT. There are many factors which affect the growth viz; industrial growth of the state, hinterland of the port etc. In spite of the allegation that THC is on the higher side, IGT is in a position to attract additional cargo from the hinterlands of Tuticorin and Chennai by offering excellent quality of service and products. The detailed comments on the marketing efforts of IGTPL have been given in the earlier para's. The comparative growth in the recent past is proof of the same , the same is detailed as below:
<table>
<tr><th></th><th colspan="2">ICTT Cochin</th><th colspan="2">South India Market</th></tr>
<tr><th>Financial Year</th><th>TEUs</th><th>YoY Growth</th><th>TEUs</th><th>YoY Growth in %</th></tr>
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</table>

IGTPL is also supporting the Trade to mitigate their overall cost by giving certain considerations like discounts/rebates/extra free period for import/export/mainline volumes.

IGT has already replied in detail to TAMP on concerns raised by various stakeholders vide our various letters dated 12th Jan 2017.</td>
</tr>
<tr>
<td>(xi).</td>
<td>It was further stated that IGTPL has failed to get any volume in transhipment business which was entirely the responsibility of IGTPL and only attained 2% of volume as against projected 25%. The petitioner further disputed the computation of deficit in actual returns and also the fact that IGTPL have not disclosed the value of the Business Related Assets which are entitled to a lower ROCE thereby claiming a higher ROCE on Business Related Assets and any compensation to IGTPL by way of ROCE above 5.72% be not extracted from the trade but settled by the Government out of its own funds in accordance with any bilateral agreement. It was also contended that a proper Business Plan must be implemented to increase the revenues of IGTPL by promoting container traffic by better utilization of available facilities, an aggressive marketing of the terminal and offering very competitive rates of tariff and thereby making IGTPL the First Choice Terminal and to drop any proceeding for increasing the rates at IGTPL. These aspects has to be considered by this Hon'ble Authority before giving permission for further enhancement in the tariff to IGTPL.</td>
<td>There were many factors which were impediment to the growth of transshipment business at ICTT viz; non availability of draft, Cabotage relaxation, lack of clarity on procedures etc which are outside the control of IGT and detailed elsewhere in this reply. It is surprising that the agents of Shipping lines who actually move the containers across the world and control the flow of the container traffic are now avoiding bringing volumes to Cochin even though transshipment rates lower than Colombo are being offered with productivity parameters at par with International standards. The agents of shipping lines are now stating that the responsibility of getting transshipment volume is entirely the responsibility of IGTPL. It is once again brought to the notice that IGTPL is offering the most competitive TP tariff. Petitioners' demand that returns in excess of ROCE of 5.72% settled by Government of India out of its own fund is not in accordance with the existing guidelines, the Authority may advise petitioners appropriately. Their further charge that IGTPL have not disclosed the value of business related assets was raised in their earlier letter to TAMP dated 22-01-2016, the same was forwarded to us for comments, which have been recorded in the TAMP order .To repeat –Business Related Assets are defined in Form 4 –"Assets created for supporting business i.e. Hospitals, Schools etc.", since IGTPL does not have any assets in this category, there is no disclosure possible in the computations.</td>
</tr>
</table>

<table>
<tr>
<td>(xii).</td>
<td>The present terminal handling charges at IGTPL is as follows:
<table>
<tr><th></th><th></th><th>20dv</th><th>40dv</th><th>20ref</th><th>40ref</th></tr>
<tr><td>PRETRIP INSPECTION</td><td>₹68/- = $ 1/-</td><td></td><td></td><td>862</td><td>862</td></tr>
<tr><td>MONITORIN G CHARGES -</td><td>2 days* 6 shift</td><td></td><td></td><td>1926</td><td>2897</td></tr>
<tr><td>WHARFAGE</td><td></td><td>883.83</td><td>1325.73</td><td>883.83</td><td>1325.73</td></tr>
<tr><td>LIFT OFF AT CY"</td><td></td><td>848.49</td><td>1272.73</td><td>848.49</td><td>1272.73</td></tr>
<tr><td>LIFT ON AT CY</td><td></td><td>848.49</td><td>1272.73</td><td>848.49</td><td>1272.73</td></tr>
<tr><td>TRANSPORT T0 HK</td><td></td><td>397.71</td><td>596.59</td><td>397.71</td><td>596.59</td></tr>
<tr><td>GANTRY</td><td></td><td>3553.68</td><td>5329.84</td><td>3658.20</td><td>5487.00</td></tr>
<tr><td></td><td></td><td>6532</td><td>9798</td><td>9425</td><td>13714</td></tr>
</table>
</td>
<td>The petitioners have listed the revised handling charges, these are correct. The Pre-trip inspection charges listed are wrong, the correct charges are ₹750 for both 20’ & 40’ containers instead of the mentioned tariff of ₹862.</td>
</tr>
<tr>
<td>(xiii).</td>
<td>The below is a comparison of per container handling cost in each of the Major Ports in the country:
(in ₹)
<table>
<tr><th>Sl No</th><th>Name of the Port</th><th>Existing Container handling charges per container 20 ft container.</th><th>Container handling charges per container 20 ft container at IGTPL</th><th>Existing Container handling charges per container 40 ft container.</th><th>Container handling charges per container 40 ft container at IGTPL</th></tr>
<tr><td>1</td><td>Gateway Terminal India Pvt. Ltd, Mumbai</td><td>3,551.00</td><td>6637.00</td><td>5,384.00</td><td>9,955.00</td></tr>
<tr><td>2</td><td>Jawaharlal Nehru Port Trust, Mumbai</td><td>3,935.00</td><td>6637.00</td><td>5,960.00</td><td>9,955.00</td></tr>
<tr><td>3</td><td>Nhava Sheva International Container Terminal, Mumbai</td><td>3,706.25</td><td>6637.00</td><td>5,616.87</td><td>9,955.00</td></tr>
<tr><td>4</td><td>Chennai International Terminal Private Ltd, Chennai</td><td>3,785.11</td><td>6637.00</td><td>5,621.95</td><td>9,955.00</td></tr>
<tr><td>5</td><td>Chennai Container Terminal Pvt. Ltd, Chennai</td><td>3,785.11</td><td>6637.00</td><td>5,621.95</td><td>9,955.00</td></tr>
<tr><td>6</td><td>PSA Sical Terminal Limited. Tuticorin</td><td>3,220.24</td><td>6637.00</td><td>4,557.00</td><td>9,955.00</td></tr>
<tr><td>7</td><td>Dakshin Bharat Gateway Terminal Pvt. Ltd, Tuticorin</td><td>3,157.24</td><td>6637.00</td><td>4,735.56</td><td>9,955.00</td></tr>
<tr><td>8</td><td>Visakha Container Terminal Pvt. Ltd, Vizag</td><td>4,222.00</td><td>6637.00</td><td>6,334.00</td><td>9,955.00</td></tr>
<tr><td>9</td><td>Kolkata Port Trust</td><td>4,287.00</td><td>6637.00</td><td>6,431.00</td><td>9,955.00</td></tr>
</table>
</td>
<td>The petitioners has listed the tariff of other ports whilst some of the stated tariff are not correct, the authority may verify the same. Such comparisons are not valid as the tariff for each port have been fixed by the authority based on its deployed infrastructure/capital employed and the applicable tariff guidelines. Some of the terminals are covered under the 2008 guidelines hence enjoy annual tariff escalation of 60% of WPI.</td>
</tr>
<tr>
<td>(xiv).</td>
<td>It is submitted that the container handling charges for shipment of container at the 3rd respondent is ₹6532.00 for 20ft containers and ₹9798.00 for 40 ft containers (approx) which is already higher compared to the other Indian ports and the neighbouring ports like Chennai and Tuticorin are handling containers at a fairly lower price.</td>
<td>The tariff for each port is fixed by the authority based on its applicable tariff guidelines and deployed infrastructure/capital employed, hence it is natural that the tariff of each port would be different. The comparison made are therefore not valid. We have no comments on the petitioner’s ignorance of the tariff fixing procedures and guidelines.</td>
</tr>
</table>

<table>
<tr><td>(xv).</td><td>Many shippers like the Tata Global Beverages Limited, and Importers like, Emirates Cements India Pvt. Ltd etc. and various other association which work for the benefit of EXIM trade like the Federation of Coir Exporters Association, Seafood Exporters Association of India, Customs House and Steamer Agents association from neighbouring states, Trade bodies like Indian Chamber of Commerce & Industry, Federation of Indian Cashew Industry, has brought these facts before this Hon'ble Authority. These facts should be taken seriously as these are the voice raised by genuine players at Kochi who use the IGTPL - terminal and association in the EXIM trade and all of them have same concern raised with regard to the rising of further tariff by the IGTPL.</td><td>IGT has already replied to the concerns raised by the various stakeholders in its earlier letters vide reference nos. IGTPL/Fin/TAMP/2017 01 to 08 dated 12th January 2017 to TAMP.</td></tr>
<tr><td>(xvi).</td><td>When the operations were shifted from Rajiv Gandhi Container Terminal, Willingdon Island of Cochin Port Trust to IGTPL at Vallarpadam, there were hope of increase in volumes of cargo and also a competent tariff which will boost the shipping sector and promote shipping trade. Whereas contrary to the expectations, there has been an increase of around 65% in Terminal Handling charges and other related costs when compared to CPT. While containers were handled by Cochin Port Trust at Rajiv Gandhi Container Terminal at about ₹3000/- per 20' container, and when the operation was shifted to IGTPL, the cost have gone up to double at ₹7000/- per 20' container without any valid reasons. The shifting to Vallarpadam has also caused additional transportation charges and hike in related costs like enblock movement of all imported containers to their interested CFS, even overlooking statutory free period, which has also seriously affected the Shipping Trade. A comparison of the then rates at Rajiv Gandhi Container Terminal before the pre IGTPL era and the present rates at IGTPL - Vallarpadam will give a clear idea of unscientific increase in rates.

TARIFF AT RAJIV GANDHI CONTAINER TERMINAL AT 2009
<table>
<tr><th></th><th>20'F</th><th>40'F</th></tr>
<tr><td>Gantry</td><td>$25.24</td><td>$37.86</td></tr>
<tr><td>Planning & Supervision</td><td>$7.86</td><td>$7.86</td></tr>
<tr><td>Total in USD</td><td>$33.10</td><td>$45.72</td></tr>
<tr><td>USD TO INR -$ 1 =</td><td>46.37</td><td>46.37</td></tr>
<tr><td>PRIME MOVER (Transportation)</td><td>247.50</td><td>371.25</td></tr>
<tr><td>Lift On/Off</td><td>1140.48</td><td>1710.72</td></tr>
<tr><td>Wharfage</td><td>550.00</td><td>825.00</td></tr>
</table>
TARIFF AT INDIA GATEWAY TERMINAL PVT. LTD AT 2010
<table>
<tr><th></th><th>20'F</th><th>40'F</th></tr>
<tr><td>Gantry</td><td>$42.14</td><td>$63.21</td></tr>
<tr><td>Planning & Supervision</td><td>$7.86</td><td>$7.86</td></tr>
<tr><td>Total in USD</td><td>$33.10</td><td>$42.14</td></tr>
<tr><td>USD TO INR -$ 1 =</td><td>46.37</td><td>46.37</td></tr>
<tr><td>PRIME MOVER (Transportation)</td><td>247.50</td><td>371.25</td></tr>
<tr><td>Lift On/Off</td><td>1140.48</td><td>1368.60</td></tr>
</table></td><td>The service levels /quality of service received by the Customers at ICTT is not comparable to the services provided at RGCT. All stakeholders have benefitted from the increased berth productivity, lower truck turnover time, faster vessel turnaround etc. at ICTT. There is no enblock movement of all imported containers. At ICTT the import containers are given delivery from terminal yard based on the delivery orders issued by the shipping lines. These Delivery orders are issued by the shipping lines to the respective importer/their agent or to their nominated CFS. IGTPL has no direct or indirect interest in any CFS .No transport movement of containers to CFS is undertaken by IGTPL. The petitioners allegation is baseless. The tariff at RGCT & ICTT as stated by the petitioner are completely wrong .In any case the comparison is not valid as the terminals are completely different in terms of facilities provided, infrastructure, operational productivity etc.</td></tr>
</table>

Wharfage	**550.00**	**712.80**

TARIFF AT INDIA GATEWAY TERMINAL PVT. LTD AT 2011

	20'F	***40'F***
Gantry	$43.61	$65.41
Planning & Supervision	$7.86	$7.86
Total in USD	$33.10	$43.61
USD TO INR -$ 1 =	***46.37***	***46.37***
PRIME MOVER (Transportation)	247.50	371.25
Lift On/Off	**1140.48**	1,416.23
Wharfage	**550.00**	737.61

TARIFF AT INDIA GATEWAY TERMINAL PVT. LTD AT 2012

	20'F	***40'F***
Gantry	$45.12	$67.69
Planning & Supervision	$7.86	$7.86
Total in USD	$33.10	$45.12
USD TO INR -$ 1=	***46.37***	***46.37***
PRIME MOVER (Transportation)	247.50	371.25
Lift On/Off	**1140.48**	**1465.51**
Wharfage	**550.00**	**763.27**

TARIFF AT INDIA GATEWAY TERMINAL PVT. LTD AT 2013

	20'F	*40'F*
Gantry	$46.70	$70.05
Planning & Supervision	$7.86	$7.86
Total in USD	$33.10	$46.70
USD TO INR -$ 1 =	***46.37***	***46.37***
PRIME MOVER (Transportation)	247.50	371.25
Lift On/Off	**1140.48**	1,516.51
Wharfage	**550.00**	789.84

TARIFF AT INDIA GATEWAY TERMINAL PVT. LTD AT 2014

	20'F	*40'F*
Gantry	$48.33	$72.49
Planning & Supervision	$7.86	$7.86
Total in USD	$33.10	$48.33
USD TO INR -$ 1 =	***46.37***	***46.37***
PRIME MOVER (Transportation)	247.50	371.25
Lift On/Off	**1140.48**	1,569.29
Wharfage	**550.00**	817.32

TARIFF AT INDIA GATEWAY TERMINAL PVT. LTD AT 2014

	20'F	*40'F*
Gantry	$50.01	$75.01
Planning & Supervision	$7.86	$7.86
Total in USD	$33.10	$50.01
USD TO INR -$ 1 =	***46.37***	***46.37***
PRIME MOVER(Transportation)	247.50	371.25

<table>
<tr>
<td></td>
<td>
<table>
<tr><td>Lift On/Off</td><td>1140.48</td><td>1,623.90</td></tr>
<tr><td>Wharfage</td><td>550.00</td><td>845.77</td></tr>
</table>
</td>
<td></td>
</tr>
<tr>
<td>(xvii).</td>
<td>Hence, in short, the moving of the terminals from Rajiv Gandhi Container Terminal of Cochin Port Trust, Willingdon Island to IGTPL at Vallarpadam has resulted only in the hike of Terminal Handling Charges upto 50% which has affected the movement of cargo through IGTPL. The shippers started preferring other ports such as the Tuticorin and Chennai due to the high Terminal Handling charges at IGTPL Vallarpadam and IGTPL. Without considering the same by virtue of Order No TAMP/25/2008-IGTPL passed by this Hon'ble Authority on 5th August, 2009 increased the tariff by 3.48% every year till date. Considering the facts and figures as stated above this authority has to suomoto review the Order No TAMP/25/2008-IGTPL passed by this Hon'ble Authority on 5th August, 2009.</td>
<td>The volume handled by ICTT is steadily growing and it may be noted that IGTPL is successful in diverting cargo originally routed through Chennai/Tuticorin. Given below is the growth in volumes at ICTT compared to South India market.
<table>
<tr><th></th><th colspan="2">ICTT Cochin</th><th colspan="2">South India Market</th></tr>
<tr><th>Financial Year</th><th>TEUs</th><th>YoY Growth</th><th>TEUs</th><th>YoY Growth in %</th></tr>
<tr><td>2009-10</td><td>289,380</td><td></td><td>1,866,851</td><td></td></tr>
<tr><td>2010-11</td><td>312,189</td><td>7.9%</td><td>2,025,647</td><td>8.5</td></tr>
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</table>
</td>
</tr>
<tr>
<td>(xviii).</td>
<td>In addition to the above rates, IGTPL is charging some additional rates which are not even placed before TAMP and approved by this authority which is approximately ₹2500 /20' and 40' as special service request charges towards container reaching after the cut off time, despite there is no physical movement involved. In addition to the said costs, IGTPL is billing shipping companies under the head of Temperature Variances for reefer containers, which none of the other ports in India is billing nor approved by TAMP. There are similar other hidden rates which are not TAMP approved or shared with Cochin Port as per license agreement and which has not been brought before this Hon'ble Authority.</td>
<td>The petitioners advocate is levying baseless allegations against IGTPL. IGT would like to confirm that all the Tariffs applicable at ICTT are fixed and approved by TAMP as per guidelines and IGTPL is not levying any tariff without the approval of TAMP. The services provided by the terminal other than those in the regular course of handling of the containers for loading or discharge from vessel and regular course of taking/giving delivery of customers is termed as a Special Service Request and these services are provided basis a written request from the customer /shipping line/vessel operator. The petitioner has alleged that the services provided on containers reaching after cutoff time and on temperature variance on reefer containers are not approved by TAMP. These have been explained in detail as below.

Regarding gate cutoff time it is stated that as per the terminal operating process, the export boxes are allowed to be stacked in the terminal yard 7 days prior to the declared arrival of vessel. The export boxes will continue to be accepted upto 4 hours prior to the actual time of arrival of the vessel. This restriction of four hours prior to actual arrival is known as the Gate cutoff time for that vessel. This is a normal practice at all terminals and is well known to the trade. These operating procedure is to ensure operating efficiency and faster turnaround of the vessel as explained further. Four hours prior to the actual time of arrival of the vessel at the terminal berth, the vessel operator forwards the Export Advance List (EAL) i.e. their planned list of containers to be loaded on the vessel and as per the Prestow & EAL the export list is closed and load plan prepared by the terminal. Based on this list the various terminal activities of loading / discharge of the containers and their stacking in yard are planned .Similarly based on this list the sequence and stacking of these containers on the vessel are also planned .This vessel plan is based on the various parameters covering both the containers already on board the vessel and containers to be loaded and discharged .The parameters include weight of the container, port of discharge, size, type etc. This plan has to be approved by the Chief Officer of the vessel and the Central planner of the vessel</td>
</tr>
</table>

		operator. Pursuant to such approval the process of loading operations can commence. Any export container arriving after the above mentioned cutoff time are normally not accepted for a particular vessel. These containers are then allocated to the next vessel of that service. In case any customer requires that a particular container should be loaded on the earlier vessel the vessel plan of that particular vessel has to be amended, approvals taken again from the Chief Officer of vessel & Central planner of the vessel operators for the changes, further the operational plan for servicing the vessel has to be altered accordingly. Based on a written request from the shipping line and approval of the vessel operator such request are carried out. These activities result in loss of operational time, deployment of additional equipment, shifting of the container from the present stack to the particular export stack and resultant delays in vessel departure. Special care to ensure that the scheduled port pilot boarding is not delayed and the vessel sails out on time .Since there are additional activities and shifting involved the tamp approved charge under Section IX (iii) is chargeable. Whilst presently the approved charge is ₹3099.84/20" & ₹4549.75 /40', IGTPL is charging a vastly reduced rate of ₹2150 as a penal charge for all containers regardless of size/type .Further these revenues are taken into consideration in both the actual performance calculations and the projected revenue calculations .Hence the petitioners allegation that these charges are not approved by TAMP is baseless. Regarding charges for temperature variance for reefer containers it is stated that as per the custom of trade, the vessel operators do not accept a reefer container in the event the actual temperature of the container has a variance of more than /less than 5 degrees from the declared/set temperature of the container. Accordingly the terminal had modified its operating procedure to accept reefer containers with a variance of more than/less than 5 degrees from the declared /set temperature. The change in the operating procedure was intimated to the trade. In practice some of the containers come in with a variance exceeding the allowable limits, in such cases the containers would have to go back to the stuffing point/CFS/factory for attaining the declared/set temperature .This would result in extra cost to the shipper, possibility of missing the planned vessel connection also possible damage to cargo. Based on written request from the shipping line these containers are accepted as active reefer containers and stacked in reefer yard for attaining the required declared /set temperature .Since there is a change in the status of the container, the approved charge of Change in status of container as per Section –IX is applicable .Whilst the charge is presently ₹3099.84/20" and ₹4649.75/40", IGTPL charges a vastly discounted rate of ₹800 per container regardless of the size of container. It should be noted these revenues are taken into consideration in both the actual performance calculations and the projected revenue calculations. The petitioners have further alleged that there are further hidden rates which are not TAMP approved or

		shared with Cochin Port as per license agreement and which have not been brought before this authority. However they have not specified any details of the same. Hence we are unable to comment on the vague statement of the petitioners.
(xix)	It is further submitted that the projected expenditure for doing Transhipment business is highly inflated. IGTPL has stated that their transhipment rates are lesser compared to other transphiment ports and have given a fancy expenditure for projecting transhipment business within IGTPL. However IGTPL has failed to give the previous figures in relation to Transhipment business and failed to bring to the attention of this Hon'ble Authority that IGTPL has failed to bring in any Transhipment business and they are only doing approximately 2% of the projected volume at present at IGTPL. There is no additional cost especially equipment hiring costs which is required as alleged by them. Further the existing ground slots within the IGTPL are utilized only a 60% efficiency and hence there is no requirement for additional Ground slots are stated by IGTPL with the current volume of cargo/containers handled at IGTPL. The existing ground slots of 2446 can be utilized for handling upto 446141 TEUS of containers. Further the dwell time of the containers which was earlier 20 days have now decreased to 9 days which means that the container movement will be faster enabling IGTPL to use the same space without looking for any additional space.	The volume estimates have been dealt in detail in our earlier para comments. IGT is taking all efforts to improve transshipment business and are in discussion with various main lines. Our submissions to TAMP mentions the Yard capacity as at 31st March 2016 at 446,141, the petitioners are merely repeating the submission made by IGTPL .The yard capacity calculations are recorded in the TAMP order and have been endorsed by COPT as recorded in TAMP 2016 Order clause 10 (iii) (II) (x). It should be noted that the average dwell days considered for this calculation is 5 days for Origin/Destination container and 7 days for Transshipment containers which is much lower than the dwell days of 9 days stated by the petitioners. In case the petitioners statement that the present dwell time is 9 days is considered the annual capacity would decrease and would be at 257,688 TEUs. Further, the increase in transshipment and Origin/Destination volume requires additional ground slots, hence the forecasts include these. The capacity calculations for each year have been submitted and the same recorded in the TAMP order. Developments of further ground slots are absolutely necessary for efficient operations at ICTT. We do not understand the petitioners allegation that "projected expenditure for doing Transhipment business is highly inflated", as the projections do not have any specific expenditure for only transhipment business. There are no projections for additional equipment. There are no additional costs, Only Costs as variable with increase in volumes has been forecasted .All Equipment's as required under the license agreement have been provided. Our projections have considered an increase in the existing equipment handling costs namely ITV hire charges, these have been supported by quotations. The detailed examination of these costs are recorded in the TAMP order.
(xx).	Apart from the above, IGTPL is given rebate in rates in Vessel Related Charges (VRC) by Cochin Port Trust and the maintenance dredging of 14.5 m draft at IGTPL is conducted by Cochin Port Trust without any liability being casted on IGTPL. In other words, IGTPL is getting all benefits from the Government , Cochin Port Trust and other authorities considerably and whereas they have kept the Terminal handling rates at a higher scale gaining advantage over the same from the Shipping fraternity.	The petitioners allegation that IGTPL is being given rebate in the Vessel Related Charges (VRC) by Cochin Port Trust is incorrect. All Vessel Related Charges and discounts if any are recovered / given directly from / to the Vessel Operators by Cochin Port Trust. Maintenance dredging is carried out by Cochin Port Trust under the License Agreement, The petitioners insinuation that undue benefits are being accorded by COPT to IGTPL is incorrect and baseless.
(xxi).	It should also be viewed that Kerala is only having one Container Terminal which is IGTPL – run by DP World and IGTPL is using its monopoly in charging higher rates which shipping trade in Kerala are	It is once again confirmed that all the charges applicable at ICTT are fixed and approved by the regulator for Major Ports, i.e. TAMP as per guidelines and IGTPL is not levying any charge without the

	forced to accept as they are left with no other ports in Kerala. Further it should also be noted that neighbouring ports such as the Chennai Port or the Tuticorin Ports have not increased their tariffs as done by IGTPL in the past even though their rates are very low compared to that of IGTPL. Hence it is respectfully submitted that IGTPL is not justified in further increasing the rates when they have failed continuous to achieve the projected volume of business through IGTPL and considering the facts that the Terminal Handling charges at IGTPL is very high compared to other neighbouring ports which is one of the reason for slow rise in volumes at IGTPL.	approval of TAMP. The tariff of Chennai and Tuticorin also fixed and approved by TAMP as per the applicable guidelines. The points regarding non achievement of volume/slow growth etc. are addressed earlier in this letter. In any event it is to be noted that IGTPL was not solely formed to serve the customers, market and trade within Kerala. The Kerala state has a limited industrial base and there has been very slow growth of Kerala market/cargo base. The entire infrastructure project for ICTT Vallarpadam Project including the railway connectivity, four lane national highway connectivity was conceived to also cater to customers beyond the territory of Kerala, i.e. the hinterland market especially Tamil Nadu and Karnataka. IGTPL has been giving various discounts and incentives to the local Kerala trade also, such as extended free storage days for import /export containers, additional free days for cashew cargo, and additional free days for containers moving through main line vessels or rail. The local trade also benefits from the increased mainline/direct vessel calls as it bring down the transit time and overall cost for the exporter/importer. Hence the petitioners' allegation that the terminal was having a monopoly for Kerala is not correct and its allegation that was using its monopoly for charging higher rates is baseless.
(xxii).	Whether the IGTPL is justified in further increasing rates when they are enjoying the benefits given by the Government, Cochin Port Trust and other Authorities?	No comments.
(xxiii).	As per BOT license agreement with the Cochin Port Trust and India Gateway Pvt. Ltd (IGTPL), IGTPL constructed at International Container Transhipment Terminal (ICTT) at Vallarpadam which is notified as a Special Economic Zone (SEZ). The Port is entitled to 33.3 % on the revenue generated from the Terminal. The Ministry of Commerce had approved the proposal of the Cochin Port Trust for Development, Operation and Maintenance of a Port based Special Economic Zone over an area of 115 hectares at Vallarpadom and notified the said area as a Special Economic Zone (SEZ). The Development Commissioner, Vallarpadom Special Economic Zone had approved the IGTPL as a Unit in the Vallarpadom Special Economic Zone. Special Economic Zone (SEZ) is a restricted area as per the Scheme of the SEZ Act 2005, which has become operational on 10th February 2006.	We have no comments.
(xxiv).	Since the 115 hectares at Vallarpadom is declared as SEZ, IGTPL has benefited huge profit towards import of its equipments which are necessary for their operation as there is tax exemption for import of equipments to SEZ area. These benefits are provided to IGTPL so that a portion of such benefits are passed on to the shipping community. Further rebates are given to mainline vessels calling at IGTPL in Vessel Related Charges (VRC) by Cochin Port Trust in order to match with international ports and the maintenance dredging of 14.5 m draft at IGTPL is conducted by Cochin Port Trust without any liability being casted on IGTPL. Further the security at IGTPL was offered through Central Industrial Security Force (CISF) for which the costs	It is true that IGT had availed of duty exemption for import of equipment etc. in accordance with the Law. However, it should be noted that the duty exemptions received by IGTPL had resulted in reduced cost of capital employed and resultant reduction in tariffs approved by TAMP which benefitted the shipping trade also. The BOT license agreement was based on an international bidding process. Both the parties to the agreement i.e. COPT and IGTPL have their obligations to fulfill. Maintenance of draft at 14.5m is part of the COPT obligation under the license agreement between COPT & IGTPL and is in line with the global tender IGTPL is providing the most competitive Transhipment rates to shipping lines to match the rates being given at Colombo. COPT has

	were born by Cochin Port. Understand that IGTPL did not settle these charges back to Cochin Port, compelling Cochin Port to withdraw the services of CISF and making IGTPL to deploy their own private securities which is very low cost in nature. None of the benefits they were getting was shared with the Cochin Port or the shipping trade / customers/ users.	given some conditional rebates for mainline vessel however its marine charges for feeder vessels are not matching with Colombo. We are not commenting on the CISF charges since the matter is referred to arbitration. However we confirm that the cost of CISF have not been included in the actual costs for computing the deficit in returns. We would also like to confirm that whatever savings or cost reduction IGTPL is making , benefit of the same is directly / indirectly passed on to the Trade thru the tariff approval process. The petitioners allegations are baseless.
(xxv).	Even though IGTPL is charging their customers unreasonably and giving incentives to only few of the importers/exporters, that too out of state of Kerala, when we have asked the details of incentives given to various companies, under Right to Information Act, Cochin Port did not disclose the details of incentives given by IGTPL and debited Cochin Port, fully knowing that disclosure of the same would show hidden benefits IGTPL was enjoying all these years. This itself shows the malpractices and unholy relations happening in the Vallarpadam IGTPL Terminal at the cost of the public / shipping trade / port users.	Disclosure of information under RTI query would be as per the Right to Information Act, we believe COPT would have dealt with the same accordingly. IGTPL has complied with the requirements as per the License Agreement. The petitioners' allegation of malpractices and unholy relations are baseless. It should be noted that complete details of discounts /rebates as recorded in the financials were submitted to TAMP as part of the tariff approval process. Hence complete transparency has been maintained by IGTPL.
(xxvi).	Other than the above mentioned details and facts, the IGTPL has obtained various other benefits from the Governments, Cochin Port Trust, and statutory authorities etc. whereas none of those benefits are being shared with the public or port users and IGTPL are solely using the same for their own benefit. With the imposing of huge Terminal Handling Charges, for those cargoes handled at IGTPL, are likely to be decreased and if there is no urgent intervention from the statutory authority like TAMP, the shipping trade in Kerala is soon going to migrate to other customer friendly Ports which has much lower Terminal Handling Charges and benefits offered which the IGTPL fail to do to the domestic customers. For the reasons stated above, it is humbly submitted that this additional points may be read and treated as part of the review petition already filed and the review may be allowed, and the IGTPL may not be permitted to increase the rates at this stage any further unless and until they achieve the projected volume of cargo and there may be direction from this Hon'ble Authority to reduce already existing the Terminal Handling Charges in competitive terms with other neighbouring ports which will generate more volume of business to IGTPL and thus benefit the entire Shipping Trade in Kerala.	The petitioner has alleged that IGTPL has obtained various other benefits from the Government, Cochin Port Trust and statutory authorities etc. whereas none of these benefits are being shared with public or port user As mentioned in earlier para, any benefits received by IGT from various statutory authorities, if any are accounted by IGT and the same will naturally form part of submission to TAMP during the tariff review process.. We once again point out that THC is only one of the factors which decide the movement of containers. There are other factors like, better services and products, other incidental expenditures etc. We would also like to point out here that ICTT has been awarded the best terminal operator of the year at Samudra Manthan awards 2016 We also would like to refer to the point raised during the public hearing on the volumes of Coffee, Cashew and Coir moving away from Cochin Port. Given below are the container volume of these commodities at Cochin from 2011 to 2016 in TEU's as given in Cochin Chamber of Commerce Statistics. The 2016 Figures include actuals from Jan-Nov and estimates for December **Commodity** | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** Coffee & Coffee Product Exports | 5,193 | 4,445 | 3,690 | 3,366 | 3,346 | 3,265 Raw Cashew Imports | 17,693 | 15,950 | 13,600 | 12,477 | 9,874 | 5,935 Coir & Coir Product Exports | 11,068 | 11,069 | 11,247 | 13,812 | 13,694 | 21,879 Coir & Coir Products Volume: As can be seen from the above, the volume of Coir & Coir products exports have actually increased. We have improved our

		volumes of Coir and Coir Products by 60% through our aggressive marketing efforts by deploying our marketing people in the coir cargo generating areas and offering a very competitive supply chain solution. Coffee Volume: Coffee is produced largely in Karnataka i.e. in Chikmanglur, Kodagu and Hassan and they account for 72% of coffee production. Followed by Kerala at 20% and Tamilnadu 5% and Andhra 3%. Earlier part of the Coffee cargo from Karnataka used to come to Cochin as the roads to Mangalore port was not good and the frequency of feeder vessels were low. There were very few vessel calls and these have to be improved. The comparative distance of the coffee production areas to Mangalore and Cochin port is as below: Distance in KMs / Mangalore / Cochin / Variance Chikmagaluru / 153 / 494 / 341 Kodagu / 153 / 346 / 193 Hassan / 174 / 464 / 290 The slot rates charged by the feeder vessel operator from Mangalore were also high making the ocean freight rates higher at Mangalore compared to Cochin. Thus the overall cost including transportation, freight etc., Cochin was at an advantageous position. With new feeder services starting at Mangalore, the vessel class have now improved further the feeder slot rates dropped to less than half, which resulted in drop of shipping line ocean freight rates. The resulting effect was that due to a reduced ocean freight difference and higher transportation rate (to higher distance), coming to Cochin was no longer financially favorable as the cost difference in transportation for a TEU is in the range of INR 17,000-18000/- (INR 43000 to Cochin and INR 25,000 to Mangalore from Chikmanglur for a 20ft). However, IGTPL still gets volumes from the Karnataka Coffee producing belt and has more or less maintained volumes over the past few years. Cashew Volume: Faced with an unfavorable Industrial climate cashew factories in Kerala have been shutting down and moving to Kanyakumari over the years. Once the Industries shifted and the larger share of the requirements were towards the Kanyakumari factories the cargo from Cochin port began to shift to Tuticorin due to proximity which is just 133 kms, whereas the distance to Cochin is approx. 300 kms and lesser transportation rates. West Africa Cashew sometimes needed drying and the climatic condition in Tamilnadu were favorable as well as the cost of warehousing was also high in Kerala compared to Tamilnadu which led the traders to shift their warehousing to Tamil Nadu. To reduce the impact of the lower ware housing costs at Tamil Nadu , IGTPL has been proving 14 days free storage for all cashew imports. Besides, we have been working with shipping lines to bring direct main line services to Cochin so that Cochin trade can benefit from better freight rates and transit time as the feedering and transshipment is eliminated from the

Distance in KMs	Mangalore	Cochin	Variance
Chikmagaluru	153	494	341
Kodagu	153	346	193
Hassan	174	464	290

		cost of a shipping line and also transship cashew cargo to other ports like Mangalore, Tuticorin etc. In 2017 Jan we attracted the first direct vessel of CMA (the third largest carrier in the world) from Africa to Cochin which discharged 900 TEUs of cargo for local delivery and transshipment. In view of the foregoing submissions we request TAMP to reaffirm the Order at the earliest and close the issue of review of the Order. In case any further details/clarifications are required we would be glad to prove the same.

9. A joint hearing in this case was held on 17 January 2017. At the joint hearing, the IGTPL, COPT and the concerned users / user associations have made the following submissions:

Cochin Steamer Agents' Association (CSAA) and Cochin Customs House Agents' Association (CCHAA) represented by Shri V.J. Mathew, Senior Advocate

(i) I represent CSAA and CCHAA. We challenged the Order passed by TAMP dated 17 September 2016 and notified on 14 October 2016 and trade notice issued by IGTPL.

(ii) IGTPL being a private entity is a private company and will always seek hike. Tariff Authority is like a judicial body. Any judicial body should have open mind in favour of trade and public. TAMP should have a lenient view towards trade.

(iii) It is for first time that the entire trade has come together against hike sought by IGTPL and approved by the Authority. Even the COPT is with trade and has opined that no increase in tariff should be given to IGTPL. We are not going into the Writ Petition. We are concerned with our Review Petition filed with TAMP.

(iv) When the first Order notifying the revised Scale of Rates of the IGTPL was notified by the Authority on 14 October 2016, we did not have the speaking Order which was notified on 17 November 2016. Though the Authority has said it has passed a speaking Order, which is notified by the Authority on 15 November 2016, the said Order does not speak how the tariff hike is allowed. TAMP has not opened its mind in both orders.

(v) The Order of the Authority is not a speaking Order. Each item should be justified. Please consider our Review Petition and our additional comments.

(vi) When IGTPL moved to Vallarpadam, they sought 58% tariff hike over the then applicable tariff of RGCT. They neither took over the employees nor did they take over the assets of RGCT.

(vii) The IGTPL projected very high volume during the last tariff revision in August 2009. But, the actual traffic handled by them from 2010 to 2015 is half of what they projected. The IGTPL has failed to do proper marketing to bring the desired traffic. Benefits are not shared with Trade.

(viii) The bifurcation of laden and transshipment containers is not given by IGTPL and in TAMP Order of September 2017.

(ix) The rate of IGTPL is double as compared to its another subsidiary container terminal CCTPL at Chennai. The tariff of CCTPL is 40% of the tariff prescribed for IGTPL.

(x) Section 51 of the Major Port Trusts, Act says the Authority shall not discriminate. While fixing the tariff, there should not have been discriminatory tariff for IGTPL compared to other container terminals.

(xi) Clause 4.2. of the License Agreement requires the IGTPL to propose tariff competitive with the tariff level existing at international container transshipment hubs and major competing ports in the region. The IGTPL is required to consult the COPT prior to recommending the tariff. The IGTPL has not complied with Clause 4.2 of the License Agreement which require them to fix tariff in consultation with port. The IGTPL says that it is not governed by License Agreement but by tariff guidelines of 2005. But, when it comes to COPT saying that it has to incur huge CAPEX on capital dredging, the IGTPL's stand is that the port is required to do as per the provisions in the License Agreement. TAMP is clinging onto guidelines not on License Agreement.

[Member (Finance), TAMP: The License Agreement is between COPT and concerned operator IGTPL. TAMP is governed by the Tariff Guidelines for fixation of tariff.]

(xii) IGTPL says clause 4.2 is a good faith clause. The said clause is a vital provision in the License Agreement. They are not good faith clause as stated by IGTPL. Condition of 4.2 of License Agreement should be complied with.

(xiii) There is no justification for the tariff hike allowed to IGTPL. The Authority has only looked into the comments of the IGTPL. The Authority has to consider all the comments of users/ trade before passing the Order.

(xiv) IGTPL has admitted that THC at IGTPL are higher in comparison to container terminals of CCTPL and PSASICAL operated at Chennai Port Trust and V.O. Chidambaranar Port Trust respectively. But, this aspect is not considered by the Authority while disposing of the IGTPL Order.

(xv) IGTPL has said legal opinion of Economic Law Practice Mr. Menon is obtained.

[TAMP: He passes remarks on Menon.]

[Mr. Kevin D'souza, Director, IGTPL: It is unfair to cast aspersions on a person who is not present in this joint hearing.]

(xvi) COPT grants 85% rebate in VRC to four main line services. Port is giving this concession for survival of trade so that rate is comparable to Colombo.

(xvii) The COPT had requested that the tariff may be reduced by 30%. But, the IGTPL has maintained that it has followed the tariff guidelines and had left the decision to the Authority. The IGTPL has repeatedly stated that they have proposed tariff hike as per the guidelines. Guidelines are made by TAMP. TAMP has declined increase sought by Tuticorin Port under the same guidelines. Why it has not declined IGTPL proposal in spite of strong objection.

(xviii) Port and trade have stated there is no congestion. There are many CFS in and around COPT.

(xix) Guidelines says power consumption norm is 8 units/ TEU. So anything excess of 8 unit/ TEU should not be allowed in tariff.

(xx) As regards Equipment hire cost, it should be examined as to which all equipment are taken on hire and from whom it is hired. Projections of Repairs and Maintenance by IGTPL is high.

(xxi) The tariff Order says that trade and COPT have objected the proposed tariff hike and hence balance should be struck. But, no balancing was done while granting tariff hike to IGTPL.

(xxii) IGTPL is collecting tariff in the name of Special Service Request (SSR) forcefully without approval of TAMP.

(xxiii) Deficit in the operations of IGTPL is not fault of trade.

Cochin Customs House Agents' Association (CCHAA) now Cochin Custom Broker Association (CCBA)
(President)

(i) I fully endorse the submissions of Shri V.J. Mathew, Senior Advocate representing us.

(ii) The IGTPL has not achieved the projected traffic.

(iii) IGTPL is giving huge discount to new importers/ exporters. There is no competition for ICTT. They are, therefore, giving huge discounts to new importers/ exporters at cost of Kerala trade. Why discount is given to few importer/ exporters? Port is losing 33% revenue share due to discounts.

(iv) Coir Industry is facing huge competition from Srilanka.

Indian Chamber of Commerce and Industry (ICCI)

We fully endorse views of Shri. V.J. Mathew, Senior Advocate.

Consolidators Association of India (CAI)

(i) We thought with operations of ICTT at Vallarpadam, the business will go up. But, that has not happened.

(ii) We request to seriously consider even downward revision in tariff.

(iii) We endorse the views of Shri. V.J. Mathew, Senior Advocate.

Tata Global Beverages Ltd. (not consulted)

After IGTPL switching operations from RGCT to ICTT, the tariff burden has increased.

Container Shipping Lines Association (CSLA)

We request to reduce handling charges for empty container and for 40' container.

Coir Board

Ours is a traditional industry. There is stiff competition from foreign market. Tamil Nadu exporters are offered discount. We are impacted. It is not offered to traditional Kerala trade.

Kerala Chamber of Commerce & Industry (KCCI)

We anticipated the tariff will come down once IGTPL moves to Vallarpadam. But, nothing has happened. Our expenses have increased. Trade is impacted. Previously we were fleeced by Cochin Port. Now IGTPL is fleecing us. That is the only difference.

Shri V.J. Mathew, Senior Advocate

(i) Consider submissions by Indian Chamber of Commerce & Industry, Seafood Exporters Association of India, Emirates Cement Indian Private Limited and Cashew Export Promotion Council of India.

(ii) No employee was absorbed by IGTPL inspite of Agreement with Trade Union and COPT.

Indian Chamber of Commerce and Industry (ICCI)

We have lost 85% coffee and cashew traffic in last 15 years due to high tariff.

Cashew Export Promotion Council of India

While fixing tariff for cashew, compare with tariff of other ports.

Federation of Indian Cashew Industry

We fully endorse views of the Senior Advocate Shri. V.J. Mathew.

Cochin Steamer Agents Association (CSAA)

(i) All stakeholders seek reduction in tariff. It is not against IGTPL. It is only to face competition. We lost many FOB orders. It moved to Tuticorin port. Moreover, there is diversion of traffic to other ports.

(ii) Discount is offered by shipping lines to attract new cargo. But, due to high tariff at IGTPL, we are not able to get the benefit. We are finding difficult to attract cargo to IGTPL because of higher charges.

(iii) Cost of empty container may be reduced.

(iv) Withdraw September Order. Retain the old Order.

India Gateway Terminal Private Limited (IGTPL)
(Mr. Kevin D'souza, Director, IGTPL)

(i) In 2005 we signed License Agreement with the COPT. At that time RGCT which was to be taken over which was a defunct terminal. Further, a new terminal was to be constructed at Vallarpadam.

(ii) We anticipated to start operations at ICTT by 2010. However, we could commence commercial operations at ICTT only on 18 February 2011.

(iii) We have created physical infrastructure facility. It is a new Terminal. We marketed this terminal globally.

(iv) The Steamer Agents should ask their principals as to why they are taking feeder vessel to Colombo.

(v) As regards clause 4.2. of License Agreement, it is a consultative process. We are not tied up with COPT. COPT is not tied up with us.

(vi) As regards comparison drawn to container terminals of VOCPT and Chennai, it is to state that in these two container terminals, the infrastructure in terms of wharf and the dredging was provided by port themselves. At VOCPT the draft is 15 mtrs. Draft and Chennai has 14 mtrs. draft. No civil assets are provided by port in our case. Hence, comparison of IGTPL tariff cannot be drawn with tariff of container terminals PSA SICAL at VOCPT and CCTPL at Chennai Port.

(vii) The tariff orders referred by the CCHAA and CSAA of container terminals operated at VOCPT, PSA SICAL and JNPT are subjudice. Hence tariff is not comparable.

(viii) The Authority has asked each and every detail to us on the proposal. We have provided the requisite details. The Authority has passed a speaking Order reasoning each and every point in their speaking Order notified on 15 November 2016.

(ix) We demanded 9.15% annual increase in tariff. After due application of mind the Authority granted only 4% increase in annual tariff. TAMP has given 6% increase for COPT. According to us it is a speaking Order. The Authority has undertaken consultation process and passed a speaking Order.

(x) The trade did not want increase in tariff of IGTPL for one year which finally materialised. By the time the revised SOR came into effect it was around November 2016. In JNPT tariff is ₹8400 including berth hire.

(xi) Under 2005 guidelines, tariff is to be determined on cost plus return model. It is not market based rate.

(xii) Review process arises when there is any error on face of record. There is not a single error pointed out by the trade in the Order passed by TAMP.

(xiii) As regard estimates variation, we have grown up by 22.5% in 2016 and we look forward to achieve the volume projected in 2017 and 2018 as well. We have put in lot of efforts for growth.

(xiv) If we reduce the volume, the tariff will go higher. The trade is benefitted in fact by our traffic projections.

(xv) TAMP took escalation of 2.46%. It should have been 3.82%. The cost are higher but TAMP has restricted to 2.46%.

(xvi) For, tariff fixation, the Authority has not considered discount. It is fixed at the then existing tariff.

(xvii) We are absorbing past losses to the extent disallowed by the Authority.

(xviii) The net profit at RGCT has been adjusted entirely by the Authority while revising the tariff in September 2016 Order instead of adjusting 40%. The Authority has taken lots of aspects. The Authority has restricted annual escalation to 2.46%, moderated estimates of repairs and maintenance, not allowed discount on tariff, not allowed return on working capital and adjusted full surplus of RGCT while fixing our tariff.

(xix) We have given additional free period. Even 14 days free period has been allowed for cashew. We have given discount on reefer charges. We have accommodated specific requests for discount wherever possible.

(xx) The SEZ benefits are completely captured in Audited Book of Accounts and is considered while determining the tariff. Capital cost has come down. We got lower return which means benefit to the trade.

(xxi) We have also suffered losses. We are constrained to increase tariff to the extent allowed by the Authority.

(xxii) We took employees at RGCT and returned them when we moved to Vallarpadam.

Cochin Port Trust (COPT)
(Deputy TM)

(i) The License Agreement was executed by Global Tender. Due diligence was exercised by all parties. Each party knew what they are bidding for.

(ii) Comparison with Chennai is totally uncalled far. They are different models. Chennai Port does not have rocky bottom. Chennai had along draft of 13.5 mtrs. Chennai has nil dredging expenditure.

(iii) The revenue share offered by CCTPL the container terminal operator of Chennai Port is different from that of IGTPL.

(iv) Our revenue increases if handling charges go up. When we argued for reduction in tariff of IGTPL, we expected that volume will go up. If tariff is reduced, increase in traffic will go up which is expected to compensate for reduction in tariff.

(v) We handled 1000 TEUs of two cargo items viz. cashew and coffee. Now the imports have reduced which we have lost.

(vi) We don't dispute guidelines. There is a need for competitive tariff. That is why we sought for reduction in tariff.

(vii) We know discount can be given as rate are ceiling tariff.

(viii) At COPT, VRC is almost double the neighboring ports due to dredging cost. The same thing is in THC. We are giving discount in VRC to match the neighboring ports.

India Gateway Terminal Private Limited (IGTPL)

Discounts are offered to attract and bring the trade outside Kerala to IGTPL. THC include various components. For importer/ exporter overall cost is pertinent. Overall cost need to be matched not only with tariff but also service level. We give discount to compensate transportation cost. For Coimbatore to Cochin and Coimbatore to Tuticorin the cost comes to the same though distance to Tuticorin is double. The connectivity levels are different at Tuticorin and Cochin. We accommodate specific request for discount to the extent possible for us. We are doing collectively in term of cost, services level and trying to match to attract containers.

Cochin Steamer Agents' Association (CSAA)

(i) Whether it is feeder or mother vessel, it is a part of shipping trade. There should not be any discrimination whether feeder or mother vessel. Feeders are inseparable method of port trade. COPT is giving huge discount.

(ii) We have no comments on infrastructure cost incurred by IGTPL. It is their requirement. They can cover it by increase in volumes and not by increase in tariff.

(iii) We are sure the Authority will generally consider all the submissions.

(iv) Discount has to be there. This proves that their tariff is high. Discount should continue.

(v) IGTPL is charging SSR and Temperature variance charges. It may be cost to IGTPL. But, it should have approval of TAMP.

(vi) We do not question efficiency of IGTPL.

Consolidators Association of India (CAI)

IGTPL is doing fantastically in service level. Cost of transportation, logistics is very high in COPT compared to other ports.

Shri V.J. Mathew, Senior Advocate

(i) We have come to submit voice of the trade.

(ii) Without approval of TAMP, IGTPL has charged few items which is not approved by TAMP. SSR is charged without approval of TAMP. It demanded weighment charges. We challenged in High Court. It was withdrawn by IGTPL.

(iii) This Authority has vast power to modify tariff guidelines in interest of trade.

(iv) COPT has not touched upon the Clause 4.2 of the License Agreement.

[COPT, Dy. TM: We have given written comments to TAMP.]

Cochin Customs House Agents' Association (CCHAA)

Please reduce the rate by 30% as stated by COPT.

India Gateway Terminal Private Limited (IGTPL)

SSR is charged as per approved tariff.

10.1. As decided at the joint hearing, the CSAA, CCHAA and IGTPL were to take action on the following points:

(i). The CSAA and CCHAA agreed to give in writing the brief synopsis of the points made by the Senior Advocate representing them in the joint hearing in a week's time. Senior Advocate also agreed.

(ii). At the joint hearing, the IGTPL also agreed to examine the points made by the users/ user associations with regard to higher discount given by IGTPL to trade outside Kerala and submit its response in a week's time i.e. 24 January 2017.

10.2. With reference to first point of action referred above, as agreed, the Sr. Advocate representing petitioners has, vide its letter dated Nil January 2017 has forwarded the brief synopsis of the points made by the Senior Advocate representing them in the joint hearing. The brief synopsis of the petitioners was forwarded to IGTPL vide our letter dated 1 February 2017 for their comments. The IGTPL, vide its email dated 9 February 2017 has furnished its reply to the brief synopsis of points made by the petitioners. The reported brief synopsis of the CSAA and CCHAA and the response of IGTPL are seen to be reiteration of the points made by the respective parties during the consultation proceedings of this case. Hence they are not repeated here, except the following:

<table>
<tr><th>Sl. No.</th><th>Comments of the petitioners</th><th>Reply given by IGTPL</th></tr>
<tr><td>(i).</td><td>It is respectfully submitted that the entire EXIM Trade body which includes the petitioners i.e. Cochin Steamer Agents' Association and The Cochin Customs House Agents' Association along with the other trading bodies such as the Federation of Indian Cashew Industry, the Coimbatore Customs House and Steamer Agents Association, Emirate Cements India Pvt Ltd, Federation of Indian Coir Exporters Association, Indian Chamber and Commerce and Industries Association, Sea Food Exporters Association of India, Tata Global Beverages Pvt Ltd, Cochin Chamber of Commerce, Consolidators Association of India etc. were all present at the time of hearing held on 17th January 2017 and have addressed their concerns before the Hon'ble Authority. All these bodies including Cochin Port Trust – Licensor have unanimously stated that</td><td>The allegation of the petitioners that business is moving away from IGTPL is not supported by the actual facts of the volumes .As mentioned in our earlier letter the growth in volumes at IGTPL has been significant .The growth in the last few years is as below:
<table>
<tr><th></th><th colspan="2">ICTT Cochin</th><th colspan="2">South India Market</th></tr>
<tr><th>Financial Year</th><th>TEUs</th><th>YoY Growth</th><th>TEUs</th><th>YoY Growth in %</th></tr>
<tr><td>2009-10</td><td>289,380</td><td></td><td>1,866,851</td><td></td></tr>
<tr><td>2010-11</td><td>312,189</td><td>7.9%</td><td>2,025,647</td><td>8.5</td></tr>
<tr><td>2011-12</td><td>337,053</td><td>8.0%</td><td>2,336,892</td><td>15.4</td></tr>
<tr><td>2012-13</td><td>334,925</td><td>(0.6)%</td><td>2,338,687</td><td>0.1</td></tr>
<tr><td>2013-14</td><td>346,204</td><td>3.4%</td><td>2,325,049</td><td>(0.6)</td></tr>
<tr><td>2014-15</td><td>366,376</td><td>5.8%</td><td>2,519,960</td><td>8.4</td></tr>
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<td>already rates in Cochin are double the rates of nearby ports and the increase in rates are moving the business away from IGTPL to other neighbouring ports such as Chennai and Tuticorin where the terminal handling charges are much lesser. The Cochin Port Trust which has 33% revenue sharing with IGTPL as per the License Agreement has also advocated for 30% reduction in the present tariff as they are also of the view that reduction in the present tariff and handling charges will attract more volumes and more business for the IGTPL and thus increase the revenue and trade in the region.</td>
<td><table>
<tr><td>2015-16</td><td>419,550</td><td>14.5%</td><td>2,708,676</td><td>7.5</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Apr-Dec-2015YTD</td><td>306,264</td><td></td><td>2,001,104</td><td></td></tr>
<tr><td>Apr-Dec-2016YTD</td><td>366,859</td><td>19.8%</td><td>2,225,546</td><td>11.2</td></tr>
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<td>(ii).</td>
<td>This is for the first time the entire trade bodies of Cochin has come before this authority with a representation and demand for not allowing any increase in the rates as any further increase will be fatal to the EXIM trade which is already suffering and requested to reduce the existing rates.

IGTPL has a responsibility to keep the tariff at ICTT in competitive rates as per the license agreement entered between IGTPL and COPT.</td>
<td>As stated above the petitioner's contention that the business is moving away from IGTPL is not sustainable as the facts are that the volumes have been increasing.</td>
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<td>(iii).</td>
<td>Equipment Running Cost - The power cost charged is at 15.67 units per TEU as against the 8 unit per TEU in 2008 guidelines. Hence IGTPL is reaping profit by way of power consumption.</td>
<td>Equipment Running Cost: The authority had raised the same query and IGTPL response to the same has been recorded in the TAMP order reference clause 8.3.B.6.(iv).(a).Further the verification, analysis and conclusion to the satisfaction of TAMP on the same has been recorded under clause 10.(iii).(II).(xx).(a).</td>
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<td>(iv).</td>
<td>Equipment Hire Charges: Other than the vehicles details, IGTPL has not clearly states which of the equipment are being hired and from who is hired. There are sufficient equipments owned by IGTPL for carrying out their operation and hence it has to be specified under why additional equipments are hired. The above charges are included only to show inflated figures to get increase in tariff rates.</td>
<td>Equipment Hire Charges: Full details of equipment hire charges are recorded under TAMP order clause 8.3.B.6. (vi) (a).The equipment's hired are the Inter Terminal Vehicle and Inter Terminal Shuttle Bus. These equipment are not owned by IGTPL hence the same are being hired. Further the verification, analysis and conclusion to the satisfaction of TAMP on the same has been recorded under clause 10.(v). Please refer page 56 of speaking order.</td>
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<td>(v).</td>
<td>Technical Service Fees – The Technical Service fees payable by IGTPL to its Principals should not be brought within the preview of calculation for getting an approval for increase in Tariff. The said payment is based on a understanding between IGTPL and its principal and it should not be made at the cost of the Trade.</td>
<td>Technical Service fees: These are permitted cost as per the tariff guidelines. The TAMP order clause reference clause 8.3.B.6.(x) gives the details of the technical fees. Further the verification, analysis and conclusion to the satisfaction of TAMP on the same has been recorded under clause 10.(ix). Please refer page 58 of speaking order.</td>
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<td>(vi).</td>
<td>Depreciation and Deficits – The same deficit in the balance sheet is partly attributed to the fact that the IGTPL has failed to achieve the intended volumes. If they had achieved the projected volumes, then the margin of deficits would have been lesser and hence the EXIM trade should not be penalized for the inefficiency of IGTPL in achieving the desired targets.</td>
<td>Depreciation and Deficits: The petitioner has not given any comment on depreciation. The petitioner has stated that due to failure of IGTPL to achieve the intended volumes has resulted in the deficit and EXIM trade should not be penalized for the same .We have given our detailed comments on the reasons and / or factors which have affected the projected volumes and the various marketing efforts undertaken by IGTPL to build the volumes despite various adverse conditions detailed in the earlier para's comments. The growth of volume at ICTT over the years and as compared to growth in the South Indian market have also been detailed in the earlier para's comments .</td>
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<td>(xxvi).</td>
<td>It is to be noted that during the hearing on 17 January 2017, wherein the argument lasted for more than an hour by the stakeholders counsel, IGTPL did not comment anything other than accepting the earlier order of TAMP.</td>
<td>The Petitioners Advocate has opined with the new Major Port Authority Bill 2016 being presented in Parliament, the TAMP authority has been nullified .Further alleged that despite knowing the intention of Government of India and the Parliament, the authority has been hasty in passing an order in favor of IGTPL and further requested that TAMP authority</td>
</tr>
</table>

	The Union Govt. And Cabinet has passed The Major Port Authority Bill 2016 and presented in the Parliament in December 2016 and in the new bill the TAMP constituted under s.48 of the present act has been taken away and given to a new Judicial Authority. Fully knowing the intention of the Government of India and the Parliament and since already the bill nullifying the TAMP has been presented in Parliament, this Authority ought not have considered the demand of IGTPL to increase the tariff and passed an order in their favour hastly. It is requested that this TAMP Authority shall suomoto withdraw from implementing its order passed on 17th day of September 2016 enhancing the Tariff at IGTPL and all Ports in India and this should be given to the newly constituted Authority.	withdraws its order for tariff increase at IGTPL and for all ports in India. The Major Port Authority Bill 2016 is not the law of land as it is not yet legislation. Until such time the Major Port Authority Bill is notified, Major Port Trusts Act, 1963 continues to be enforce under which TAMP continues to be the relevant authority to determine tariff for Major Ports.

10.3. With reference to second point of action referred, the IGTPL has, vide its email dated 9 February 2017, made following submissions:

(i) The authority has asked us to examine the point made by the user/user associations with regard to higher discounts given by IGTPL to trade outside Kerala. The Kerala state has a limited industrial base and there has been very slow growth of Kerala market/cargo base. For IGTPL to improve the volumes and make the port an attractive port call option for a mainline vessel, we have to look at cargo from hinterland in Tamilnadu and Karnataka. The infrastructure such as rail connectivity and four lane highway connectivity have also been provided recognizing the need to attract cargo from areas beyond Kerala. In order to divert such cargo IGTPL have deployed its marketing team in Tamilnadu and Karnataka to meet the customers in the hinterland i.e. trade outside Kerala and work out solutions for them. There were many challenges highlighted by the customers like Walayar check post crossing delays, higher cost of transportation to Cochin viz a viz Tuticorin, higher freight cost of shipping lines compared to other ports like Chennai and Tuticorin, etc. With assistance from the ministry the Walayar check post issue for sealed containers were sorted and in order to mitigate the overall cost differences we have offered rate equalization scheme to these customers so as to persuade them and get their supply chain readjusted towards Cochin from other ports and as may we have met with great amount of success as evidenced by our growth rate. Details of IGTPL growth in comparison to the South India market growth is given below:

	ICTT Cochin		**South India Market**	
Financial Year	**TEUs**	**YoY Growth**	**TEUs**	**YoY Growth in %**
2009-10	289,380		1,866,851	
2010-11	312,189	7.9%	2,025,647	8.5
2011-12	337,053	8.0%	2,336,892	15.4
2012-13	334,925	(0.6)%	2,338,687	0.1
2013-14	346,204	3.4%	2,325,049	(0.6)
2014-15	366,376	5.8%	2,519,960	8.4
2015-16	419,550	14.5%	2,708,676	7.5
Apr-Dec-2015YTD	306,264		2,001,104	
Apr-Dec- 2016YTD	366,859	19.8%	2,225,546	11.2

(ii) The cargo from hinterland is crucial for increasing the volumes, as only significant volumes can create interest in shipping lines to begin mainline vessels calls at Cochin. Hence we offer some rate equalization measures to divert business to the terminal looking at the long term prospect and benefit to trade despite the present financial burden on IGTPL. Presently the hinterland volumes comprise of 9% of the total volume handled, we have projected this will grow to 13.5% in 2017. It should be noted that TAMP has not considered these projected rate equalization measures as deductions from its estimation of projected revenue for tariff revision.

(iii). IGTPL has been giving various discounts and incentives to the local Kerala trade also, such as extended free storage days for import /export containers, additional free days for cashew cargo, additional free days for containers moving through main line vessels or rail. The local trade also benefits from the increased mainline/direct vessel calls as it bring down the transit time and overall cost for the exporter/importer.

(iv). The authority has also asked IGTPL to explain the tariff arrangement under which Special Service Request (SSR) is being collected. SSR is the trade nomenclature for any service other than Container handling & Storage. Thus service provided by the terminal other than those in the regular course of handling of the containers for loading or discharge from vessel and regular course of taking/giving delivery of customers is termed as a Special Service Request and these services are provided basis a written request from the customer /shipping line/vessel operator. The approved list of such service are listed in the Section –IX of the approved Scale of Rates and the services are being collected as per these approved tariff.

(v). In particular, the charges for Gate cutoff, Temperature variance and Removal / Fixing of seals were raised. We would like to submit as below:

Regarding gate cutoff time it is stated as per the terminal operating process, export boxes are allowed to be stacked in the terminal yard 7 days prior to the declared arrival of vessel. The export boxes will continue to be accepted upto 4 hours prior to the actual time of arrival of the vessel. This restriction of four hours prior to actual arrival is known as the ‘Gate cutoff time’ for that vessel. This is a normal practice at all terminals and is well known to the trade. These operating procedure is to ensure operating efficiency and faster turnaround of the vessel as explained further. Four hours prior to the actual time of arrival of the vessel at the terminal berth, the vessel operator forwards the Export Advance List (EAL) i.e. their planned list of containers to be loaded on the vessel and as per the Prestow & EAL the export list is closed and load plan prepared by the terminal . Based on this list the various terminal activities of loading / discharge of the containers and their stacking in yard are planned .Similarly based on this list the sequence and stacking of these containers on the vessel are also planned .This vessel plan is based on the various parameters covering both the containers already on board the vessel and containers to be loaded and discharged .The parameters include weight of the container, port of discharge, size, type etc. This plan has to be approved by the Chief Officer of the vessel and the Central planner of the vessel operator. Pursuant to such approval the process of loading operations can commence. Any export container arriving after the above mentioned cutoff time are normally not accepted for a particular vessel. These containers are then allocated to the next vessel of that service .In case any customer requires that a particular container should be loaded on the earlier vessel the vessel plan of that particular vessel has to be amended, approvals taken again from the Chief Officer of vessel & Central planner of the vessel operators for the changes, further the operational plan for servicing the vessel has to be altered accordingly. Based on a written request form the shipping line and approval of the vessel operator such request are carried out. These activities result in loss of operational time, deployment of additional equipment, shifting of the container from the present stack to the particular export stack and resultant delays in vessel departure. Special care to ensure that the scheduled port pilot boarding is not delayed and the vessel sails out on time. Since there are additional activities and shifting involved, TAMP approved charge under Section IX (iii) is chargeable. Whilst presently the approved charge is ₹3099.84/20” & ₹4549.75/40’, IGTPL is charging a vastly reduced rate of ₹2150 as a penal charge for all containers regardless of size/type. Further these revenues are taken into consideration in both the actual performance calculations and the projected revenue calculations.

(vii). Regarding charges for temperature variance for reefer containers it is stated that, as per trade custom, the vessel operators do not accept a reefer container in the event the actual temperature of the container has a variance of more than /less than 5 degrees from the declared/set temperature of the container. Accordingly the terminal had modified its operating procedure to accept reefer containers with a variance of more than/less than 5 degrees from the declared /set temperature. The change in the operating procedure was intimated to the trade. In practice some of the containers come in with a variance exceeding the allowable limits, in such cases the containers would have to go back to the stuffing point/CFS/factory for attaining the declared/set temperature .This would result in extra cost to the shipper, possibility of missing the planned vessel connection also possible damage to cargo. Based on written request from the shipping line these containers are accepted as *active reefer* containers and stacked in reefer yard for attaining the required declared /set temperature. Since there is a change in the status of the container, the approved charge of Change in status of container as per Section – IX is applicable .Whilst the charge is presently ₹3099.84/20" and ₹4649.75/40", IGTPL charges a vastly discounted rate of ₹800 per container regardless of the size of container. It should be noted these revenues are taken into consideration in both the actual performance calculations and the projected revenue calculations.

(viii). Regarding the charges for removal /fixing of seals , shifting /stacking in yard charges, the petitioner has alleged that the same are not approved by TAMP. We would like to point out that these charges are approved under the Section IX (i) & (iii) of the approved Scale of Rates .Further these are levied basis the written request of the shipping lines for such services . It should be noted these revenues are taken into consideration in both the actual performance calculations and the projected revenue calculations.

11.1. As stated earlier, the comments received from various users/ user associations were forwarded to IGTPL and the Petitioners viz., CSAA and CCHAA for their response/ comments. Since, the petitioners viz., CSAA and CCHAA has not responded, the CSAA and CCHAA was reminded vide our letter dated 24 February 2017**.**

11.2. In response, the CCHAA has, vide its email dated 1 March 2017, stated that both petitioners viz., CSAA and CCHAA fully endorse the views taken by all associations who furnished their comments. All the users/ user associations have highlighted main issues such as high terminal handling charges at IGTPL, loss of business opportunities due to high charges, deviation of cargo to neighboring ports, high increase in rates when the operations were shifted from RGTPL to IGTPL which we have addressed in detail in the Review petition, additional statement and in Argument notes. The CCHAA has also requested to pass an Order at the earliest in the interest of justice directing IGTPL not to increase the existing rates and thus benefit the entire shipping trade in Kerala.

12. The IGTPL vide its email dated 03 February 2017 has forwarded the following points raised by it at the joint hearing held on 17 January 2017 and has requested to take into consideration them and give effect in the tariff Order:

(i). Clause No. 10(iii) (I) (B)(ii) (b) - Adjustment of actual surplus for the period Dec-09 to Feb-2011 amounting to Rs.929.74 lacks has been taken at 100% adjustment against the deficits estimated for ICTT. As per the opinion of the Attorney General for India, both financial and physical parameters will be taken into account for the purpose of clause 2.13 of the Tariff Guidelines of 2005. 20% of the surplus would be allowed to be retained by the operator. It is only the surplus over and above the 20% that shall be shared equally between the operator and the users.

(ii). Clause No. 10(iii)(II)(xvii)(a) - The various discounts provided on the foreign and transshipment containers in the projections, have been set aside in the TAMP analysis and the income from foreign and transshipment containers were estimated at the rates prescribed in the SOR. The total value of such discounts set aside is ₹1551.7 Lakhs. This notional income has reduced the eligible increase in tariff.

(iii). Clause No. 10(iii)(II) (xix) and 10 (xii) and Annual escalation estimated at on Operating & Direct Labour as well as Management labour considered only at 2.46%

as against our submission based on actual past trend of 11%. The provisioning at the lower level of the eligible costs have reduced the eligible increase in tariff.

(iv). Clause No. 10(iii)(II) (xx)(c) - Equipment R&M Expenses we have estimated at 3.82% escalation with the previous year, however TAMP has considered at 1% on civil assets and 2% on Mechanical equipment's, whereby expenses are reduced by ₹144.23 lakhs. This notional decrease in costs has reduced the eligible in tariff.

(v). Clause No. 10(iii)(II) (xviii) - Cost escalation considered by TAMP only at 2.46%, however the application for revision in tariff was submitted in Dec-2015. The permitted cost escalation for 2015-16 was 3.82% which was adopted by us for the cost projections. Since the processing of the proposal was delayed and completed in 2016-17, the authority has adopted the cost escalation applicable for 2016-17, i.e. 2.46%. We submit that the delays in disposing of the proposal should not unduly disadvantage IGTPL, hence the cost escalation may be applied at the applicable for 2015-16 i.e. 3.82%.

13. A Summary of the points made by the CSAA and CCHAA in their review application dated 17 November 2016 and additional points made by them vide their letter dated 06 January 2017 during the proceedings of this case and our analysis thereon is furnished below:

I. Main points made by the CSAA and CCHAA in their review application dated 17 November 2016 and our analysis thereon:

1. Main points made by the CSAA and CCHAA

The Scale of Rates notified in August 2009 is applied to the IGTPL till date. However, the IGTPL has arbitrarily and unethically demanded review of Scale of Rates. The IGTPL has proposed 6.98% increase over the expiring tariff from 1January 2016 with an annual increase of 6.98% from 1 April 2016 for each year 2016-17, 2017-18 and 2018-19. After joint hearing held on 7 June 2016, IGTPL has proposed 9.12% annual increase with effect from August 2016.

Analysis

1.1. The Scale of Rates notified on 11 August 2009 vide tariff Order No.TAMP/25/2008-IGTPL dated 5 August 2009 was valid upto 31 December 2015. Therefore, the review of tariff of IGTPL was due from 1 January 2016. Clause 3.1.3 of Tariff Guidelines of 2005, under which the tariff of IGTPL is regulated, calls for the Private Terminal operators to file the proposal before this Authority three months before the tariff is due for revision. The IGTPL filed the proposal for revision of tariff fixed in the tariff Order dated 5 August 2009 by its letter No.IGTPL/FIN/TAMP/2015/2 dated 16 December 2015 and e-mail dated 28 December 2015 for the next tariff cycle 2016-17 to 2018-19. Therefore, the action of the IGTPL to file the tariff proposal for the tariff cycle 2016-17 to 2018-19 even when the tariff fixed by tariff Order dated 05 August 2009 was in force is in line with clause 3.1.3 of the Tariff Guidelines of 2005; and, therefore filing of proposal for review of tariff cannot be termed as arbitrary and unethical.

1.2. It is factual that the IGTPL proposed in its proposal dated 16 December 2015 and 28 December 2015 6.98% increase over the tariff fixed as per tariff Order dated 05 August 2009 from 1 January 2016 and annual increase of 6.98% from 1 April 2016 for each of the year 2016-17, 2017-18 and 2018-19 as recorded in Paragraph No.4.2 (xii) of the speaking tariff Order dated 17 September 2016.

1.3. As recorded at serial No.3 of the table under paragraph No.8.3. of the speaking tariff Order dated 17 September 2016, the figures for the year 2015-16 was based on the provisional accounts for the first nine months (April to December 2015) and estimates for the remaining three months (January 2016 to March 2016) of the financial year 2015-16. Since the financial year 2015-16 was over when the tariff proposal of IGTPL was under scrutiny in the Office of this Authority, the IGTPL was advised vide our letter dated 23 May 2016 to update the estimates of the year 2015-16 with the actuals for the entire year 2015-

16 and review and modify the estimates for the financial year 2017-18 and 2018-19, if necessary, with reference to the actuals for the year 2015-16. Accordingly, the IGTPL updated the figures with the actuals for the year 2015-2016 and modified the estimates for the year 2016-17 and 2018-19 vide its letter dated 30 June 2016 and filed the revised cost statements. The revised cost statements showed an average net deficit of 17% for the year 2016-17 to 2018-19. Based on the average net deficit, the IGTPL sought annual tariff increase of 9.12% per annum with effect from August 2016. The filing of the revised cost statement and seeking the revised percentage of tariff increase by the IGTPL was with reference to the letter dated 23 May 2016 issued by the office of this Authority prior to the date of joint hearing which was held on 7 June 2016. Therefore, attributing the reason for seeking higher percentage of tariff increase to the joint hearing held on 7 June 2016 is not seen to be correct and it amounts to misleading the stakeholders.

2. <u>Point made by CSAA and CCHAA</u>

The assessment of traffic estimation was seen due to underperformance of IGTPL. The Container terminal handling charges were already high at IGTPL. Hence, traffic is diverted to other ports like Tuticorin (PSA) and Chennai (DPW) as their terminal handling charges was 54% and 38% cheaper compared to IGTPL. Further increase in rates will further increase the migration of traffic. Absorption of cost by increasing the rate would only decrease the existing traffic in IGTPL. The IGTPL has not identified the real reason for the under performance. It is lack of marketing of services of IGTPL and high terminal handling rates. [The COPT and user organisations consulted in the review application have almost aired the same views.]

<u>Analysis</u>

2.1. The tariff of IGTPL was last approved by this Authority in August 2009 vide Order dated 5 August 2009. As recorded in paragraph no.10(iii)(II) of the speaking Order dated 17 September 2016, the cost statement under cost plus method showed an average deficit of 57.85% at the then existing Rates for the tariff cycle from 2010 to 2012 and 12.09% deficit for the next tariff cycle 2013 to 2015 resulting an increase of 57.85% for the first tariff cycle and the increased tariff of first cycle is to be reduced by 29.56% in the next tariff cycle of 2013 to 2015. This showed that there would be wide fluctuation in the tariff movement. In order to smoothen the impact of steep hike in tariff in one cycle an analysis was done and the tariff for IGTPL was prescribed allowing an annual increase in tariff by 3.48% instead of granting steep increase at one go.

2.2. As regards the reported diversion of traffic from IGTPL to the PSA SICAL operated container terminal at the V.O. Chidambaranar Port Trust (VOCPT) at Tuticorin and the DP World operated container terminal at the Chennai Port Trust (CHPT), the IGTPL has sought to counter that the market and hinterland of Cochin has been smaller as compared to the market and hinterland available to the terminals at the VOCPT and CHPT.

From the traffic statistics furnished by the IGTPL for the year 2014, 2015 and 2016 it is seen that the container traffic volume growth is in decreasing trend both at the CHPT and VOCPT. The traffic growth which was at 3.86% in the year 2014 has come down to (-) 1.21% at CHPT in the year 2016 and the growth at the VOCPT which was at 10.52% in the year 2014 has come down to 6.70% in the year 2016. The container traffic volume growth at IGTPL is seen to be growing from 5.43% in the year 2014 to 22.50% in the year 2016.

2.3. As regards the reported lack of marketing efforts by IGTPL, the IGTPL has sought to explain that it has been offering discounts to the transhipment containers and over dimensional containers (ODC). The IGTPL is of the view that though the CSAA and CCHAA (steamer agents) represent the shipping lines who actually move the containers have also the responsibility for volume growth at the IGTPL.

2.4. As recorded in paragraph 10 (xv) of the speaking tariff Order dated 17 September 2016, which the IGTPL proposed annual increase in tariff, the COPT initially requested for reduction in tariff by 30% and later requested to maintain status quo in the tariff of IGTPL. The Tariff Guidelines of 2005 envisage Cost plus model of tariff fixation. The tariff of the IGTPL is fixed following the said Tariff Guidelines of 2005. Tariff increase is granted or reduction in tariff is effected as per the estimated financial and cost position of the port operator. The COPT is aware of the cost plus model of tariff fixation. Since the estimated financial and cost position warranted increase in tariff, tariff increase was given to IGTPL. Unless the operator voluntarily opts for moderation in tariff hike, this Authority would not have been justified in suo moto denying increase in tariff or maintaining status quo.

2.5. In any case, the CSAA and CCHAA or the COPT or the users consulted in the review application have not pointed out any error in the Scale of Rates notified on 14 October 2016; and, hence no review of the Scale of rates is warranted.

3. Point made by the CSAA and CCHAA

The IGTPL has failed to get any volume in transhipment business which was entirely the responsibility of IGTPL. The IGTPL has only attained 2% of volume as against projected 25%.

Analysis:

As regards the point made by the CSAA and CCHAA that the IGTPL has achieved 2% transshipment volume as against projected 25% volume, they are advised to note that the variation between the entire actual container volume (including) actual volume of transshipment (containers) for its operations at RGCT for the period December 2009 to 17 February 2011 and for its operations at ICTT for the period from 18 February 2011 to 31 December 2015 has been analysed at greater length with reference to the estimates relied upon while fixing tariff in the tariff Order dated 5 August 2009 following clause 2.13 of the Tariff Guidelines of 2005. The CSAA and CCHAA are advised to refer to the paragraph no. from 10 (iii) (I) to 10 (iii) (II) of the Speaking Order.

4. Point made by the CSAA and CCHAA

IGTPL has not disclosed the value of the Business Related Assets which are entitled to lower ROCE thereby claiming a higher ROCE, and any compensation by way of ROCE above 5.72% be not extracted from trade but settled by the Government out of its own funds in accordance with any bilateral agreement.

Analysis:

4.1. Clause 2.9.7 of the Tariff Guidelines of 2005 stipulates that on the cost of Business - related assets / facilities; (like quarters / schools / hospital for port employees) which may not be distinctly used in the business but which have been created for supporting the business, return will be allowed only at the risk free rate. Variable and fixed operations expenses on such assets will be considered as admissible cost for tariff purpose.

4.2. The IGTPL has categorically stated that it does not have any asset in the category of business related assets during the proceedings relating to the review application filed by the CSAA and CCHAA. That being so, the question of allowing lower ROCE at risk free rate does not arise. In fact, in none of the tariff cases of BOT operators decided so far, the question of their having Business Related Assets has arisen. It is relevant only in the case of Major Port Trusts.

4.3. The basis for the ROCE of 5.72% is stated to be industry norms and global performance of DPW at 5.72%. Clause 2.9.1 of the Tariff Guidelines of 2005 stipulates that Return has to be allowed for private terminal operator fixed in accordance with the Capital Asset Pricing Model (CAPM). As stipulated in Clause 2.9.2 of the Tariff Guidelines of 2005, the ROCE to be allowed for the tariff cases to be decided in the year 2016-17 has been reviewed by this Authority and this Authority had announced 16% ROCE for BOT Operators governed under the Tariff Guidelines of 2005. The proposal of IGTPL claiming 16% ROCE was in line with the Tariff Guidelines of 2005. The contention of the CSAA and CCHAA that the ROCE in excess of 5.72% be settled by the Government is not in accordance with the Tariff Guidelines of 2005, given by the Government itself.

5. Point made by the CSAA and CCHAA

This Authority has passed a non-speaking Order disposing of the proposal filed by the IGTPL for general revision of its SOR under Tariff Policy Guidelines, 2005 and allowing the tariff increase of 4.5% over the existing rates. This Authority while passing the impugned Order has failed to come to reasoning on why such a conclusion of allowing the revision of tariff is allowed and on why the objections raised by the COPT and the petitioners, were not considered. The impugned Order only has the concerns raised by the various parties including the petitioners and COPT and other associations and the reply comments given by the IGTPL to the said concerns. This Authority failed to give the justifiable reasoning on why the view of the IGTPL was preferred to that of the petitioners and COPT and other associations.

Analysis

5.1. The review application filed by the CSAA and CCHAA before this Authority is dated as 17 November 2016. The said review application is to review the Notification No.380 dated 14 October 2016. The Notification No. 380 dated 14 October 2016 related to the Notification of revised Scale of Rates of IGTPL only. As stated at paragraph No.5 of the Notification No.380 dated 14 October 2016, the Speaking Order passed by this Authority was in the process of notification in the Gazette of India. Since the notification of the Speaking Order was likely to take some more time, this Authority notified revised Scale of rates of IGTPL following the approach adopted by this Authority in respect of general revision of Scale of Rates of Major Port Trusts and other BOT Terminal Operators. The Speaking Order was notified separately in the Gazette of India vide Gazette No.408 dated 15 November 2016. It is, therefore, denied that this Authority has passed a non-speaking Order.

5.2. The Speaking Order vide Notification No.408 dated 15 November 2016 has elaborately recorded the reasons at paragraph No.10(i) to 10(xxvii) for approving the revised Scale of Rates of IGTPL. The objection raised by the COPT for tariff increase has been dealt with in paragraph No.10(xv) of the Speaking Order. The objection of one of the users on the traffic estimates of the IGTPL for the year 2016-17 to 2018-19 has been dealt with in the paragraph No.10(xvi) of the Notification of the Speaking Order. The objection of the CSAA that ROCE has to be determined on the basis of Industry Norms and the ROCE to IGTPL be based on the global performance of DPW at 5.72% has been dealt in the paragraph No. 10 (xvi) (b) of the Notification of the Speaking Order. The CSAA and CCHAA are advised to refer to the Notification of the Speaking Order already furnished to them vide letter No.TAMP/81/2015-IGTPL dated 17 September 2016. The Order dated 17 September 2016 is also available in the TAMP website http://tariffauthority.gov.in.

6. Point made by the CSAA and CCHAA

The container handling charge is already very high compared to all other neighboring ports. Summary of comparison of per container handling cost in each of the Major Ports in the country is given below:

(in ₹)

Sl. No.	Name of the Port	Existing container handling charges per container 20' container	Container handling charges per 20' container at IGTPL	Existing container handling charges per container 40' container	Container handling charges per 40' container at IGTPL
1.	GTIPL, Mumbai	3551.00	6637.00	5384.00	9955.00

2.	JNPT, Mumbai	3935.00	6637.00	5960.00	9955.00
3.	NSICT, Mumbai	3706.25	6637.00	5616.87	9955.00
4.	CITPL, Chennai	3785.11	6637.00	5621.95	9955.00
5.	CCTPL, Chennai	3785.11	6637.00	5621.95	9955.00
6.	PSA Sical Terminal, Tuticorin	3220.24	6637.00	4557.00	9955.00
7.	DBGTPL, Tuticorin	3157.24	6637.00	4735.56	9955.00
8.	VCTPL, Vizag	4222.00	6637.00	6334.00	9955.00
9.	KOPT	4287.00	6637.00	6431.00	9955.00

The terminal handling charges at the IGTPL is as follows:

	20' Actual	**40' Actual**	**20 reefer Actual**	**40 reefer Actual**
Pre-trip inspection			950.00	1300.00
Monitoring Charges			7930.00	11928.00
Wharfage	883.83	1325.73	883.83	1325.73
Lift Off at CY"	848.49	1272.73	848.49	1272.73
Lift On at CY"	848.49	1272.73	848.49	1272.73
Transport to HK	397.71	596.59	397.71	596.59
Gantry	3658.20	5487.00	3658.20	5487.00
Grand Total	6637.00	9955.00	15516.00	23183.00

Enforcement of Order passed by this Authority at this stage will further increase the terminal handling charges at the Port which will lead to further diversion of business from Kerala to other states.

Analysis:

6.1. The first table contains comparison of existing container handling charges for a 20' container at the IGTPL and at other container terminals operating at Major Ports. The said table also contains the container handling charges for a 40' container at other terminals. Since the container handling charges for a 40' container is only a derived rate at 1.5 times of the handling charge of a 20' container, analysis is restricted to comparison of handling charges for 20' container.

6.2. The tariff of the container terminal at the Jawaharlal Nehru Port Trust (JNPT), Chennai Port Trust (CHPT) and PSA SICAL Terminal at the V.O. Chidambaranar Port Trust is fixed following the Cost Plus Return on Capital Employed approach stipulated in the Tariff Guidelines of 2005. Fixation of tariff following cost plus approach takes into account the capital investment made in the terminal, capacity of the terminal, operating cost of the terminal, overheads thereat and the 16% return on the capital employed. Therefore, cost plus approach for tariff setting will invariably lead to variation in rates across the ports.

6.3. This Authority follows a uniform approach consistently to tariff setting at all the Major Port Trusts and Private Terminals thereat. While the concepts, principles and approach of tariff setting can be uniform, the resultant tariff cannot be the same across the ports due to variation in operational procedure, traffic volume, cost structure, order and timing of capital investments. The operators at the Chennai port Trust and V. O. Chidambaranar Port trust and the terminals at the JNPT have made investments prior in time to the investment made in Cochin. This has contributed to lower cost and lower tariff at the Chennai, Tuticorin and JNPT as compared to the rates at the IGTPL.

6.4. The charges shown in the second table as given in the review application reported to be levied at IGTPL. It is only break-up for the figure for ₹6637 reported to be levied by IGTPL.

7. Point made by the CSAA and CCHAA in the review application

While passing the impugned Order, this Authority has failed to cross check on the genuineness of the assessment provided by the IGTPL. There was a specific contention raised by the CSAA in the reply dated 22 January 2016 challenging the assessment made by the IGTPL which was not considered by this Authority while passing the Order.

Assessment made by the CSAA in its letter dated 22 January 2016 is summarised below:

(a). Actual realisation of traffic for the period 2010 to 2015 is only in the region of 31% of the projection made in 2009 considered for tariff fixation. IGTPL has not identified the reason for under performance in its tariff revision proposal.

(b). Actual transhipment traffic for the period 2010 to 2015 was in the range of 2% to 8% as against the projection of 25%. If 25% volume of transhipment traffic was achieved, the revenue would have been much higher.

(c). The ICTT deficit for the period April to December 2015 has been computed by taking the ROCE at 16% of the capital employed of ₹73,681 Lakhs for the whole year at ₹11,788.96 Lakhs whereas it ought to have been only for nine months period amounting to ₹8841.72 Lakhs resulting in an overstatement of deficit by ₹2947.27 lakh. There is computational error.

(d). Deficit for the period December 2009 to December 2015 aggregating to ₹240.80 crores has been factored in as an expenditure to be recovered from the trade in future by way of increase in tariff. Past deficit now sought to be recovered from the trade who will constitute a totally different segment is unreasonable and illegal.

(e). As per the data sourced from public domain of DP World, the ROCE to the IGTPL would be, restricted to the mean of the average ratios of return on Assets employed (4.56%) and Return on capital employed (6.87%) which is 5.72% [(4.56% + 6.87%)/2 = 5.72%].

<u>Analysis</u>

7.1. With reference to (a) above, it is stated that as recorded in the paragraph No. 10 (iii) (B) (I) of the Speaking Order, the estimates for the Rajiv Gandhi Container Terminal (RGCT) provided by the IGTPL was upto November 2009 since the IGTPL envisaged to migrate to the International Container Transhipment Terminal (ICTT) from January 2009. However the IGTPL migrated from RGCT to ICTT only on 17 February 2011. Therefore, no estimates were available for the year 2010.

7.2. As seen from paragraph No. 10 X (ii) of the speaking Order relating to comparison of actuals vis-à-vis estimates for the operations at the International Container Transhipment Terminal (ICTT) operated by IGTPL for the period from 18 February 2011 to 31 December 2015, the actuals of the container traffic for the said period was 17,20,089 TEUS as compared to the estimates for the corresponding period registering a variation of (-) 53.35%. So, the actual realization of traffic for the said period is not in the region of 31% as stated by the CSAA and CCHAA. The factor contributing to non-realisation of projection, as explained by IGTPL during the proceedings, relates to its proposal were already brought out in the summary of comments of stakeholders and the replies of IGTPL thereon, a copy of which was forwarded to the CSAA and CCHAA under cover of TAMP's letter of even number dated 18 November 2016. An extract of the factor contributing to the non-realisation of projections as recorded in the summary is reproduced below, as provided by the IGTPL at the relevant point of time.

"The projections are made based on global economic and market conditions, Government policies etc. Most of these factors are variable and beyond individual control. Further consequent to the downturn in the shipping industry in 2008 the volumes have dropped, for the period 2011 to 2015 the All India container growth is an average 7% and South India container growth is at average 5%."

Draft of 13.5 was made available only in December 2012 (i.e. nearly 2 years from start of terminal services) and draft of 14.5 meters was made available only in April 2013. The relaxation of cabotage was made available from December 2012; however, clarity on customs procedures was known only much later. Non realisation of volumes are also influenced by growth of capacity at Colombo, poor feeder connectivity due to comparatively higher vessel related charges (VRC), low South Indian market growth of 0% to 8%, border checkpost bottlenecks, non availability of CFS and other cost factors outside IGTPL control but influencing the shippers / consignees decisions on which port to use. The original projections given are estimates based on multifold factors as mentioned above. Any delay / absence of any of these could have an impact on achieving the estimated volume". Therefore, it is not correct to say that the IGTPL has not identified the reason for under performance in its tariff review proposal.

7.3. As regards the point made by the CSAA and CCHAA that the IGTPL has achieved 2% transshipment volume as against projected 25% volume, they are advised to note that the variation between the entire actual container volume (including) actual volume of transshipment (containers) for its operations at RGCT for the period December 2009 to 17 February 2011 and for its operations at ICTT for the period from 18 February 2011 to 31 December 2015 has been analysed at greater length with reference to the estimates relied upon while fixing tariff in the tariff Order dated 5 August 2009 following clause 2.13 of the Tariff Guidelines of 2005. The CSAA and CCHAA are advised to refer to the paragraph no. from 10 (iii) (I) to 10 (iii) (II) of the Speaking Order.

7.4. As regards the point at (c) above, the error pointed out by CSAA and CCHAA was conceded by the IGTPL as recorded in the summary of comments. However, the data relating to net fixed assets and deficit cited by the CSAA and CCHAA is with reference to the original proposal dated 16 December 2015 filed by IGTPL, which was not considered in the tariff review. The tariff review of IGTPL was based on the revised proposal dated 30 June 2016 filed by the IGTPL. As recorded in the paragraph No.10(viii) of the Speaking Order, Net fixed assets for the financial year 2015-16 (upto December 2015) has been considered at ₹71315.78 lakhs as reported in the provisional accounts of the said year.

7.5. As regards (d), the deficit for the period December 2015 aggregating to ₹240.80 crores mentioned by CSAA and CCHAA is with reference to the original proposal dated 16 December 2015 filed by the IGTPL, which was not considered in the tariff revision.

On consideration of the revised proposal dated 30 June 2016, the additional net surplus over and above the admissible ROCE of 16% was assessed for the period December 2009 to 17 February 2011 for its operation at Rajiv Gandhi Container Terminal (RGCT) at ₹929.74 lakhs as recorded in the paragraph No. 10(B)(ii)(b) of the Speaking Order. For the period from 18 February 2011 to 31 December 2015 for the operations at the ICTT, the net deficit after the admissible cost and permissible return of 16% was assessed at ₹42,565.48 lakhs as recorded in paragraph no.10(xii)(b) of the speaking Order.

As per clause 2.13 of the tariff guidelines, if review of actual physical and financial performance of the previous tariff cycle shows the variation of more than + or – 20%, then 50% of such accrued benefit / loss has to be adjusted in the next tariff cycle. As per the opinion of AG conveyed by the MOS, variation in both physical and financial parameters should be taken into account for the purpose of clause 2.13. Further, in case of variation in both physical and financial parameters, 20% of the surplus would be allowed to be retained by the operator. Of the remaining 80% surplus, it should be shared equally between the operator and user. In nutshell, 60% of additional surplus is allowed to be retained with the operator and 40% additional is to be shared with users by considering adjustment in future tariff.

It is relevant here to state that provision stipulated in clause 2.13 refers to positive / negative variation of +/(-) 20%. In the instant case, there was a case of adjustment of past period deficit of ICTT operations in the next tariff cycle. Accordingly, of the total net deficit of ₹42,565.48 lakhs, 40% thereof i.e. ₹17,026.19 lakhs was considered for adjustment in the future tariff of ICTT. The additional surplus of ₹929.74 Lakhs was also set off in the tariff fixed after adjustment of excess surplus of ₹282 lakhs adjusted in the August 2009 Tariff Order. In a nutshell 60% of the deficit for the period December 2015 was borne by the IGTPL and only 40% of the deficit is borne by the users as per clause 2.13 of the Tariff guidelines read with the opinion of the Attorney General for India.

As regards point (e) of the CSAA and CCHAA regarding restriction of ROCE to 5.72%, it has been explained in detail earlier and hence not repeated here.

8. Point made by the CSAA and CCHAA in the review application

Cochin Port is of the considered view that one of the critical reasons for non-realization of volumes at ICTT is the exorbitant Terminal Handling Charges (THC) levied by the IGTPL." When the 2nd respondent / Cochin Port trust as the licensor itself claims that the non-realization of volumes at ICTT is due to higher Terminal Handling charges, further increasing the Terminal handling Charges without addressing the issue on merits is arbitrary and this would directly affect the Exim trade in Cochin.

Analysis

8.1. During the proceedings relating to the revision of tariff of IGTPL, the IGTPL has disagreed with the above view of the COPT, as brought out in the summary of comments of stakeholders. The response of the IGTPL on the above matter given to us during the proceedings for review of tariff of IGTPL is reproduced below:

The overall growth for the period 2011-12 to 2014-15 has been 15% for ICTT whereas the South Indian market has grown by 11%. The Terminal Handling Charges (THC) at Cochin are as prescribed in the Scale of Rates approved by TAMP. The THC mentioned of Chennai & Tuticorin are not entirely accurate, however the THC at Cochin is higher than the terminals at Chennai & Tuticorin. Most factors for slow growth of ICTT are attributable directly to COPT, as it failed to complete in time many of its contractual obligations and for which the parties are currently in arbitration. It should be noted that the actual charge of this THC by the shipping lines are much higher. It should be noted that draft of 13.5 mtrs was made available only in Dec 2012 (i.e., nearly 2 years from start of terminal services) and draft of 14.5 mtrs was made available only in April 2013. The relaxation of cabotage was made applicable from Dec 2012 however clarity on the customs procedures were known only much later. Non realization of volumes are also influenced by growth of capacities at Colombo and poor feeder connectivity due to comparatively higher VRC.

8.2. The IGTPL has attributed non-tariff issues to the non-realisation of volume. Tariff increase depends on the estimated financial/ cost position of the operator. Further, the tariff fixed by this Authority is at ceiling level and the IGTPL has the liberty to levy lower tariff based on commercial consideration. In fact, the IGTPL has claimed that it is offering discounts, extended free days and additional storage period to attract volumes, which will give relief to the EXIM Trade.

II. Additional points made by CSAA and CCHAA vide their letter dated 06 January 2017 and our analysis thereon:

1. Point made by CSAA and CCHAA

Whether the IGTPL is justified in further increasing the rates when they have failed continuous to achieve the projected volume of business through IGTPL and when there is no necessity for further enhancement of infrastructure as claimed by them?

Analysis

1.1. The regulation of tariff of the IGTPL is governed by the provisions of the tariff Guidelines of 2005. The Tariff Guidelines of 2005 prescribe cost plus return on capital employed approach for fixation of tariff of the operators governed by 2005 Tariff Guidelines. In the cost plus approach, hike in tariff or reduction of tariff depends upon the financial / cost position of the operator. If the financial / cost position depicts deficit after admissible cost and permissible return, hike in tariff is inevitable. Likewise, if the financial / cost position shows surplus after admissible cost and permissible return, the tariff is reduced to the extent as warranted.

1.2. The deficit arising out of the failure in the achievement of projected traffic is assessed and captured for appropriate adjustment in the tariff for the next cycle following clause 2.13 of the Tariff Guidelines of 2005. As recorded in paragraph No. 10 (xiii) (g), only 40% of the total deficit of ₹42565.48 pertaining to the period 18 February 2011 to 31 December 2015 was considered for tariff fixation for the next cycle and balance 60% of ₹42565.48 Lakhs was borne by the IGTPL as per clause 2.13 of the Tariff Guidelines of 2005 read with the opinion of the Attorney General for India.

Even if there is no further enhancement of infrastructure, return on the depreciated value of investment on the existing infrastructure has to be given at 16% of the capital employed.

2. Point made by CSAA and CCHAA

The IGTPL is making illegal gain all throughout its inception and by virtue of the Order obtained through TAMP vide Order No.TAMP/25/2008-IGTPL dated 5th August, 2009. At the time of passing the said order, the Hon'ble Authority has decided an annual escalation of 3.48% every year till 31st December, 2015 based on the projection of volume provided by IGTPL. The said projection of volume which is provided by IGTPL is as given below:

(In TEUs)

2010	**2011**	**2012**	**2013**	**2014**	**2015**
4,78,000	5,88,000	6,84,456	7,52,902	8,28,192	9,11,011

Analysis

2.1. The tariff for the IGTPL vide Order No.TAMP/25/2008-IGTPL dated 5 August 2009 was fixed following the Tariff Guidelines of 2005 issued by the Government under Section 111 of the Major Port Trusts Act, 1963 as a Policy Direction to this Authority. The tariff increase granted by 3.48% every year vide Order dated 5 August 2009 is based on the traffic projections and costs at the relevant point of time. The Order dated 5 August 2009 was passed based on the proposal of IGTPL in consultation with all the relevant users/ user organisations including the Petitioners CSAA and CCHAA and COPT. Even with the annual increase of 3.48% in tariff from the date of operations of IGTPL at ICTT, the IGTPL has recorded a loss of ₹42565.48 lakhs as furnished in the above preceding paragraph. Hence, the contention of the Petitioners that the IGTPL has reaped the benefit is not correct. Further, as recorded under the paragraph no.10 (xiii) (g) of the Speaking Order, the entire additional surplus after admissible costs and permissible return for its operations at the Rajiv Gandhi Container Terminal (RGCT) for the period from December 2009 to 17 February 2011 amounting to ₹929.74 Lakhs was mopped up while fixing Tariff for the next tariff cycle for the period 2016-17 to 2018-19. The IGTPL was not let off with any additional income for its operations at the RGCT.

2.2. As recorded in paragraph no.10(iii)(II) of the speaking Order dated 17 September 2016, the cost statement under cost plus method showed an average deficit of 57.85% at the then existing Rates for the tariff cycle from 2010 to 2012 and 12.09% deficit for the next tariff cycle 2013 to 2015 resulting an increase of 57.85% for the first tariff cycle and the increased tariff of first cycle is to be reduced by 29.56% in the next tariff cycle of 2013 to 2015. This showed that there would be wide fluctuation in the tariff movement. In order to smoothen the impact of steep hike in tariff in one cycle an analysis was done and the tariff for IGTPL was prescribed allowing an annual increase in tariff by 3.48% instead of granting steep increase at one go.

3. Point made by CSAA and CCHAA

The IGTPL as an operating terminal has failed miserably in achieving the targeted projected volume which was submitted before this Hon'ble Authority at the time of passing the Order No TAMP/25/2008-IGTPL dated 5 August 2009 but they have reaped the benefit of an annual escalation of 3.48% every year till date without achieving the desired volume of business and without any additional cost spend on the infrastructure. The volume which has been realized by IGTPL till date is as follows:

(In TEUs)

2010	2011	2012	2013	2014	2015
3,12,189	3,37,053	3,34,925	3,46,204	3,66,376	3,06,324 (Apl-Dec)

Analysis

3.1. Our analysis on the point made by the CSAA and CCHAA about failure of the IGTPL to achieve the targeted volume has already been given below Sr. no.1. Hence, not repeated again.

3.2. As regards the annual escalation of 3.48% mentioned by the CSAA and CCHAA, it is relevant here to draw reference to paragraph no. 10 (II) (i) of the Speaking Order. As recorded therein, the cost statement and cost plus method showed an average deficit of 57.85% at the then existing tariff level i.e. RGCT rates for the tariff cycle from 2010 to 2012 and 12.09% at the then existing tariff level (i.e. RGCT rates) for the next tariff cycle from 2013 to 2015 following the cost plus method. This showed that there would be wide fluctuation in the tariff movement for its operations at the ICTT under the cost plus method. In order to smoothen the impact of steep hike in tariff increase in one cycle, an analysis was done for 6 years (2 tariff cycles) and annual escalation of 3.48% was granted in the Tariff Order dated 5 August 2009.

3.3. The IGTPL has responded in detail to the point made by CSAA and CCHAA and listed the reasons for projecting the traffic and the reasons for failure to achieve the projected volume at the time of fixation of tariff vide Tariff Order dated 5August 2009 which has already been brought out in the factual part of this Order; hence, not repeated again.

4. Point made by CSAA and CCHAA

A mere analysis of the volume achieved with the volume projected would bring out the failure of IGTPL in doing proper marketing and to bring business up to the desired volume and it clearly shows that IGTPL has no justification in further enhancing any rates. In fact, IGTPL has failed to achieve even half of the projected volume / traffic till date and there is no additional infrastructure and costs which has been brought in by IGTPL to increase the tariff every year.

Analysis

4.1. In its response to the above point made by the CSAA and CCHAA the IGTPL has stated that its senior management and commercial teams were marketing the services provided by the ICTT at the Indian and international offices of the various shipping lines such as MSC, Wan Hai Line, Maersek Line, Evergreen line, MOL, CMA, CSAV, ZIM etc. including conducting road shows for few such shipping lines. It has also stated that it approached various feeder operators to connect the Indian East Coast to ICTT. Reportedly, it has also contacted exporters / importers like Jindal Steel, TNPL etc. We have nothing to add in this regard.

4.2. As stated earlier, the estimated traffic was compared with actual traffic and necessary adjustment in tariff was made following clause 2.13 of the Tariff Guidelines of 2005, before fixing tariff for the next tariff cycle.

5. Point made by CSAA and CCHAA

Now IGTPL has come up with a new fancy figure of business volume projection without any valid basis and without any explanation on how they intend to achieve the volume which they could not attain all these years. A mere looking back to the volumes on what they have achieved till date from 2010 to 2016 would give a clear hint that whatever that was projected by IGTPL now cannot be achieved in the near future and the said projection is given only to mislead this Hon'ble Authority and to obtain an order for further escalation of rates without any valid basis.

The present projection given by IGTPL is as follows:-

(In TEUS)

2016-2017	**2017-2018**	**2018-2019**
4,71,300	5,54,400	6,22,200

Analysis

5.1. The response of the IGTPL to the point made by CSAA and CCHAA has been brought out in detail in the earlier part of this Order.

5.2. As recorded in paragraph no.10 (xvi) of the Speaking Order, the actual throughput handled by IGTPL is 4,19,550 TEUs in the year 2015-16. As against that the traffic estimated by IGTPL for the years 2016-17 to 2018-19 is 4,71,300 TEUs, 5,54,400 TEUs and 6,22,600 TEUs respectively. The growth projected in traffic is 12.33%, 17.63% and 12.30% for the years 2016-17 to 2018-19 respectively over the actuals/ estimates of the respective previous years and the average growth rate comes to 14.09%. While furnishing its comments on the comments on the traffic estimates of one of the users, the IGTPL had stated that the traffic has been forecasted considering the current market scenario and historical volume growth in South India. The IGTPL had also stated that the year in year growth considered in the traffic projections ranges from 13% to 18%, whereas the historic volume growth in South India has been from 0% to 8% and in spite of low expected growth, the IGTPL had projected an increase in excess of 60% over three years.

As regards traffic projected by IGTPL for 2016-17 to 2018-19, the COPT had agreed that the cargo traffic is expected to grow at the level projected by IGTPL. The main reason for the increased growth in traffic forecast is reported to be on account of growing EXIM trade from West Tamil Nadu region and significant growth in Coastal trade from Gujarat to north Kerala and West Tamil Nadu. The traffic projected by the IGTPL along with the container profile projected by IGTPL, therefore, was relied upon by this Authority.

5.3. In any case, the traffic estimates projected for the year 2016-17 to 2018-19 by the IGTPL and considered by this Authority for revising the tariff are liable for comparison with actuals before fixing tariff for the tariff cycle 2019-20 to 2021-22 and the additional surplus, if any, is liable to be set off following clause 2.13 of the tariff guidelines of 2005.

6. Point made by CSAA and CCHAA

The projection shows that IGTPL is projecting an increase of an average of 80,000 TEUs every year, whereas the figures in the past shows that the annual increase in TEUs is not more than 20,000 TEUs at any given point of time. Hence, the projection given by IGTPL is without any valid basis and they have not provided any scheme or study report as to how they intend to achieve the projected volume of cargo. Hence, further increase in the tariff cannot be allowed unless and until there is any substantial increase in the volume and IGTPL has already increased the tariff at 3.48% every year till date without achieving the intended volume or without any additional infrastructural developments which has to be reviewed and reduced in tally with other Indian Ports.

Analysis

6.1. The detailed response of the IGTPL to the above point made by CSAA and CCHAA has already been brought out in the earlier part of this Order.

6.2. The reasons for relying upon the traffic projections made by the IGTPL for the years 2016-17 to 2018-19 are brought out clearly in the previous paragraph; hence, not repeated here.

7. Point made by CSAA and CCHAA

As clearly mentioned in “Guidelines for regulation of Tariff at Major Port, 2004” which is notified by the Central Government as per Section 111 of the Major Port Trust Act, “TAMP will examine the reasonableness of the various items of Working Capital, like, inventory, sundry debtors, cash balances, etc., to ensure that it is not unjustifiably expanded and will, from time to time, set limits up to which such balances will be considered admissible for computing working capital and return thereon. ....”. Hence this Hon’ble Authority as a statutory authority safeguarding the interest of the shipping trade and public money should look into the previous performances of the terminal - IGTPL before blindly granting permission for any escalation of tariff by IGTPL. As already stated, IGTPL has already increased the tariff at 3.48% every year till date without achieving the intended volume or without any additional infrastructural developments has also to be reviewed and reduced in tally with other Indian Ports.

Analysis

7.1. The actual physical and financial performance of the IGTPL for its operations at RGCT for the period December 2009 to 17 February 2011 and for its operations at ICTT for the period from 18 February 2011 to 31 December 2015 has been analysed at greater length with reference to the estimates relied upon while fixing tariff in the tariff Order dated 5 August 2009 following clause 2.13 of the Tariff Guidelines of 2005. The CSAA and CCHAA are advised to refer to the paragraph no. from 10 (iii) (I) to 10 (iii) (II) of the Speaking Order. It is clear that this Authority has not blindly granted permission for escalation of tariff.

7.2. The linkage of only one item of examination of reasonableness of the working capital to the tariff increase is found not relevant here. The tariff increase or decrease depends on not only the return on the working capital but also on net fixed assets and operating cost of the terminal.

8. Point made by CSAA and CCHAA

One of the primary reasons why IGTPL is not able to achieve the desired result is due to the factor the container terminal handling charges were already high at IGTPL and hence the goods and traffic bound to Kochi- IGTPL are diverted to other nearby ports like Tuticorin (PSA) and Chennai (DPW) as their terminal handling charges was 54% and 38% cheaper compared to IGTPL. Cochin Port Trust which hold 33% stake in IGTPL has already put in writing their comments given before this Hon’ble Authority before passing the impugned order. The Commissioner of Customs and all trade bodies and terminal users have highlighted in strong words in their letters addressed to this authority that the present rates are already on the higher side and any further enhancement have to be dropped. Cochin Port a Major Port licensor of the IGTPL Terminal has further contended that further increase in rates will further increase the migration of traffic and that IGTPL have not identified the real reason for their underperformance which is lack of marketing of services of IGTPL and high terminal handling rates and absorption of cost by increasing the claim would only decrease the existing traffic in IGTPL.

Analysis

8.1. The IGTPL has furnished its detailed response to the above point made by the CSAA and CCHAA, which has already been brought out in the earlier part of this Order.

8.2. The reported high tariff at the IGTPL, diversion of traffic to nearby ports at Tuticorin and Chennai, further increase of tariff will further increase the migration of traffic and the reported lack of marketing by IGTPL are seen to be the repetition of issues which have already been discussed in the earlier part of this Order. Hence, not repeated here.

9. Point made by CSAA and CCHAA

It was further stated that IGTPL has failed to get any volume in transhipment business which was entirely the responsibility of IGTPL and only attained 2% of volume as against projected 25%. The petitioner further disputed the computation of deficit in actual returns and also the fact that IGTPL have not disclosed the value of the Business Related Assets which are entitled to a lower ROCE thereby claiming a higher ROCE on Business Related Assets and any compensation to IGTPL by way of ROCE above 5.72% be not extracted from the trade but settled by the Government out of its own funds in accordance with any bilateral agreement. It was also contended that a proper Business Plan must be implemented to increase the revenues of IGTPL by promoting container traffic by better utilization of available facilities, an aggressive marketing of the terminal and offering very competitive rates of tariff and thereby making IGTPL the First Choice Terminal and to drop any proceeding for increasing the rates at IGTPL. These aspects has to be considered by this Hon'ble Authority before giving permission for further enhancement in the tariff to IGTPL.

Analysis

9.1. The response of the IGTPL to the above point made by the CSAA and CCHAA has already been brought out in the earlier part of this Order. Hence, not repeated here.

9.2. The IGTPL has been offering discounts to transshipment containers as well as over dimensional containers to attract customers, as reported by the IGTPL.

9.3. As regards the point made by the CSAA and CCHAA that the IGTPL has achieved 2% transshipment volume as against projected 25% volume, they are advised to note that the variation between the entire actual container volume (including) actual volume of transshipment (containers) for its operations at RGCT for the period December 2009 to 17 February 2011 and for its operations at ICTT for the period from 18 February 2011 to 31 December 2015 has been analysed at greater length with reference to the estimates relied upon while fixing tariff in the tariff Order dated 5 August 2009 following clause 2.13 of the Tariff Guidelines of 2005. The CSAA and CCHAA is advised to refer to the paragraph no. from 10 (iii) (I) to 10 (iii) (II) of the Speaking Order.

10. Point made by CSAA and CCHAA

The present terminal handling charges at IGTPL is as follows:

		20dv	***40dv***	***20ref***	***40ref***
PRETRIP INSPECTION	₹68/- = $ 1/-			862	862
MONITORING CHARGES -	2 days* 6 shift			1926	2897
WHARFAGE		883.83	1325.73	883.83	1325.73
LIFT OFF AT CY"		848.49	1272.73	848.49	1272.73
LIFT ON AT CY		848.49	1272.73	848.49	1272.73
TRANSPORT T0 HK		397.71	596.59	397.71	596.59
GANTRY		3553.68	5329.84	3658.20	5487.00
		6532	9798	9425	13714

Analysis

10.1. The IGTPL in its response to the above table has commented on the incorrectness of the charges quoted by the CSAA and CCHAA in the earlier part of this Order.

10.2. The CSAA and CCHAA have not mentioned anything else other than giving the above table. Therefore, there is nothing to be discussed on the matter.

11. Point made by CSAA and CCHAA

The below is a comparison of per container handling cost in each of the container terminal operating at Major Ports in the country:

(in ₹)

Name of the Port	Existing Container handling charges per container 20 ft container.	Container handling charges per container 20 ft container at IGTPL	Existing Container handling charges per container 40 ft container.	Container handling charges per container 40 ft container at IGTPL
Gateway Terminal India Pvt. Ltd, Mumbai	3,551.00	6637.00	5,384.00	9,955.00
Jawaharlal Nehru Port Trust, Mumbai	3,935.00	6637.00	5,960.00	9,955.00
Nhava Sheva International Container Terminal, Mumbai	3,706.25	6637.00	5,616.87	9,955.00
Chennai International Terminal Private Ltd, Chennai	3,785.11	6637.00	5,621.95	9,955.00
Chennai Container Terminal Pvt. Ltd, Chennai	3,785.11	6637.00	5,621.95	9,955.00
PSA Sical Terminal Limited. Tuticorin	3,220.24	6637.00	4,557.00	9,955.00
Dakshin Bharat Gateway Terminal Pvt. Ltd, Tuticorin	3,157.24	6637.00	4,735.56	9,955.00
Visakha Container Terminal Pvt. Ltd, Vizag	4,222.00	6637.00	6,334.00	9,955.00
Kolkata Port Trust	4,287.00	6637.00	6,431.00	9,955.00

Analysis

The CSAA and CCHAA have only repeated their point made in the review application, which has already been analysed at greater length at sub paragraph 6.1. to 6.4. Hence, not repeated here.

12. Point made by CSAA and CCHAA

The container handling charges for shipment of container at the 3rd respondent (IGTPL) is ₹6532.00 for 20ft containers and ₹9798.00 for 40 ft containers (approx) which is already higher compared to the other Indian ports and the neighbouring ports like Chennai and Tuticorin are handling containers at a fairly lower price.

Analysis

12.1. The tariff of the container terminal operated by the BOT Operators at the Chennai Port Trust (CHPT) and the container terminal operated by the PSA SICAL Terminal at the V.O. Chidambaranar Port Trust is fixed following the Cost Plus Return on Capital Employed approach stipulated in the Tariff Guidelines of 2005. Fixation of tariff following cost plus approach takes into account the capital investment made in the terminal, capacity of the terminal, operating cost and overheads thereat and 16% return on the capital employed. Therefore, cost plus approach for tariff setting will invariably load to variation in rates across the ports.

12.2. This Authority follows a uniform approach consistently to tariff setting at all the Major Port Trusts and Private Terminals thereat. While the concepts, principles and approach of tariff setting can be uniform, the resultant tariff cannot be the same across the ports due to variation in operational procedure, traffic volume, cost structure, order and timing of capital investments. The operators at the Chennai Port Trust and V.O. Chidambaranar Port Trust have made investments prior in time to the investment made in Cochin. This has contributed lower cost and lower tariff at the Chennai and Tuticorin.

13. Point made by CSAA and CCHAA

Many shippers like the Tata Global Beverages Limited, and Importers like, Emirates Cements India Pvt. Ltd etc. and various other association which work for the benefit of EXIM trade like the Federation of Coir Exporters Association, Seafood Exporters Association of India, Customs House and Steamer Agents association from neighbouring states, Trade bodies like Indian Chamber of Commerce & Industry, Federation of Indian Cashew Industry, have brought these facts before the Hon'ble Authority. These facts should be taken seriously as these are the voice raised by genuine players at Kochi who use the IGTPL - terminal and association in the EXIM trade and all of them have same concern raised with regard to the rising of further tariff by the IGTPL.

Analysis

13.1. The IGTPL has responded to the various concerns of the stakeholders which have been brought out in the earlier part of this Order.

13.2. The major concern of the stakeholders mentioned by CSAA and CCHAA is with regard to the tariff increase of 4.5% granted by this Authority with a provision for annual increase of 4.5% on 1 April 2017 and 1 April 2018 to bridge the deficit of ₹6,851.83 Lakhs over the validity of the tariff cycle, as recorded in paragraph 10 (xvii) of the Speaking Order. The Speaking Order gives reasons for granting tariff increase vide paragraph no. from 10 (i) to 10 (xvi), which the CSAA and CCHAA is advised to refer.

13.3. The Tariff Guidelines of 2005 stipulate portwise cost plus approach for fixation of tariff. The estimated financial/cost position of IGTPL for the years 2016-17 to 2018-19 as modified by this Authority showed a deficit of ₹6851.83 Lakhs, as per Annex – II attached to the Speaking Order. Therefore, grant of hike in tariff was inevitable to bridge deficit. In any case, the tariff fixed by this Authority is at ceiling level; and, the IGTPL has the flexibility to levy lower rates below the ceiling level based on commercial considerations. In fact, the IGTPL has committed to offer discounts.

14. Point made by CSAA and CCHAA

When the operations were shifted from Rajiv Gandhi Container Terminal, Willingdon Island of Cochin Port Trust to IGTPL at Vallarpadam, there were hope of increase in volumes of cargo and also a competent tariff which will boost the shipping sector and promote shipping trade. Whereas contrary to the expectations, there has been an increase of around 65% in Terminal Handling charges and other related costs when compared to CPT. While containers were handled by Cochin Port Trust at Rajiv Gandhi Container Terminal at about ₹3000/- per 20' container, and when the operation was shifted to IGTPL, the cost have gone up to double at ₹7000/- per 20' container without any valid reasons. The shifting to Vallarpadam has also caused additional transportation charges and hike in related costs like enblock movement of all imported containers to their interested CFS, even overlooking statutory free period, which has also seriously affected the Shipping Trade.

(A comparison of the then rates at Rajiv Gandhi Container Terminal before the pre IGTPL era and the present rates at IGTPL – Vallarpadam, as given by CSAA and CCHAA has already been brought out and hence not reproduced here)

Analysis

14.1. In its response to the above point made by the CSAA and CCHAA, the IGTPL has stated the following:

"The service levels /quality of service received by the Customers at ICTT is not comparable to the services provided at RGCT. All stakeholders have benefitted from the increased berth productivity, lower truck turnover time, faster vessel turnaround etc. at ICTT. There is no enblock movement of all imported containers. At ICTT the import containers are given delivery from terminal yard based on the delivery orders issued by the shipping lines. These Delivery orders are issued by the shipping lines to the respective importer/their agent or to their nominated CFS. IGTPL has no direct or indirect interest in any CFS .No transport movement of containers to CFS is undertaken by IGTPL. The petitioners allegation is baseless. The tariff at RGCT & ICTT as stated by the petitioner are completely wrong .In any case the comparison is not valid as the terminals are completely different in terms of facilities provided, infrastructure, operational productivity etc."

We have nothing to add to the response of the IGTPL.

15. <u>Point made by CSAA and CCHAA</u>

Hence, in short, the moving of the terminals from Rajiv Gandhi Container Terminal of Cochin Port Trust, Willingdon Island to IGTPL at Vallarpadam has resulted only in the hike of Terminal Handling Charges upto 50% which has affected the movement of cargo through IGTPL. The shippers started preferring other ports such as the Tuticorin and Chennai due to the high Terminal Handling charges at IGTPL Vallarpadam and IGTPL. Without considering the same by virtue of Order No.TAMP/25/2008-IGTPL passed by this Hon'ble Authority on 5th August, 2009 increased the tariff by 3.48% every year till date. Considering the facts and figures as stated above this authority has to suo motu review the Order No.TAMP/25/2008-IGTPL passed by this Hon'ble Authority on 5th August, 2009.

<u>Analysis</u>

15.1. The IGTPL has reported that the volume handled at ICTT is steadily growing and the IGTPL is successful in diverting cargo originally routed through the container terminals at Chennai Port Trust and V. o. Chidambaranar Port Trust. As seen from the data furnished by the IGTPL, the year on year growth of container traffic which was at 7.9% in the year 2010-11 has reached 19.8% in the year 2016 (April to December) as compared to the South India market which is 11.2% in the year 2016 (April to December).

15.2. With reference to the request made by the CSAA and CCHAA to suo-motu review the tariff Order dated 5 August 2009, the CSAA and CCHAA are advised to note that the estimates relied upon at the time of fixing tariff in the Order dated 5 August 2009 was reviewed with reference to the actuals before fixing tariff for the next tariff cycle 2016-17 to 2018-19 in the Speaking Order, as stipulated in clause 2.13 of the Tariff Guidelines of 2005. As shown under the paragraph no. 10 (xiii) (g) of the Speaking Order, the entire additional surplus after admissible cost and permissible return for its operations at the Rajiv Gandhi Container Terminal (RGCT) for the period from December 2009 to 17 February 2011 amounting to ₹929.74 Lakhs was mopped up while fixing Tariff for the next tariff cycle for the period 2016-17 to 2018-19. The IGTPL was not let off with any additional income for its operations at the RGCT. Further, the IGTPL was made to bear 60% of the net deficit for its operations at ICTT for the period from 18 February 2011 to 31 December 2015 amounting to ₹25,539.29 Lakhs (₹42,565.48 lakhs x 60%) and the balance 40% of deficit amount of ₹17,026.19 Lakhs was only considered for tariff fixation for the next cycle following clause 2.13 of the Tariff Guidelines of 2005 read with the opinion of Attorney General for India. Since the Tariff Order dated 5 august 2009 has already been reviewed as per the provisions of Tariff Guidelines of 2005, there is no case to carry out another review of Tariff Order dated 5 August 2009 as requested by the CSAA and CCHAA.

16. <u>Point made by CSAA and CCHAA</u>

The IGTPL is charging some additional rates which are not even placed before TAMP and approved by this Authority which is approximately ₹2500 / 20' and 40' as special service request charges towards container reaching after the cut off time, despite there is no physical movement involved. In addition to the said costs, IGTPL is billing shipping companies under the head of Temperature Variances for reefer containers, which none of the other ports in India is billing nor approved by TAMP. There are similar other hidden rates which are not TAMP approved or shared with Cochin Port as per license agreement and which has not been brought before the Hon'ble Authority.

Analysis

16.1. When the above point was referred to the IGTPL, the IGTPL has furnished its clarifications, which have been brought out in the earlier part of this Order.

16.2. As clarified by the IGTPL, any export container arriving at the terminal after the gate cut off time is not accepted for a particular vessel to ensure operating efficiency and faster turnaround of the vessel. These containers are then allocated to the next vessel. In case any customer requires that a particular container should be loaded on the earlier vessel, the vessel plan of that particular vessel has to be amended, approval is taken from the Chief Officer of a vessel for amendment, the operational plan for the servicing the vessel has to be altered accordingly. Based on a written request from the shipping line and approval of the vessel operator such request of the customer is accepted. This results in loss of operational time, deployment of additional equipment, shifting of the container from the present stack to the particular export stack and results in delay of vessel departure. Since there are additional activities and shifting involved, the rate of ₹3099.84 per 20' container and ₹4549.75 for a 40' container as approved by this Authority is chargeable. However, the IGTPL levies vastly reduced rate of ₹2150 as a penal charge for all containers regardless of size and type. It appears that the source for the levy of ₹2150 is the rate approved by this Authority for shifting of the containers. Since the revenue arising out of levy of gate cut off time charges is taken into account both at the actual performance calculations and the projected revenue calculations, as confirmed by the IGTPL, there will not be undue benefit accruing to the IGTPL on account of levy of gate cut off time charges. However, the IGTPL is advised to obtain a specific approval to levy charges for containers arriving at the terminal after gate cut off time during the next review of its general Scale of Rates.

16.3. As regards the levy of charges for temperature variance, the IGTPL has clarified that as per the custom of trade, the vessel operators do not accept a reefer container in the event the actual temperature of the container has a variance of more than / less than 5 degrees from the declared / set temperature of the container. Accordingly, the terminal had modified its operating procedure to accept reefer containers with a variance of more than / less than 5 degrees from the declared /set temperature. The change in the operating procedure was intimated to the trade. In practice, some of the containers come in with a variance exceeding the allowable limits. In such cases the containers would have to go back to the stuffing point/CFS/factory for attaining the declared/set temperature. This would result in extra cost to the shipper, possibility of missing the planned vessel connection also possible damage to cargo. Based on written request from the shipping line these containers are accepted as active reefer containers and stacked in reefer yard for attaining the required declared /set temperature. Since there is a change in the status of the container, the approved charge of Change in status of container as per Section –IX is applicable. Whilst the charge is presently ₹3099.84/20" and ₹4649.75/40", IGTPL charges a vastly discounted rate of ₹800 per container regardless of the size of container, as reported by IGTPL. Since the levy is as per the approved Scale of rates at a discounted level, no review in this regard is called for.

16.4. As regards the reported other hidden rates, neither the CSAA nor the CCHAA have furnished any details to this Authority.

17. Point made by CSAA and CCHAA

The projected expenditure for doing Transhipment business is highly inflated. IGTPL has stated that their transhipment rates are lesser compared to other transphiment ports and have given a fancy expenditure for projecting transhipment business within IGTPL. However IGTPL has failed to give the previous figures in relation to Transhipment business and failed to bring to the attention of the Hon'ble Authority that IGTPL has failed to bring in any Transhipment business and they are only doing approximately 2% of the projected volume at present at IGTPL. There is no additional cost especially equipment hiring costs which is required as alleged by them. Further the existing ground slots within the IGTPL are utilized only a 60% efficiency and hence there is no requirement for additional Ground slots are stated by IGTPL with the current volume of cargo/containers handled at IGTPL. The existing ground slots of 2446 can be utilized for handling upto 446141 TEUS of containers. Further the dwell time of the containers which was earlier 20 days have now decreased to 9 days which means that the container movement will be faster enabling IGTPL to use the same space without looking for any additional space.

Analysis

When the above point was referred to the IGTPL, the IGTPL has clarified as under:

IGTPL is taking all efforts to improve transshipment business and are in discussion with various main lines. The yard capacity calculations are recorded in the TAMP order and have been endorsed by COPT as recorded in TAMP 2016 Order clause 10 (iii) (II) (x). It should be noted that the average dwell time considered for this calculation is 5 days for Origin/Destination container and 7 days for Transshipment containers which is much lower than the dwell time of 9 days stated by the petitioners. In case the petitioners statement that the present dwell time is 9 days is considered the annual capacity would decrease and would be at 257,688 TEUs. Further, the increase in transshipment and Origin/Destination volume requires additional ground slots, hence the forecasts include these. The capacity calculations for each year have been submitted and the same recorded in the TAMP order. Developments of further ground slots are absolutely necessary for efficient operations at ICTT, as reported by the IGTPL.

The projections do not have any specific expenditure for only transhipment business. There are no projections for additional equipment. There are no additional costs, Only Costs as variable with increase in volumes has been forecasted. All Equipments as required under the license agreement have been provided. IGTPL's projections have considered an increase in the existing equipment handling costs namely ITV hire charges and these have been supported by quotations. The detailed examination of these costs are recorded in the TAMP order.

We have nothing to add to the response of IGTPL.

18. Point made by CSAA and CCHAA

IGTPL is given rebate in rates in Vessel Related Charges (VRC) by Cochin Port Trust and the maintenance dredging of 14.5 m draft at IGTPL is conducted by Cochin Port Trust without any liability being casted on IGTPL. In other words, IGTPL is getting all benefits from the Government, Cochin Port Trust and other authorities considerably and whereas they have kept the Terminal handling rates at a higher scale gaining advantage over the same from the Shipping fraternity.

Analysis

The vessel related charges on the vessels calling at the container terminal operated by IGTPL are levied by the licensor port, Cochin Port Trust. The Scale of Rates approved by this Authority does not authorize IGTPL to collect any vessel related charges. Maintenance dredging to keep draft at 14.5 m is the contractual obligation of COPT as per the License Agreement. Therefore, the discounts, if any, given by the COPT on the vessel related charges would not fully accrue to the IGTPL. The CSAA and CCHAA have not specified what are all the other benefits the IGTPL is getting from Government and other Authorities.

19. Point made by CSAA and CCHAA

Kerala is only having one Container Terminal which is IGTPL – run by DP World and IGTPL is using its monopoly in charging higher rates which shipping trade in Kerala are forced to accept as they are left with no other ports in Kerala. Further it should also be noted that neighbouring ports such as the Chennai Port or the Tuticorin Ports have not increased their tariffs as done by IGTPL in the past even though their rates are very low compared to that of IGTPL. Hence, it is respectfully submitted that IGTPL is not justified in further increasing the rates when they have failed continuous to achieve the projected volume of business through IGTPL and considering the facts that the Terminal Handling charges at IGTPL is very high compared to other neighbouring ports which is one of the reason for slow rise in volumes at IGTPL.

Analysis

19.1. The above points have already been analysed at length at the relevant paragraphs of this Order.

19.2. The tariff fixed at the BOT operated container terminals at the CHPT and VOCPT is subjudice. Therefore, it is not appropriate for this Authority to comment on the existing tariff thereat.

20. Point made by CSAA and CCHAA

Whether the IGTPL is justified in further increasing rates when they are enjoying the benefits given by the Government, Cochin Port Trust and other Authorities?

Analysis

20.1. The IGTPL is authorized by this Authority to levy only container related charges. Therefore, the discount, if any, given by COPT on the vessel related charges does not fully accrue to the IGTPL. The CSAA and CCHAA have not specified what are the other benefits given by Government and other Authorities to the IGTPL.

20.2. The actual income accrued to the IGTPL during the period from December 2009 to 17 February 2011 for its operations at the RGCT and for the period from 18 February 2011 to 31 December 2015 for its operations at ICTT and estimated income for the next tariff cycle for the period 2016-17 to 2018-19 have been accounted for while fixing tariff in the Speaking Order, as shown in the cost statement attached to the said Order as Annex – II.

21. Point made by CSAA and CCHAA

As per BOT license agreement with the Cochin Port Trust and India Gateway Pvt. Ltd (IGTPL), IGTPL constructed at International Container Transhipment Terminal (ICTT) at Vallarpadam which is notified as a Special Economic Zone (SEZ). The Port is entitled to 33.3 % on the revenue generated from the Terminal. The Ministry of Commerce had approved the proposal of the Cochin Port Trust for Development, Operation and Maintenance of a Port based Special Economic Zone over an area of 115 hectares at Vallarpadom and notified the said area as a Special Economic Zone (SEZ). The Development Commissioner, Vallarpadom Special Economic Zone had approved the IGTPL as a Unit in the Vallarpadom Special Economic Zone. Special Economic Zone (SEZ) is a restricted area as per the Scheme of the SEZ Act 2005, which has become operational on 10 February 2006. Since the 115 hectares at Vallarpadom is declared as SEZ, IGTPL has benefited huge profit towards import of its equipments which are necessary for their operation as there is tax exemption for import of equipments to SEZ area. These benefits are provided to IGTPL so that a portion of such benefits are passed on to the shipping community. Further rebates are given to mainline vessels calling at IGTPL in Vessel Related Charges (VRC) by Cochin Port Trust in order to match with international ports and the maintenance dredging of 14.5 m draft at IGTPL is conducted by Cochin Port Trust without any liability being casted on IGTPL. Further the security at IGTPL was offered through Central Industrial Security Force (CISF) for which the costs were born by Cochin Port.

Understand that IGTPL did not settle these charges back to Cochin Port, compelling Cochin Port to withdraw the services of CISF and making IGTPL to deploy their own private securities which is very low cost in nature. None of the benefits they were getting was shared with the Cochin Port or the shipping trade / customers/ users.

Analysis

21.1. The IGTPL has confirmed that it had availed duty exemption for import of equipment. As rightly stated by the IGTPL, duty exemption for import of equipment would have brought down the capital cost of equipment and resultant reduction in the return on capital employed and reduction in the tariff approved by this Authority. Consideration of capital employed without duty exemption for import of equipment would have further increased the tariff approved in earlier tariff order dated 5 August 2009. It is needless to say that the users were benefitted to that extent.

21.2. Since the IGTPL is not authorized to levy vessel related charges, the benefit of discount, if any, given by the COPT on the vessel related charges collected by the COPT would not fully accrue to the IGTPL.

21.3. As regards the expenditure towards security given by CISF for which cost is reportedly borne by the COPT, the IGTPL has confirmed that the cost of CISF has not been included in the actual cost for computing the tariff.

22. Point made by CSAA and CCHAA

Even though IGTPL is charging their customers unreasonably and giving incentives to only few of the importers/exporters, that too out of state of Kerala, when we have asked the details of incentives given to various companies, under Right to Information Act, Cochin Port did not disclose the details of incentives given by IGTPL and debited Cochin Port, fully knowing that disclosure of the same would show hidden benefits IGTPL was enjoying all these years. This itself shows the malpractices and unholy relations happening in the Vallarpadam IGTPL Terminal at the cost of the public / shipping trade / port users.

Analysis

In its response to this point, the IGTPL has denied any malpractices and unholy relations at the cost of the stakeholders, as brought out at earlier part of this Order. The discount aspect is dealt with in the later part of this Order.

23. Point made by CSAA and CCHAA

Other than the above mentioned details and facts, the IGTPL has obtained various other benefits from the Governments, Cochin Port Trust, and statutory authorities etc. whereas none of those benefits are being shared with the public or port users and IGTPL are solely using the same for their own benefit. With the imposing of huge Terminal Handling Charges, for those cargoes handled at IGTPL, are likely to be decreased and if there is no urgent intervention from the statutory authority like TAMP, the shipping trade in Kerala is soon going to migrate to other customer friendly Ports which has much lower Terminal Handling Charges and benefits offered which the IGTPL fail to do to the domestic customers.

For the reasons stated above, it is humbly submitted that this additional points may be read and treated as part of the review petition already filed and the review may be allowed, and the IGTPL may not be permitted to increase the rates at this stage any further unless and until they achieve the projected volume of cargo and there may be direction from this Hon'ble Authority to reduce already existing the Terminal Handling Charges in competitive terms with other neighbouring ports which will generate more volume of business to IGTPL and thus benefit the entire Shipping Trade in Kerala.

Analysis

23.1. The IGTPL has responded in detail to the above point made by the CSAA and CCHAA, as brought out in the earlier part of this Order.

23.2. As regards the reported non sharing of benefits reportedly availed by the IGTPL from the Government, COPT and Statutory Authorities, these have been already dealt with in detail. Hence, not repeated here.

24. Additional point made by the CSAA and CCHAA as one of the items of Brief Synopsis of the arguments made by them at the joint hearing vide their letter dated NIL January 2017 is that the Union Government and Cabinet have passed New Major Ports Authority Bill, 2016 and presented in the Parliament in December 2016. According to CSAA and CCHAA in the new Bill, TAMP constituted under Section 48 of the present Act has been taken away and given to a new Judicial Authority. They have further stated that fully knowing the intention of the Government of India and the Parliament and since the Bill nullifying TAMP has been presented in Parliament, this Authority ought not have considered the demand of IGTPL to increase the tariff and passed an order in their favour hastily. They have requested that the IGTPL may not be permitted to increase the existing rates at this stage till the formation of new Tariff Authority as per the new Major Ports Authority Bill, 2016 and it achieved the projected volume. They have prayed that IGTPL may be directed to reduce the THC which is already on the higher side.

Analysis

The tariff proposal filed by the IGTPL was disposed of by this Authority by passing an Order dated 17 September 2016, well before the reported introduction of new Major Ports Authority Bill, 2016 in the Parliament in December 2016. The Major Port Trusts Act, 1963 is still in force. That being so, this Authority is bound to pass Orders disposing of the tariff proposals filed before this Authority in exercise of the powers conferred under Sections 48, 49 and 50 of the Major Port Trusts Act, 1963. This Authority passes Orders on the tariff proposals filed by the Major Port Trusts and BOT Terminals operating thereat after following the prescribed consultation process and the appropriate tariff guidelines issued by the Government from time to time. No haste is shown by this Authority in disposing of any tariff proposals including the tariff proposal received from the IGTPL.

14.1. The Federation of Coir Exporters Association and the Seafood Exporters Association have stated that IGTPL is offering special discounts to shippers of Coimbatore, Thirupur and Bangalore area. They have further stated that this is highly discriminatory since, the IGTPL collects higher charges from regular exporters of Kerala. The Coir Board has stated that Tamilnadu Exporters are offered discounts and it is not offered to traditional Kerala trade. When the grievance of these associations was forwarded to the IGTPL, the IGTPL has admitted that it is offering discounts to the users outside Kerala to attract volume. From the further submissions made by the IGTPL in this regard, it is seen that the incentive offered by IGTPL to the users of Kerala is in the non-monetary nature like additional free period for cashew cargo and additional free days for containers moving through main line vessels or Rail only. No monetary discount by way of reduction in approved ceiling rate appears to have been offered by the IGTPL to the customers of Kerala.

14.2. Clause 2.16.3 of the Tariff Guidelines of 2005 calls upon the Port operator to notify the public lower rates and continue to notify the public any further changes in such lower rates. The IGTPL has not stated anything about the compliance to clause 2.16.3. It is taking commercial calls as required from time to time for considerations like discounts / rebates / extra free period and not as required under clause 2.16.3. When the grievances of trade of Kerala on the aspect of discount and the response of IGTPL are considered together there may be a view that as if transparency in offering discount is lacking on the part of IGTPL. Therefore, this Authority is inclined to advise the IGTPL to implement the discount scheme in a non discriminatory manner, if it is discriminatory now, and consider to offer monetary discounts on the ceiling rates to the Kerala Trade also to attract volume.

15. During the proceedings of this case, the CSAA and CCHAA have made some more points with regard to equipment running cost, equipment hire charges, technical service fee and

depreciation. The IGTPL has responded to each of these points, which have already been brought out. These points have already been analysed in the Speaking Order to which the CSAA and CCHAA may refer.

16. As brought out earlier, the IGTPL has raised the following points at the joint hearing held on 17 January 2017 and has requested this Authority to take into consideration and give effect in the tariff order. They are discussed in the following paragraphs:

(i). The points made by IGTPL and our analysis:

(a). Clause No. 10(iii) (I) (B)(ii) (b) - Adjustment of actual surplus for the period Dec-09 to Feb-2011 amounting to Rs.929.74 lacks has been taken at 100% adjustment against the deficits estimated for ICTT. As per the opinion of the Attorney General for India, both financial and physical parameters will be taken into account for the purpose of clause 2.13 of the Tariff Guidelines of 2005.20% of the surplus would be allowed to be retained by the operator. It is only the surplus over and above the 20% that shall be shared equally between the operator and the users.

Analysis

As recorded in paragraph no. 10(iii) (I) (B)(ii) (b) the IGTPL has made aggregate additional surplus of ₹929.74 lakhs for its operations at RGCT from December 2009 till 17 February 2011.

It is relevant to state that for the analysis of the actuals for this period there are no estimates for the operations at RGCT, as the IGTPL during the last revision had proposed to migrate from RGCT by November 2009 and commence operations at ICTT from January 2010.

Analysis of actuals for this period will not fall under clause 2.13 of the Tariff Guidelines 2005 which requires comparison of estimates considered in previous tariff Order with the actuals. Estimates of ICTT considered in August 2009 Order is not comparable with the facilities and capital cost envisaged for RGCT and hence rightly not compared by IGTPL as well.

During the last tariff revision, the approach followed was that the entire surplus estimated for RGCT for the period 2008-09 to 2009-10 (upto November 2009) was adjusted against the deficit estimated for ICTT while arriving at the tariff for ICTT. That being so, the same approach is to be followed with reference to the actual additional surplus of ₹929.74 lakhs for the operations of IGTPL at RGCT from December 2009 till February 2011. Accordingly, the entire additional surplus of ₹929.74 lakhs assessed based on actual operations at RGCT for the period December 2009 upto 17 February 2011 was considered for adjustment in the tariff for ICTT. In view of this position, this Authority is not in a position to accede to the request of IGTPL to retain itself 60% of the amount of ₹929.74 lakhs. The position of this Authority recorded in paragraph no.10(iii)(I)(B)(ii)(b) of the speaking Order is reiterated.

(b). Clause No. 10(iii)(II)(xvii)(a) - The various discounts provided on the foreign and transshipment containers in the projections, have been set aside in the TAMP analysis and the income from foreign and transshipment containers were estimated at the rates prescribed in the SOR. The total value of such discounts set aside is ₹1551.7 Lakhs. This notional income has reduced the eligible increase in tariff.

Analysis

As recorded in paragraph no. 10(iii)(II)(xvii)(a), the IGTPL has estimated the income at the discounted rates in respect of transshipment containers and few containers of foreign category. Under the cost plus method of tariff fixation, the existing tariff is considered to estimate the income for the future tariff cycle in respect of all BOT Operators governed under the Tariff Guidelines of 2005. As brought out earlier, the IGTPL offers discount on case to case basis whenever such requests are received from users, that too from outside Kerala, the discounted rate is not a permanent tariff outside Kerala and the discounted rate is a temporary phenomenon. Therefore, this Authority is not in a position to accede to the request of IGTPL to consider the discounted rates for estimation of income. If the IGTPL confirms that the discounted rates are ceiling rates, such rates can be considered for estimation of income. In that case, this Authority would like to note that the tariff for transshipment containers and few category of foreign container would further go up. The discounts/ rebates, if any, given by the IGTPL to the users during the period from January 2016 to March 2019 will be recognised by not considering as notional income as per the opinion of AG.

(c). Clause No. 10(iii)(II) (xix) and 10 (xii) and Annual escalation estimated at on Operating & Direct Labour as well as Management labour considered only at 2.46% as against our submission based on actual past trend of 11%. The provisioning at the lower level of the eligible costs have reduced the eligible increase in tariff.

(d). Clause No. 10(iii)(II) (xx)(c) - Equipment R&M Expenses we have estimated at 3.82% escalation with the previous year, however TAMP has considered at 1% on civil assets and 2% on Mechanical equipment's, whereby expenses are reduced by ₹144.23 lakhs. This notional decrease in costs has reduced the eligible in tariff.

Analysis

As recorded in paragraph no 10 (II) (xviii), Clause 2.5.1. of the tariff guidelines of 2005 requires that the expenditure projections of the terminal operators should be in line with traffic adjusted for price fluctuations with reference to current movement of Wholesale Price Index (WPI) for all commodities as announced by the Government of India. The escalation factor adopted by this Authority in respect of tariff cases filed under Tariff Guidelines, 2005 disposed during the year 2016-17 is 2.46%. Annual escalation applied by the IGTPL for estimating some of cost items like manpower cost at 11% and other expenditure at annual escalation at 3.82% was found to be higher than the permissible level. In our analysis, the estimate for the years 2016-17 and 2018-19 were modified applying the annual escalation factor of 2.46% over the actuals/ estimate of respective previous years wherever the annual escalation applied by the IGTPL is higher than the stated level. This approach is followed uniformly in case of expenditure projections of all BOT operators. The IGTPL has not brought out extraordinary circumstances warranting deviation from the uniform procedure adopted in all other cases.

As regards the repairs and maintenance expenses of civil assets and mechanical equipments, for estimating repairs and maintenance cost on the existing gross block of assets, the actual repairs and maintenance cost reported as on 31 March 2016 was taken as the base and escalated by applying annual escalation of 2.46% for each of the years 2016-17 to 2018-19.

In order to take care of incremental repairs and maintenance cost on the proposed assets to be added in the next cycle, the repairs and maintenance cost was estimated at 1% on the civil assets and 2% of mechanical equipment. This is as per the procedure followed in other BOT Container Terminal Operators. The IGTPL has not brought out extraordinary circumstances warranting deviation from the uniform procedure adopted in all other cases.

(e). Clause No. 10(iii) (II) (xviii) - Cost escalation considered by TAMP only at 2.46%, however the application for revision in tariff was submitted in Dec-2015. The permitted cost escalation for 2015-16 was 3.82% which was adopted by us for the cost projections. Since the processing of the proposal was delayed and completed in 2016-17, this Authority has adopted the cost escalation applicable for 2016-17, i.e. 2.46%. We submit that the delays in disposing of the proposal should not unduly disadvantage IGTPL, hence the cost escalation is applied at the applicable for 2015-16 i.e. 3.82%.

<u>Analysis</u>

The original proposal filed by the IGTPL was dated 16 December 2015. The revised proposal filed by the IGTPL was dated 30 June 2016 which was considered for deciding the tariff. The Order was passed on 17 September 2016, after a gap of about 2 and half months after the receipt of revised proposal from IGTPL.

As per the common Order dated 30 September 2008, passed for clarifying certain areas of tariff fixing methodology, in exceptional cases, when a change in financial year occurs between the time this Authority decides a case and the date of notification of such decision and if the value of WPI undergoes a revision as per the Tariff Guidelines in intervening period, the concerned tariff order can be reviewed to the extent of correctly reflecting the applicable value of WPI. The Order dated 17 September 2016 was notified in the Gazette of India on 14 October 2016 vide Gazette no.380. Since the date of Order and date of notification fall in the same financial year of 2016-17, the consideration of escalation factor of 2.46% relevant for the year 2016-17 and to be considered for the tariff cases decided during the year 2016-17 is in order.

17.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority reiterates the Tariff Order No.TAMP/81/2015-IGTPL dated 17 September 2016 notifying the revised Scale of Rates of the IGTPL in the Gazette of India on 14 October 2016 vide Gazette No.380 and the speaking Tariff Order No.TAMP/81/2015-IGTPL dated 17 September 2016 notified in the Gazette of India on 15 November 2016 vide Gazette No.408. Accordingly, the Review Application dated 17 November 2016 filed by the CSAA and CCHAA stands disposed of.

17.2. As regards the concern of the users on the tariff increase of 4.5% per annum, it is relevant here to state that in terms of Clause 2.16.1 of the Tariff Guidelines of 2005, the rates approved vide Order dated 17 September 2016 are ceiling levels; rebates and discounts are floor levels. The IGTPL can exercise the flexibility to charge lower rates and/or allow higher rebates and discounts, as it has been doing in the last tariff cycle to attract volume.

17.3. The IGTPL is advised to implement the discount scheme in a non-discriminatory manner and consider to offer monetary discounts on the ceiling rates to the Kerala Trade also to attract volume.

17.4. The IGTPL is advised to interact with the COPT, Users and User associations regularly and take efforts to achieve the projected volume of traffic.

(T.S. Balasubramanian)
Member (Finance)