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TARIFF AUTHORITY FOR MAJOR PORTS

GNo.158

New Delhi,

29 September 2008

NOTIFICATION

In exercise of the powers conferred under Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal of the Nhava Sheva International Container Terminal Private Limited for review of its tariff as in the Order appended hereto.

(Brahm Dutt)
Chairman

Tariff Authority for Major Ports

Case No. TAMP/14/2008 – NSICT

The Nhava Sheva International Container Terminal Private Limited - - - Applicant

ORDER

(Passed on this 19 day of September 2008)

This case relates to a proposal received from Nhava Sheva International Container Terminal Private Limited (NSICT) for review of its tariff.

2.1. The tariff at the NSICT fixed in November 2000 fell due for a review in November 2002 following the two year tariff validity cycle then adopted. Since NSICT did not file any proposal for review of its tariff suo motu proceedings were initiated to reset the tariff at NSICT. This Authority for the reasons recorded and subject to the conditions specified in its Order dated 22 July 2005 had effected a reduction of about 13% in the then prevailing rates at NSICT. Since the entire cost of royalty was allowed as pass through in November 2000 Order, the same position was maintained in the suo motu review undertaken in July 2005.

2.2. On an advice rendered by the Ministry of Shipping, Road transport and Highways (MSRTH) about the decision of this Authority regarding the entire royalty allowed as pass through, another review of NSICT tariff was carried out in March 2006 with reference to royalty expenses and this Authority passed an Order on 7 March 2006. Vide the said Order, a further reduction of 12% of the earlier tariff was effected.

3. The validity of the revised tariff of NSICT was prescribed for 3 years from the date of notification of the Order dated 22 July 2005. Since the Order dated 22 July 2005 was notified in the Gazette of India on 4 August 2005, the validity of the NSICT tariff expired on 3 August 2008.

4.1. With reference to the proposal in reference, the NSICT has stated the following:

- (i). Article 14 of the Concession Agreement (CA) between NSICT and JNPT allows the Licensee (NSICT) to request amendments to the terms of Agreement, if there is change in the Law after the date of the CA. In this regard, the CA defines the terms "Law", "Government Authority", "Change in Law", "Relief under Change in Law".
- (ii). The TAMP is a governmental Authority in terms of the Concession Agreement. The action of TAMP to disallow part of royalty as cost, qualifies to be treated as change of law under Article 14.2 of the Concession Agreement.
- (iii). NSICT has no option but to seek relief under Article 14.3 – Change in Law as the downward tariff revisions by TAMP has substantially and adversely affected its rights to earn a reasonable return.

4.2. The other main points made by NSICT in its proposal dated 24 March 2008 are summarized below:

- (i). NSICT has set new benchmarks in terms of productivity and optimum utilization of port assets, which has helped the government to establish new benchmark for all future port concessions in India.
- (ii). At the time of signing the concession, there was no defined policy about fixation of tariff for container handling. TAMP allowed royalty completely vide their Order of December 1998, November 2000 and suo motu review of August 2005, which was done under the revised guidelines of March 31, 2005. In terms of Clause 2.8.1 of the revised tariff guidelines notified on 31 March 2005, tariff fixation has to be in a

manner to ensure that there is no likely loss to the operator on account of revenue share / royalty not taken into account. This 16% ROCE needs to be protected at all times in BOT cases where the bidding process was finalized before July 2003. Suo motu review in April 2006 of the suo motu order of August 2005 did not allow full royalty as costs in determining the tariff. By this action NSICT has had to bear the disallowance from its allowed return, which has led to loss.

- (iii). During 2000 to 2007, NSICT managed to continue and improve the operations backed by consistent increase in volumes. JNPT has benefited greatly from the additional volume handled by NSICT and has earned additional royalties and vessel related charges.
- (iv). With the existing infrastructure of 600 Meters of quay line and 28 Hectares of yard, NSICT has managed to handle volumes of 1.47 Million TEUs (which is more than double the original designed capacity) and is one of the largest volume handled per meter of quay line in the world.
- (v). Further scope of minimizing the costs through increase in volumes/ increasing efficiency do not remain, as NSICT is now operating in excess of its capacity.
- (vi). The royalty contracted by NSICT was on the premise that this will be a pass through and appropriate tariff adjustments will protect NSICT's interest. However, as per clause 2.8.1 of the revised tariff guidelines, in those BOT cases where bidding process was finalized before 29 July 2003, the tariff computation will take into account royalty / revenue sharing as cost for tariff fixation in such a manner as to avoid likely loss to the operator on account of the royalty / revenue sharing as cost for tariff fixation in such a manner as to avoid likely loss to the operator on account of the royalty / revenue share not being taken into account, subject to maximum of the amount quoted by the next lowest bidder. This change in regulations will impact the costs structure as under:

Month & Year	Royalty per TEU	As % of existing revenue
July 2008	1,542	55%
July 2009	1,960	70%
July 2010	2,086	75%

- (vii). The current tariff review is based on the audited accounts of past three years viz. 2005 to 2007 and projections for the next three years viz., 2008 to 2010.
- (viii). The salient features and base assumptions of the tariff review are as follows:
 - (a). The tariff is to be revised effective 1st July 2008 based on submission of data post 1st January 2005.
 - (b). 100% royalty is considered as cost for the entire period 2005-2010 based on prevailing regulations at the time of submissions of bid and upto 31 March 2005.
 - (c). Return on capital is considered in line with existing guidelines dated 31 March 2005
 - (d). No adjustment for excess profits prior to 2005 is made since there was no concept of excess return / computation of efficiency gains at the time of submission of bids and up to 31 March 2005.
 - (e). (i). JNPT has handled 1.999 million TEUs, 1.260 Million TEUs and 1.148 Million TEUs in 2005, 2006 and 2007 respectively. Based on the highest volume of 1.260 Million TEUs handled by JNPT in 2006, from 680 meters quay line, optimum volume, which can be handled by NSICT from 600 meters, is 1.1 Million TEUs.

(ii). Based on the guidelines for PPP Projects, the optimal capacity of NSICT works out to 1.1 million TEUs. In view of this, the contribution earned by NSICT in excess of 1.10 million TEUs for the years 2005 to 2008 are on account of efficiency of NSICT and the gains accrued to NSICT on account of such efficiency should be allowed to be retained by NSICT. The computation of efficiency gains is based on contribution (Revenue – Variable cost) for volumes handled in excess of 1.10 Million TEUs during 2005 to 2007.

(f). The port / Government is 100% beneficiary of the royalty due on the volumes in excess of 1.10 Million handled by NSICT.

(g). Future annual volumes are considered at 1.10 million TEUs, which is the optimum capacity as established under the revised PPP tariff guidelines.

5.1. NSICT has proposed an across the board increase of 46% over the existing level of tariff.

The financial position at the existing tariff level as reflected in the Cost statements furnished by NSICT are as follows:

Year	Operating Income (Rs. in Lakhs)		Net Surplus(+) / Deficit (-) (Rs. In Lakhs)		Net Surplus(+)/ Deficit (-) as % of Operating Income	
	Existing Rates	Proposed Rates	Existing Rates	Proposed Rates	Existing Rates	Proposed Rates
2008	30351.56	43101.51	(8499.35)	4250.60	-28.00%	9.86%
2009	30351.98	43101.94	(13201.42)	(451.47)	-43.49%	-1.05%
2010	30352.41	43102.37	(15887.52)	(3137.56)	-52.34%	-7.28%
Average %					-41.28%	0.51%

5.2. In the proposed draft Scale of Rates, the NSICT has introduced a separate Section for definitions and general terms and conditions. It has also introduced a new Section for prescribing charges for miscellaneous services like fixing/ removal of seal, charges for shifting within the terminal for custom inspection, charges for overstay of vessel due to users fault, etc.

6. In accordance with the consultative procedure prescribed, a copy of the NSICT proposal was forwarded to the concerned user organisations for their comments. At the request of the NSICT, the annual accounts for the previous years submitted alongwith the proposal, was not forwarded to the users. However, the annual accounts were referred to during the internal scrutiny of the proposal. The comments received from the JNPT and some of the users were sent to NSICT as feedback information. The NSICT has furnished its comments on the comments of the users.

7. The NSICT vide its letter dated 22 May 2008 has made the following submissions:

- (i). NSICT has requested in its proposal the Authority which is the governing Authority in terms of the Concession Agreement to review its action of disallowing part of royalty as cost.
- (ii). The Minutes of the Court Order dated 5 May 2008 indicate the NSICT desire to approach the Ministry for consideration of the royalties paid by them to JNPT. The Authority has been vested with powers under the MPT Act for determination of tariff. It has also notified guidelines for tariff regulation from time to time.
- (iii). The Authority is requested to review the position arising from our tariff application and its Order of April 2006 which had a detrimental effect and hardship to NSICT from a 'Change of Law'

8. On a preliminary scrutiny of the proposal it is found that additional information and clarification are required from NSICT on various points. We have sought additional information/ clarifications from NSICT. The NSICT has responded vide its letters dated 4 July 2008, 8 July 2008 and 29 July 2008. The additional information/ clarifications sought by us and the response of NSICT are summarized and tabulated below:

Sr. No	Information/ clarification sought by us	Response of NSICT
(A).	General:	
(i).	The revised tariff guidelines stipulate that tariff should be linked to benchmark of the levels of productivity. The NSICT has stated that it has set new benchmarks for productivity. NSICT to indicate benchmark levels of productivity, which should be included in the Scale of Rates as conditionalities governing the respective tariff items.	The benchmark level of productivity considered by NSICT in the proposed SOR is 20 moves per hour, as committed in the LA.
(ii).	NSICT has stated that its pricing strategy is performance based apart from cost based. NSICT to bring out the impact of the anticipated improvement in performance on the unit price.	The tariff application is based on the cost plus approach as specified in the March 2005 guidelines. NSICT intends to use the pricing strategy of performance based contracts with its customers as specified in Clause 5.9 of the March 2005 guidelines.
(iii).	NSICT to furnish the actual traffic and income / expenditure for the period January 2008 – June 2008 in the prescribed format for the cost statement. The estimates for the remaining period of 2008 may be adjusted accordingly with corresponding changes in the estimates for the succeeding years.	NSICT has achieved a volume of 762142 TEUs during the period January 2008 to June 2008. The cost estimates for the full year are in line with the details submitted by NSICT in its tariff proposal.
(iv).	NSICT to furnish a copy of audited accounts for year 2007.	NSICT has furnished a copy of audited accounts for the year 2007.
(v).	The cost statements considered in the Order dated 7 November 2000, 22 July 2005 and 7 March 2006 are on financial year basis. The cost statements furnished now by NSICT for review of its tariff are on calendar year basis. The NSICT to furnish alternate set of cost statements on financial year basis for the years 2000-01 to 2010-11.	As per the general instructions in the tariff revision format prescribed by the Authority, while filing the tariff proposal, the yearly details should pertain to the accounting year followed by the respective terminal i.e. April to March or January to December or as the case may be. Based on the above, NSICT has adopted calendar year as a period of reviewing data. NSICT's statutory year end as per the Companies Act is December ever since it commenced its commercial operations.
(B).	Financial / Cost position of NSICT from the year 2000 to 2004.	
(i).	In the Order dated 22 July 2005, an estimated additional surplus of Rs.473.44 Crores after admissible cost and permissible return was assessed to have accrued to the NSICT during the years 2000-01 to 2004-05. 50% of Rs.473.42 Crores is required to be set	The reasons for not adjusting the surplus of the previous years is summarized below: (i). The retained earnings arise from over utilisation/ excess utilisation of capacity, which has been done to facilitate and accommodate trade growth. The 50% adjustment as per Clause 2.1.3 has a disincentive to the operator to increase his asset

	off during a period of five years from 2005-06 to 2009-10 as stipulated in paragraph No. 10 (xii) of Order dated 22 July 2005. The NSICT has not adjusted the additional surplus accrued to it prior to the year 2005 on the ground that there was no concept of excess return prior to 31 March 2005. 50% of the estimated additional surplus of Rs.473.44 Crores estimated to have accrued to the NSICT during the period 2000-01 to 2004-05 was considered for adjustment in the revised tariff in accordance with Clause 2.13 of the revised tariff guidelines. An amount of Rs.142 Crores has been set off in the cost statements for the years 2005-06 to 2007-08 in the tariff Order dated 22 July 2005. The NSICT has not considered the balance amount of around Rs. 95 Crores, subject to actuals, for set off during the year 2008-09 to 2009-10.	utilisation. (ii). If NSICT were to operate at the assessed capacity, then the trade would pay Rs.5000/- per TEU resulting in an excess outflow by trade of Rs.135 crores per annum and would have also limited the ability to increase the EXIM trade. The government has benefited from the revenue through increase in commerce, vessel related charges, royalty payment and growth in EXIM business. Shipping lines have also been benefited by deployment of larger vessels with lower scale of economy, faster turn around time etc. Though every one has benefited from NSICT's over utilisation, NSICT has been penalized through adjustment of gains from over utilisation. This cannot be said to be a fair position. (iii). Clause 2.4.1 also deal with retention of gains, cost reduction and not with retention of gains from over utilisation of capacity. (iv). The adjustment of retained earnings is not in line with the bid conditions or with tariff setting process followed during the bid submissions. (v). NSICT should be allowed to retain the complete gains from over utilisation of capacity. Moreover, there is no prohibition in the guidelines from NSICT retaining the same.															
(ii).	NSICT to note that the estimated additional surplus of Rs.473.42 Crores does not take into account the benefit continued to accrue to the NSICT from April 2005 till the implementation of the Order dated 22 July 2005 (3 September 2005). In this regard, paragraph No. 10(xii) of Order dated 22 July 2005 may be referred to.	The rationale for not adjusting the surplus is given above.															
(iii).	As per Clause 2.8.1. of the revised tariff guidelines, in those cases where the bidding process was finalized before 29 July 2003, royalty / revenue share payable by the private operator to the landlord port is allowed as an admissible cost for tariff computations subject to maximum of the next highest bidder. The LA entered into between NSICT and JNPT was signed on 3rd July 1997. The royalty amount payable by NSICT is to be taken at the level of 69.50% for the purpose of tariff computations. In this regard, paragraph 15 and 18 of the tariff Order dated 7 March 2006 may be referred to. Considering the royalty payment upto the quote of the second highest bidder, the actual additional surplus may be worked out for the years 2005 to 2007 which may be set off in the next tariff cycle commencing from the year 2008 as stipulated in paragraph No. 10(xvi) of the tariff Order dated 22 July 2005.	(i). There is no dissent that royalty is a cost. It was only because of the royalty, that NSICT was given right to construct and operate the facility. The bid conditions did not disallow inclusion of royalty in computation of tariff. Even the current allowance of 2nd highest royalty is not line with bid conditions. TAMP in all its Orders except the March 2006 Order have allowed complete royalty in computation of tariff. (ii). A comparison of the royalties between NSICT and 2nd highest bidder is as below: <table border="1"> <thead> <tr> <th>Particulars</th><th>NSICT</th><th>2nd highest bidder</th></tr> </thead> <tbody> <tr> <td>NPV of royalty quoted (Rs. In crores)</td><td>312.00</td><td>225.00</td></tr> <tr> <td>Volume guaranteed (in Million TEUs)</td><td>15.25</td><td>16.60</td></tr> <tr> <td>Total Royalty (Rs. In crores)</td><td>4039.00</td><td>4345.00</td></tr> <tr> <td>Average royalty per TEU (Rs.)</td><td>2601.00</td><td>2617.00</td></tr> </tbody> </table> (iii). As per the Ministry's Order no. PR/14019/C/2002-PG has clearly stated that the position of royalty being not factored in, is to be clearly indicated in the bid documents, while inviting bids. No conditions regarding disallowance of full or	Particulars	NSICT	2 nd highest bidder	NPV of royalty quoted (Rs. In crores)	312.00	225.00	Volume guaranteed (in Million TEUs)	15.25	16.60	Total Royalty (Rs. In crores)	4039.00	4345.00	Average royalty per TEU (Rs.)	2601.00	2617.00
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	The NSICT to furnish revised cost statements for the years 2005 to 2010 reckoning with the position brought out above.	part royalty was there in the JNPT's invitation of bids. (iv). Clause 2.8.1 of the guidelines goes against the basic tenets of the bid conditions and results in change of law. This adversely affects NSICT's right to operate the facility. As per the said guideline, royalty will be taken into account as a cost in order to avoid likely loss to the operator. By disallowing part of royalty, loss does occur. Hence if loss arises, full royalty is to be allowed. (v). It may be incorrect to use the NPV of the cash flow to the port over the licence period for determination of quantum of royalty paid. Such a method results in a loss to the operator. (vi). As per Clause 2.8.1, royalty shall be subject to maximum amount quoted by the next lowest bidder. The amount quoted by the next lowest bidder over the licence period was Rs.4345 crores as against Rs.4039 crores by NSICT. The average royalty per TEU of the next lowest bidder works out to Rs.2617/- as against Rs.2601/- of NSICT. Hence full royalty paid by NSICT must be allowed. There can be no other interpretation of the said guideline and hence the position with regard to royalty adopted by TAMP in March 2006 cannot be adopted.
(iv).	The NSICT to furnish the cost statements for the years 2000 to 2004 based on actuals along with audited annual accounts for the respective years.	Clause 3.1.1. of the guidelines require that the tariff fixation proposals be formulated in accordance with the guidelines and in formats prescribed by TAMP. Accordingly, NSICT has submitted the proposal in the prescribed format. (NSICT has furnished the audited accounts for the year ending December 2000 to December 2004.)
(v).	Estimated Technical Services Fee (TSF) was admitted as an item of cost for the years 2005-06 to 2007-08 in the suo motu tariff Order of 2005 on the presumption that the NSICT will be in a position to furnish the relevant Income Tax assessment Order to establish "arms length relationship" of the TSF payment made to its promoter company. Paragraph No. 10(x) of Order dated 22 July 2005 may be referred to in this regard. Therefore, the NSICT may furnish the relevant IT assessment order to establish "arms length relationship" of the TSF payments made to the promoter company for the years 2005, 2006 and 2007.	TSA fee paid is allowed by the Income Tax Officer while computing the income tax liability for the Assessment Year 2002-03. A copy of the assessment Order is furnished. Final assessment for subsequent years is not complete. Returns filed justifying arms length relationship are attached.
(C).	<u>Comparison of actuals vis-à-vis estimates:</u>	
	Clause 2.13 of the revised tariff guidelines requires this Authority to review the actual physical and financial performance at the end of the prescribed tariff validity period. Flowing from this guideline, the private	Prior to the March 2005 guidelines, there were no norms for adjustment of surplus. Hence this is not applicable. Also, a plain reading of clause 2.13 of the guidelines show that the actual physical and financial performance can be reviewed if the projections were

	terminal operators are required to furnish the requisite details in the prescribed format. The NSICT to furnish the requisite details in the prescribed format (Form – 7).	relied upon at time of fixing the prevailing tariff. Since the last revision was by Order of November 2000 and covered a period upto March 2002, TAMP has not relied upon projections after March 2002 and hence no adjustment can be made. Since no tariff projection was done for this period, NSICT has not prepared the said statement and provided the actual figures. Also, the said guideline is not applicable, as the gains arise on account of over utilisation of capacity.																				
(D).	Financial / Cost Statements:																					
(i).	The aggregate of operating income and other income furnished by NSICT in its Cost statement for the years 2005 to 2007 do not match with the income figures reflected in the Annual Accounts of the respective years. The operating income shown in the Cost statements is on a lower side as compared to the Annual Accounts. The NSICT to reconcile the difference and furnish a reconciliation statement in this regard.	(The NSICT has furnished the Reconciliation statement for the years 2005 to 2007. The difference in operating income is mainly on account of exclusion of Interest income by NSICT in its cost statements.)																				
(ii).	The operating cost including overheads furnished in the Cost statement for the years 2005 to 2007 do not match with the expenditure figures reflected in the Annual Accounts of the said years. The NSICT to reconcile the difference and furnish a reconciliation statement.	The NSICT has furnished the Reconciliation statement for the years 2005 to 2007. The difference in operating cost is mainly on account of exclusion of Interest & finance charges by NSICT in its cost statements.																				
(iii).	<u>Capacity:</u> The optimum capacity of 11.00 lakh TEUs worked out by the NSICT appears to be based on the volume reportedly achieved by the adjacent container terminal of the JNPT for the year 2006. The NSICT has also drawn a reference to the upfront tariff setting guidelines for PPP Projects at the major ports in support of its approach adopted in determination of the optimum capacity. In term of Clause 1.3.2. of the guidelines for upfront tariff setting for PPP Projects at the major ports notified by this Authority in February 2008 in compliance of the policy direction issued by the Government of India, upfront tariff setting guidelines are not applicable to the existing private terminals. The capacity of the adjacent terminal may not be a reference point to determine the capacity of the NSICT.	TAMP in its general revision Order of JNPT (2006) and GTIPL (2006) decided capacity for the said terminals at 15.40 lakh TEUs and 13.30 lakh TEUs. The quay length and yard area of JNPT, GTIPL and NSICT are given below: <table><tr><td></td><td>JNPT</td><td>GTIPL</td><td>NSICT</td></tr><tr><td>Quay Length (metres)</td><td>1125</td><td>712</td><td>600</td></tr><tr><td>Yard area (hectares)</td><td>55</td><td>40</td><td>28</td></tr><tr><td>Capacity (lakh TEUs)</td><td>15.40</td><td>13.30</td><td>11.00</td></tr><tr><td>Utilisation</td><td>64.00%</td><td>83.17%</td><td>100%</td></tr></table> Guideline 2.9.10 categorically states that the method of determining the designed capacity of Ports will be standardized. This has been done through the 2008 guidelines, where the normative cost committee has determined the optimal capacity of the terminal based on its physical parameters. TAMP cannot apply different parameters for calculation of optimal/ design capacity of a facility. It would be incorrect to interpret clause 2.9.10 by considering the actual throughput handled by NSICT as its capacity. The Authority has followed such an approach in its earlier Orders of NSICT, JNPT and GTIPL. If such an interpretation was followed, then the actual throughput would equal to capacity and thus the objective of the guideline to provide maximum permissible return for 60% capacity utilisation would be infructuous. Based on the precedent Orders of TAMP and the Optimal Capacity model, the quay capacity for		JNPT	GTIPL	NSICT	Quay Length (metres)	1125	712	600	Yard area (hectares)	55	40	28	Capacity (lakh TEUs)	15.40	13.30	11.00	Utilisation	64.00%	83.17%	100%
	JNPT	GTIPL	NSICT																			
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		NSICT works out to 11.90 lakh TEUs and yard capacity works out to 10.20 lakh TEUs. The lower among the two (10.20 lakh TEUs) needs to be adopted. Yet, NSICT has adopted 11 lakh TEUs as its optimal capacity.
(iv).	<u>Traffic:</u> Though the NSICT has handled around 14.72 lakh TEUs during the year 2007, it has estimated the traffic at 11 lakh TEUs each for the years 2008 to 2010 on the ground that the capacity of the terminal is around 11 lakh TEUs. But, the traffic projections should be in accordance with stipulation made in Clause 2.5.1. of the revised tariff guidelines. The NSICT to review the traffic forecast for the years 2008 to 2010 in line with the tariff guideline and furnish the reviewed traffic forecast with basis.	Guideline 2.9.10 categorically states that the method of determining the designed capacity of Ports will be standardized. This has been done through the 2008 guidelines, where the normative cost committee has determined the optimal capacity of the terminal based on its physical parameters. TAMP cannot apply different parameters for calculation of optimal/ design capacity of a facility. It would be incorrect to interpret clause 2.9.10 by considering the actual throughput handled by NSICT as its capacity. The Authority has followed such an approach in its earlier Orders of NSICT, JNPT and GTIPL. If such an interpretation was followed, then the actual throughput would equal to capacity and thus the objective of the guideline to provide maximum permissible return for 60% capacity utilisation would be infructuous. Based on above, where capacity as per norms is lower than traffic estimates, capacity is considered as volume projections.
(v).	<u>Operating Income:</u> (a). Note 3 to Form 2B of the tariff filing forms prescribed for private terminals requires the operator to provide detailed computation of income with reference to the estimated traffic. However, no such computation has been furnished by NSICT. NSICT to furnish detailed computation of income with reference to the estimated revised traffic and the existing Scale of Rates as well as the proposed Scale of Rates for all the years under consideration.	The Form 2B gives details of revenue earned for each category of containers. Since the tariff for the years 2005, 2006 and 2007 were different, the amount cannot be correlated directly with Form 2A relating to traffic.
	(b). This Authority vide Order dated 28 June 2007 approved the proposal of JNPT to levy an additional amount of Rs. 400 per TEU with retrospective effect from 15 February 2007 towards Inter Terminal Rail Handling Operation (ITRHO) of ICD containers moved by rail at the terminals of JNPT, including NSICT. In the absence of break-up of income estimations furnished by the NSICT, it is not clear whether the income arising out of ITRHO has been considered in the actual income for the year 2007 and in the estimates for the subsequent period. It is also observed that the NSICT has not included levy of ITRHO in the proposed draft Scale of Rates. The NSICT to furnish this additional income accrued to the NSICT for the year 2007 and the estimates for the subsequent period.	The income earned from the ITRHO for the year 2007 is Rs.14.74 crores. Based on the same trend, income is already considered under miscellaneous income for the years 2008 to 2010. Since the existing ITRHO arrangement puts additional burden on all ICD containers for accommodating the rail operators, NSICT has prescribed a shift charge (point (5) in Section 11 – Miscellaneous Charges) to be applied for all boxes handled on mixed trains received at NSICT. If the Authority decides to continue with the present arrangement, it is requested that ITRHO charges be prescribed by TAMP in the NSICT SOR with the increase based on the current NSICT proposal.

	Necessary provision to be included in the draft Scale of Rates.																																	
	(c). The NSICT proposal does not explicitly state the exchange rate adopted by it for estimation of income arising from the dollar denominated tariff. The NSICT is requested to furnish the exchange rate adopted by it to estimate the operating income.	The exchange rate considered is Rs.40.34 per US\$. The exchange rate is applicable for storage/ reefer income.																																
	(d). Apart from the general increase in rate proposed, the NSICT has also proposed introduction of some new services. The year wise income estimated to arise from the new services may be quantified item wise and furnished for all the years under consideration with basis of estimation of income.	(The NSICT has furnished a statement showing the income arising out of the miscellaneous services for the years 2008 to 2010.)																																
	(e). NSICT may furnish a note containing a detailed dwell time analysis with reference to the data furnished by it in Form 2 - B.	(The NSICT has furnished a statement showing the monthly dwell time for the ICD, local and TP containers for the years 2006, 2007 and upto June 2008.) The average dwell time for the ICD, local and TP containers is tabulated below: <table><tr><td></td><td>2006</td><td>2007</td><td>Upto July 2008</td></tr><tr><td>ICD</td><td></td><td></td><td></td></tr><tr><td>- Import</td><td>5.0</td><td>3.3</td><td>4.9</td></tr><tr><td>- Export</td><td>5.4</td><td>5.0</td><td>4.9</td></tr><tr><td>Local</td><td></td><td></td><td></td></tr><tr><td>- Import</td><td>1.6</td><td>1.3</td><td>1.7</td></tr><tr><td>- Export</td><td>3.8</td><td>3.9</td><td>4.1</td></tr><tr><td>TP</td><td>3.8</td><td>5.3</td><td>4.3</td></tr></table>		2006	2007	Upto July 2008	ICD				- Import	5.0	3.3	4.9	- Export	5.4	5.0	4.9	Local				- Import	1.6	1.3	1.7	- Export	3.8	3.9	4.1	TP	3.8	5.3	4.3
	2006	2007	Upto July 2008																															
ICD																																		
- Import	5.0	3.3	4.9																															
- Export	5.4	5.0	4.9																															
Local																																		
- Import	1.6	1.3	1.7																															
- Export	3.8	3.9	4.1																															
TP	3.8	5.3	4.3																															
(vi).	<u>Operating Cost:</u> (a). <u>Operating and Direct Labour:</u> The average cost per employee for the year 2008 is estimated to increase by around 9% as compared to the relevant figure for the year 2007. The estimated increase in average cost per employee for the year 2008 over the year 2007 to be justified. A detailed working for estimations of operating & direct labour cost for all the years under consideration to be furnished.	The long-term settlement with the Union in 2004 has expired in March 2008. During the last settlement for a period of 4 years, NSICT had agreed to a revision of 20% during the 1 st year and 4.5% each during the next 3 years. For the current settlement, NSICT is expecting a higher outgo in the first year of settlement. The increase over the 3-year period is in line with the inflation factor applicable in April 2008. Due to the present increasing trend in inflation, the actual outflow is likely to increase significantly. The Authority is requested to not make any adjustment to the proposed estimates. (The NSICT has furnished workings for calculation of Operating & Direct Labour.)																																
	(b). <u>Maintenance Labour:</u> (i). The estimated increase in average cost per employee of around 7% each during the years 2008 to 2010 as compared to the respective previous years to be justified. A detailed working for the estimated maintenance labour cost for all the years under consideration to be furnished. (ii). The NSICT has estimated an	Incase of Engineering Staff, there has been a significant employee turnover during 2007. NSICT is likely to get replacement at a marginally higher wage rate as compared to the present wage rate. Hence an increase of 7% is projected. The increase in head																																

	increase in the number of employees during the year 2008 as compared to the year 2007. The increase in the number of employees to be justified when the NSICT has drawn up its cost statements for a reduced traffic level for the year 2008 as compared to the year 2007.	count over 2007 has been considered for filling vacancies. In view of present increasing trend in inflation, the actual outflow is likely to increase significantly. The Authority is requested to not make any adjustment to the proposed estimates.															
	(c). <u>Equipment running cost:</u> (i). The reason for around 8% increase in the per TEU consumption of electricity estimated for the year 2008 as compared to the actual electricity consumption for the year 2007 to be clarified. (ii). The NSICT has applied an escalation factor of around 5% to arrive at per TEU power consumption for the years 2009 and 2010. In this regard it may be relevant to note that escalation factor may apply only for the estimation of unit cost of electricity. (iii). Please explain the reason for around 10% increase in the unit cost of electricity estimated for the year 2008 as compared to the unit cost for the year 2007. Please justify the escalation factors considered and furnish the actual unit cost of electricity for the year 2008.	The units consumed per TEU during the years 2005 to 2007 was 14, 13 and 11 units respectively. Hence an average of 12 units per TEU has been considered. This is essentially for consumption of QC, reefer containers, yard / office lighting which has no connection with volume. The deviations are mainly on account of container load mix, reefer consumption and weather conditions. The escalation of unit cost of electricity is considered as 10% in line with the previous tariff cycles. The electricity price includes fuel surcharge. The unit cost of electricity during the years 2005 to 2007 has been Rs.4.99, 5.72, 6.01 respectively. The average increase works out to 10.66%. (NSICT has furnished a copy of electricity bill for April 2008)															
	(d). <u>Royalty / Revenue share:</u> (i). The NSICT has stated in its proposal that this Authority allowed full royalty as pass through in tariff Order of December 1998. It may be noted that when the NSICT was about to commence its operations in January 1999, it approached this Authority in June 1998 to fix its tariff. This Authority approved the proposal of NSICT to adopt the (then) existing tariff of JNPT vide Order dated 5 December 1998. Since the NSICT was only permitted to adopt the tariff of JNPT in 1998, no cost plus analysis was made and, therefore, the question of allowing royalty as pass through in 1998 did not arise.	(i). There is no dissent that royalty is a cost. It was only because of the royalty, that NSICT was given right to construct and operate the facility. The bid conditions did not disallow inclusion of royalty in computation of tariff. Even the current allowance of 2nd highest royalty is not in line with bid conditions. TAMP in all its Orders except the March 2006 Order have allowed complete royalty in computation of tariff. (ii). A comparison of the royalties between NSICT and 2nd highest bidder is as below: <table border="1"> <thead> <tr> <th>Particulars</th><th>NSICT</th><th>2nd highest bidder</th></tr> </thead> <tbody> <tr> <td>NPV of royalty quoted (Rs. In crores)</td><td>312.00</td><td>225.00</td></tr> <tr> <td>Volume guaranteed (in Million TEUs)</td><td>15.25</td><td>16.60</td></tr> <tr> <td>Total Royalty (Rs. In crores)</td><td>4039.00</td><td>4345.00</td></tr> <tr> <td>Average royalty per TEU (Rs.)</td><td>2601.00</td><td>2617.00</td></tr> </tbody> </table>	Particulars	NSICT	2 nd highest bidder	NPV of royalty quoted (Rs. In crores)	312.00	225.00	Volume guaranteed (in Million TEUs)	15.25	16.60	Total Royalty (Rs. In crores)	4039.00	4345.00	Average royalty per TEU (Rs.)	2601.00	2617.00
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(ii). Since the July 2005 tariff Order was a suo motu review of tariff of NSICT, adjustment only in respect of traffic was made. In this regard paragraph 10(ix)(c) of Order dated 22 July 2005 may be referred to. (iii). The NSICT has claimed full royalty of Rs. 565.60 Crores as cost for the years 2008 to 2010. It may be noted that Clause 2.8.1. of the traffic guideline permits the royalty payment as cost to the extent of the quote of the second highest bidder.	(iii). As per the Ministry's Order no. PR/14019/C/2002-PG has clearly stated that the position of royalty being not factored in is to be clearly indicated in the bid documents, while inviting bids. No conditions regarding disallowance of full or part royalty was there in the JNPT's invitation to bidders. (iv). Clause 2.8.1 of the guidelines goes against the basic tenets of the bid conditions and results in change of law. This adversely affects NSICT's right to operate the facility. As per the said guideline, royalty will be taken into account as a cost in order to avoid likely loss to the operator. By disallowing part of royalty, loss does occur. Hence if loss arises, full royalty is to be allowed. (v). It may be incorrect to use the NPV of the cash flow to the port over the licence period for determination of quantum of royalty paid. Such a method results in a loss to the operator. (vi). As per Clause 2.8.1, royalty shall be subject to maximum amount quoted by the next lowest bidder. The amount quoted by the next lowest bidder over the licence period was Rs.4345 crores as against Rs.4039 crores by NSICT. The average royalty per TEU of the next lowest bidder works out to Rs.2617/- as against Rs.2601/- of NSICT. Hence full royalty paid by NSICT must be allowed. There can be no other interpretation of the said guideline and hence the position with regard to royalty adopted by TAMP in March 2006 cannot be adopted now. In July 2005 Order, the Authority had specifically addressed the issue of royalty and rightly chose not to consider second highest royalty as part of costs.
(e). <u>Equipment Hire Charges:</u> With reference to the estimated equipment hire charges, NSICT to furnish the following: (i). The workings for estimated equipment hire charges for the years 2007 to 2010. (ii). The list of equipments taken on hire/proposed to be taken on hire validated with documentary evidence.	(NSICT has furnished a statement for the estimated equipment hire charges for the years 2008 to 2010. No workings are furnished. It appears that the equipment hire charges estimated for 2008 to 2010 are for the volume of 11 lakh TEUs each for the said three years. The estimated equipment hire charges include JNPT-ICD handling charges under ITRHO. NSICT expects drop in ICD volume from 2008 once shifting charges proposed by it are introduced. It has also furnished two contract copies entered into with private parties for the hire of ITVs and TTs). One contract relates to movement of containers from ICD to yard and vice versa and shifting within the yard. Another contract relates to movement of containers from wharf to yard and shifting within the yard.
(f). <u>Other expenses:</u> (i). NSICT may list out the items considered with cost details under	The "other expenses" comprises of cost of casual labour for lashing and supervision, staff welfare

	"other expenses". (ii). There is around 15% increase in the other expenses for the year 2007 as compared to the year 2006. The reason for this increase in expenditure may be clarified.	expenses, general operations and management fees. The increase is on account of spending on staff function, medical examination etc.
	(g). <u>Technical Services Fee:</u> The reasonableness of technical services fee estimated in the cost statement for all the years under consideration applying the yardstick of "arms length relationship" as required under clause 2.8.2. of the revised tariff guidelines to be established. A copy of the latest Income Tax assessment order for payment of technical services fee may be furnished.	(NSICT has furnished a copy of the final assessment order done for the assessment year 2002-03 where there is no disallowance towards technical service fee)
	(h). <u>Depreciation:</u> NSICT has proposed additions to the gross block of fixed assets. There are also deletions from the gross block of fixed assets. NSICT to furnish detailed workings for the estimated depreciation for all the years under consideration bearing in mind clause 2.7.1. of the revised tariff guidelines. The rates of depreciation adopted may also be furnished giving reference to provisions of the Companies Act or provisions of concession agreement, as the case may be.	Depreciation is provided using straight line method as per the useful life of the assets estimated by the management or at the rates prescribed in the Companies Act whichever is higher. Depreciation on additions / deletions of fixed assets made during the year is provided on pro-rata basis from / to the date of such additions / deletions. Setup cost is capitalised as buildings and is amortized over a period of 25 years. (The NSICT has furnished the rates of depreciation adopted by it for the different type of fixed assets)
	(i). <u>Overheads:</u> (i). NSICT to list out the items of expenditure considered under the Management & Administration overheads. (ii). NSICT to justify the estimated increase of 19% in Management & Administration overheads for the year 2008 than that of the year 2007. (iii). The items considered under 'General Overheads' may be listed out.	NSICT has furnished a statement showing the management and administration overheads which comprises of salary to the management staff. The statement shows the number of management staff and average salary per person from the year 2005 to 2010. The average salary increase given to management staff in January 2008 was approximately 12% over the last year. The wage bill for the year 2007 had only 34 employees as against the actual staff strength of 36 in 2006. The estimate for the year 2008 considers the cost of vacancies arisen in 2007 and filled in 2008. "General Overheads" comprises of bank fees, general office expenses, stationary, communication etc.
	(j). <u>Others:</u> The NSICT has shown actual expenditure captioned as "others" to the tune of Rs. 22.90 Crores, 14.17 Crores and 13.08 Crores for the years 2005 to 2007, respectively. It has also estimated an amount of Rs. 15.18 Crores, Rs. 16.44 Crores and Rs. 17.77 Crores for the years 2008 to 2010, respectively. In this context, NSICT to clarify / furnish the following:	

	(i). A list of the items considered under “others”. (ii). There is an increase of around 16% in the estimated expenditure for the year 2008 over the actual for the year 2007. The NSICT has considered around 8% hike in the estimates for the subsequent years. NSICT to justify the estimates for the years 2008 to 2010 with justification for the hike considered.	Items considered under “others” and expenses are as follows: <table><tr><th rowspan="2">Description</th><th colspan="6">Years</th></tr><tr><th>2005</th><th>2006</th><th>2007</th><th>2008</th><th>2009</th><th>2010</th></tr><tr><td>Property Cost</td><td>1306.46</td><td>1148.15</td><td>762.47</td><td>872.41</td><td>966.03</td><td>1064.33</td></tr><tr><td>Travel and Accommodation</td><td>116.02</td><td>117.25</td><td>123.50</td><td>163.86</td><td>172.06</td><td>180.66</td></tr><tr><td>Marketing & Promotion</td><td>14.53</td><td>10.07</td><td>66.95</td><td>53.15</td><td>55.80</td><td>58.59</td></tr><tr><td>Professional Services</td><td>602.08</td><td>91.88</td><td>151.95</td><td>136.02</td><td>142.82</td><td>149.96</td></tr><tr><td>IT</td><td>251.06</td><td>49.83</td><td>202.81</td><td>292.95</td><td>307.59</td><td>322.97</td></tr><tr><td>Total</td><td>2290.15</td><td>1417.18</td><td>1307.68</td><td>1518.39</td><td>1644.30</td><td>1776.51</td></tr></table> During the year 2007, NSICT did not incur Annual Maintenance charges for the terminal operations software since the software was not supported by NAVIS. NSICT has upgraded the terminal operations software during the first quarter of 2008. The year 2008 considers the annual maintenance charges amounting to Rs.70/- lakhs per annum contribution to the increase.	Description	Years						2005	2006	2007	2008	2009	2010	Property Cost	1306.46	1148.15	762.47	872.41	966.03	1064.33	Travel and Accommodation	116.02	117.25	123.50	163.86	172.06	180.66	Marketing & Promotion	14.53	10.07	66.95	53.15	55.80	58.59	Professional Services	602.08	91.88	151.95	136.02	142.82	149.96	IT	251.06	49.83	202.81	292.95	307.59	322.97	Total	2290.15	1417.18	1307.68	1518.39	1644.30	1776.51
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	(k). <u>Capital employed:</u> (i). <u>Fixed Assets:</u> (a). <u>Gross Fixed Assets:</u> The value of gross fixed assets at the beginning of the year 2005 as reflected in the Cost statement does not include the value of furniture and office equipment amounting to Rs.301.14 lakhs as shown in the fixed assets schedule forming part of annual accounts of NSICT. (b). <u>Additions to gross block:</u> The additions to the gross block of fixed assets proposed for the years 2008 to 2010 appears towards replacement of the existing assets like ITVs, Terminal Operating Software & hardware, reachstaker / empty handler, office equipment / furniture etc., and civil work for Customs Office and ICD Office etc., In this regard, NSICT to furnish / clarify the following: (i). Documentary evidence like purchase order / bills paid relating to the assets proposed to be added during the year 2008. (ii). The evidence of action taken to procure assets to be added during the years 2009 and 2010. (iii). The details of additions to gross block furnished by NSICT in Form – 4B are incomplete. Please detail the impact of the additional investment on the following aspects: (a).Reduction in unit operating cost (b). Additional traffic (c).Improvement in operational efficiency. (d).Additional capacity arising out of replacement of assets	The value of Gross Fixed Assets including the value of furniture and fixture is included and corrected. However there is no change in capital employed or form 3A. (i). (NSICT has furnished the details of the expenditure incurred upto May 2008 for replacement of assets supported by documents.) (ii). The reachstakers/ Empty Handlers purchased by NSICT in the year 2001 are due for replacement in 2009. Since it will complete its useful life the replacement is budgeted for. (iii). The other assets amount to Rs.17 lakhs estimated towards replacement of office equipment, furniture etc., for year 2009 and 2010, which is just 0.03% of capital employed and does not require prior action. The total replacement proposed is only Rs. 20.80 Crores as against existing capital employed of Rs. 470 Crores, which is only 5% over a three-year period. The year wise explanation is given below:																																																							

	(iv). The treatment given in the cost statements in respect of the residual value of the assets proposed to be replaced. (c). NSICT confirm that the assets to be replaced are deleted from the capital employed estimated for the years 2008 to 2010. (d). NSICT to note that only completed and commissioned assets should alone be counted for capital employed. A confirmation in this regard to be furnished.	<u>2008</u> (i). <u>Tractor-Trailers</u>. At present, NSICT has 4 No. of TTs which are due for replacement. These are being used in the Engineering for delivery of fuel to RTG, Shifting spreader for replacement etc. This does not add to capacity of the terminal. (ii). <u>Hardware/Software</u>: The terminal operating software has been operating for more than 7 years. The existing software version used by NSICT is not supported by the vendor. Life cycle of a software is not more than five years and hence replaced. This is required for very operation of terminal and does not add any capacity. (iii). <u>Customs Office</u>: This is basically for customs seating arrangement in the terminal <u>2009</u> (i). <u>Reach-stacker/ empty Handler</u>: At present, NSICT has 3 No. of Reach-staker and 2 Empty Handlers which were purchased in 2000 – 2001 and are due for replacement. They are basically deployed at ICD for handling trains and ITHRO activity. These equipments help in faster turn around of trains and do not increase the Capacity of terminal on the Wharf. These are supporting equipment for us to perform better. The software/ hardware replacement does not have residual value. NSICT has not considered scrap value since it is assumed that the amount realized on disposal will be in line with its written down value. NSICT has confirmed that the assets replaced are deleted from the capital employed. Further, the Return given on Capital employed is on net fixed asset, which is after depreciation. It is confirmed that only completed and commissioned assets are counted for capital employed.
	(ii). <u>Deletions from the Gross Block</u>: (a). Form 4 – B relating to details of additions to gross block contained in the proposal filed by NSICT shows that the proposed investment during the years 2008, 2009 and 2010 are for replacement of existing assets. While the NSICT has considered deletion of existing assets from the gross block of assets for the year 2008, no such deletion of existing assets sought to be replaced by it during the year 2009 and 2010 are mentioned. Please clarify. (b). NSICT has proposed deletions in its gross block of assets in the year 2008. The treatment given in the cost statement to the anticipated profit or loss from sale of the assets deleted in the year 2008 may be explained.	Annex-14 to letter dated 4 July 2008 furnished by NSICT shows that the gross value of the assets proposed to be replaced during the years 2009 and 2010 are entirely offset by accumulated depreciation. The software / hardware replacement does not have residual value – NSICT has not considered scrap value since it is assumed that the amount realized on disposal will be in line with its written down value.

	(l). Working Capital:	
	(a). NSICT has claimed Sundry Debtors as a part of working capital for the years 2005 to 2007 at Rs.10.31 Crores, Rs.3.31 Crores, and Rs.9.43 Crores, respectively. Likewise, it has estimated Rs.9.53 Crores, Rs.9.62 Crores and Rs.9.72 Crores for the years 2008 to 2010, respectively. The above said sundry debtors balances are seen to be lower than the two months terminal charges payable by Indian Railways as mentioned in the cost statement. In this context, the NSICT to furnish bills/ documentary evidence to show that the Terminal Charges are payable by Railways to NSICT during the years 2005 to 2007. The workings for the estimated two months terminal charges payable by Indian Railways during the years 2008 to 2010 may be furnished.	The amount indicated towards outstanding for two months estimated income is not relevant as NSICT has considered debtors in line with past trend which is reasonable and lower than the norms specified in March 2005 guidelines. [Sundry Debtors claimed for the years 2006 and 2007 are found to be as per the values mentioned in the audited accounts for the respective years.]
	(b). Workings for the inventory comprising of capital spares inventory and other inventory shown as part of working capital for all the years under consideration keeping in view Clause 2.9.9 of the revised tariff guidelines.	The inventory is computed as per norms specified under 2.9.9 considering one year's average consumption of spares excluding fuel. [The components of current assets considered by NSICT are Sundry debtors, fuel & other and pre-payments.]
	(c). NSICT has not considered cash balance as part of working capital.	As per Clause 2.9.4 of guidelines, Cash is not to be considered as part of working capital calculation. Hence it is not considered.
	(d). The nature of pre-payments considered by NSICT as part of working capital may be intimated with workings for all the years under consideration.	Pre-payments comprise of advances to employees, suppliers, Pre-payment of rent and insurance, etc. (NSICT has furnished year wise breakup of the pre-payments for the years 2005 to 2010.)
E.	Scale of Rates:	
(i).	The definition for "NSICT PL" furnished at Section 1.2 of the draft Scale of Rates is incomplete.	The name may be corrected to Nhava Sheva International Container Terminal Private Ltd., a company incorporated in India, its successors and assigns.
(ii).	The proposed Section 2.7 deals with timing of payment by users. Section 58 of the Major Port Trusts Act, 1963 already contains a provision for timing of payments. Therefore, it may not be required to notify the proposed Section 2.7.	The purpose of including this clause is to ensure that the course of action to the defaulting party is clearly established. NSICT is a private terminal operator.
(iii).	The proposed note 2.8 (ii) governing levy of penal interest may be modified in line with clause 2.18.2 of the revised tariff guidelines and the rate of penal interest to be updated.	NSICT agrees that the rate applicable should be the rate of interest will be 2% above the Prime Lending Rate of the State Bank of India.
(iv).	In the proposed note 2.10, NSICT has stated that the proposed charges for handling of containers include the cost of rendering lashing/ unlashings services. NSICT to propose rebate	Ever-since operations, NSICT has not permitted the shipping lines to carry out any operations relating to lashing / unlashings or any other service inside the port premises due to safety and security reasons. In view of that we do not wish to

	based on cost of rendering lashing/unlashing services, when such services are not provided by the NSICT.	include any rebate structure in the published tariff.
(v).	With reference to the proposed Section 2.11, which governs levy of penalties for non-performance of contractual conditions by the NSICT / users, it may not be possible for this Authority to notify the proposed conditionality permitting unguided discretion to the NSICT to set contractual conditions for performance and penalties. Therefore, the NSICT is to furnish the datum for measuring efficiency, which will be incorporated as conditionality in the Scale of Rates for NSICT.	NSICT's scale of rates is based on average productivity of 20 moves per hour in line with concession agreement. The contractual conditions, which can be mutually agreed with the customer, will not have performance penalties exceeding 10% of published tariff.
(vi).	The additional services / facilities proposed to be provided to the users and the benefit of productivity improvements accruing to users justifying the proposed tariff hike to be listed out.	NSICT is not proposing any further improvement in productivity. The tariff increase is essentially originating from increase in royalty from Rs. 1,194 per TEU to Rs. 2,086 per TEU in July 2010.
(vii).	The NSICT to justify the unit rates in the draft Scale of Rates with reference to the cost of rendering the relevant services.	The unit rates are in line with the March 2005 guidelines and the existing NSICT tariff after considering proposed increase percentages.
(viii).	Clause 2.15 of the revised tariff guidelines stipulates that the users will not be required to pay charges for delays beyond the reasonable level attributable to the port. Flowing from this principle, the following provisions in the proposed Scale of Rates to be incorporated (a). Users will not be required to pay charges for delays beyond a reasonable level attributable to the NSICT. (b). In case vessel idles due to non-availability or breakdown of the shore based facilities of NSICT or any other reasons attributable to the NSICT, rebate equivalent to berth hire charges payable to JNPT accrued during the period of idling of vessel shall be allowed. (c). The users will not have to pay storage charges for the period during which NSICT is not in a position to deliver/ shift the containers when requested by the users.	NSICT agrees to the amendment. NSICT agrees to this, provided clause 2.11 as proposed by NSICT is incorporated in the tariff. NSICT agrees to the amendment.
(ix).	The NSICT is requested to list out separately the services proposed to be rendered for levy of rates proposed in Section 1 to 4 of the draft Scale of Rates.	NSICT's tariff under section 1 to 4 clearly indicates the activity for which the charges are levied under A, B, C and D.

(x).	(a). NSICT to explain the reason for dispensing with the existing sliding scale for handling transshipment containers and proposing single rate irrespective of the volumes. (b). The services proposed to be provided for transshipment containers may be listed.	The transshipment containers already enjoys 50% rebate as compared to normal containers. Since commencement of operations, no customer has qualified for the volume rebates over discounted tariff. The traffic projections are also based on same assumptions. In event if this rebate is maintained, any increase in transshipment volume will have significant increase in royalty payment by NSICT and disturb the entire financial projections of NSICT submitted in the tariff application. In order to avoid that, the rebates are not considered in the tariff.
(xi).	192% hike proposed for handling ODC for yard to CFS (sub-section B), yard to rail (sub-section C) and yard to truck (sub-section D) as compared to the rates proposed for identical operations of normal containers to be justified with a list of additional services proposed to be provided for ODCs.	The existing rates of NSICT are twice the rate of normal handling charge. The same ratio has been maintained. The reason for a higher charge for ODC box is that the time taken to handle the box at wharf/ yard is atleast three times more than the normal containers. Also it requires special devices like slings etc for handling.
(xii).	By Order dated 15 November 2000 revising the Scale of Rates of NSICT, provision for allowing rebates to users for carrying out various operations with their own arrangement were introduced in the Scale of Rates of NSICT. The reason for dispensing with the existing arrangement for giving rebate to the users to be explained.	Ever since the operations, NSICT has not permitted the shipping lines to carry out any operations inside the port premises due to safety and security reasons. Allowing outside parties to carry any operations within the terminal will also affect the productivity of the terminal. In view of that any rebate structure is not included.
(xiii).	The Note No. 1 proposed under Section – 7 may not be required as the definition of shut out cargo is already included as definition under Section– 1.	NSICT has withdrawn the Note-1 vide its letter dated 8.7.2008.
(xiv)	(a). The proposed charges for reefer monitoring and connection (Section – 8) may be reviewed in line with Clause 5.7.1. of the revised tariff guidelines, which stipulates unit of levy at 4 hourly unit basis. (b). The proposed charges for reefer monitoring and connection are also applicable for restow reefer containers. That being so, the reasons for proposing additional electricity charges on restow containers as proposed in the Note – 4 under Section - 8 are not clear.	These charges are associated to the infrastructure established. As per scale of rates the storage charges also are on 24 hours basis and the existing practice should be allowed to be continued. The present estimates of reefer monitoring and connections are based on 24 hours cycle. If change is made, the price increase required will have to be higher by at least 100% of existing rates to achieve the desired return This is in line with existing tariff statement notified by the authority and it clarifies that reefer monitoring charges are applicable to Restow containers also. [subsequently, the NSICT has withdrawn the Note-4 vide its letter dated 8.7.2008]
(xv).	(a). The proposed Note – 1 under Section 9 governing the commencement of storage period may be modified in line with Clause 5.8.1. and 5.8.2. of the revised tariff guidelines. (b). The NSICT has proposed first 7 days as free days for storage of ICD	The existing free days proposed are based on 24 * 7 operations. The income projections are based on these norms. If the storage period is modified in line with Clause 5.8.1 and 5.8.2, we request the Authority to reduce the free days by one more day from what is proposed. The responsibility of the trains at the terminal is not that of operator. It is the responsibility of the

	containers (Sl. No. 4 of Section 9 – Dwell time charges). However, the proposed conditionality No. 3 under Section 9 which governs free days and levy of storage charges appears to contradict the tariff item proposed at Sl. No. 4 of Section 9 – Dwell time charge.	lines as the lines have direct relationship. Accordingly free days of 7 days as recommended by Port will be available for ICD containers. Conditionality No. 3 specifies that in order to avail 7 days free period, the shipping lines have to submit the documents within 48 hours of arrival so that these containers can be properly planned. If required ICD documentation is not submitted within 48 hours of discharge of container, the benefit of 7 free days will not be available. Hence the statements are not contradicting. For sake of clarity the clause can be reworded as: “ In case of ICD container, if the documentation is submitted within 48 hours of date of landing of container, the storage period of 7 free days for loading the container on rail will be applicable, else storage charges shall be applicable from the day following the day of landing up to the date of loading / delivery of the container”.
	(c). The NSICT to explain the rationale behind prescribing storage charges for Over dimensional containers at 3 times the rate for normal containers. (Refer note 6 under Section – 10). The storage charges for over dimensional containers may depend on the actual number of ground slots the respective category of ODC occupies under respective slab structure proposed in Section 9. Review the proposed note 6.	NSICT has a very small container yard and hence the operations are hugely constrained by its size. ODC containers coming at NSICT occupy much more ground slots than a normal container. This greatly constrains operations and even though it occupies more than one ground slot, storage revenue on only one ground slot is chargeable. In order to eliminate this anomaly, NSICT had proposed that the storage charges be based on the actual number of ground slots the respective container actually occupies. Even though this was not there from inception, it is a serious constraint for us. ODC Containers also do not allow more than 1 high stacking of containers. NSICT has only proposed to charge for the no. of ground slots occupied at the ground level and has not proposed any charge for the slots lost above the ground level (as normally, containers are stacked 4-high). This principle of slots killed is also followed by shipping line when pricing ODC containers on board the vessel.
	(d). NSICT has prescribed a premium of 50% for storage of hazardous containers at note 7 under Section – 10. This note will be governed by clause 5.7.3 of the revised tariff guidelines, which prescribes a premium of 25% on the handling and storage charges for hazardous containers. (e). The dwell time charges proposed by the NSICT for storage of containers includes dwell time charges for empty containers. That being so, the proposed separate note No. 8 to govern levy of storage charges on empty “auction container” may not be necessary. The rationale behind the proposed note No. 8 to be explained.	Though the present estimates of hazardous containers storage are based on existing norms of 50% premium, change made in line with guidelines will affect the income projections. However since this volume is not very significant income projections, NSICT agrees to the authority’s suggestion. This is only a clarification in case of a container under auction where de-stuffing is done in the terminal and container changes status from loaded to empty container.
(xvi).	As regards the proposed charges for handling transshipment containers, it is	The process and the activity required to be carried out is specifically defined and for activities

	to be noted that in respect of a container discharged by the NSICT but loaded by the JNPT at its terminal the additional levy towards inter-terminal transfer of containers will be governed by the rates prescribed in the Scale of Rates of JNPT and not at the rates proposed by the NSICT.	undertaken by NSICT, NSICT scale of rates will apply.
(xvii).	(a). Each of the rates for the tariff items proposed under Section -11 (miscellaneous charges) to be justified with cost details (b). NSICT has proposed different rates (Sl. No. X of Section 11) for 20' and 40' for non-declaration / misdeclaration of hazardous containers. The rate proposed for 40' containers is at 1 ½ times of the rate proposed for a 20' container. The rate need not vary with reference to the size of the container for the purpose of levy of a charge for non-declaration / misdeclaration. The NSICT to consider to adopt the proposed rate for 20' containers as a rate for non-declaration / misdeclaration of a container of 40' also. (c). NSICT has proposed a new charge for opening one door of the container. The existing practice in this regard and the charges levied, if any, giving reference to authorization of this Authority to be intimated.	NSICT do not maintain activity based costing and hence this cannot be provided. Non declaration and mis-declaration of containers is risk for terminal operations. This requires shifting of container to the appropriate slots and transportation and extra lifts. Hence the charges proposed for 40' container at 1.5 times the 20' container is in line with clause 5.4 of the March 2005 guidelines. NSICT has not been charging for this service in past. At present the shipping lines are carrying out containers for open door containers just outside the container date. By introducing this tariff item we are providing this option to shipping lines to take these services of NSICT and carry out within the terminal. The above is purely based on request of customer and is voluntary.
	(d). NSICT has proposed a levy of US\$ 5000 per hour for the overstay of the vessel due to user's fault. The NSICT is requested to intimate the relevant provision of the Licence Agreement entered between the NSICT & JNPT authorizing the NSICT to collect the vessel related charges.	As demands made on the terminal infrastructure is enormous and with fixed window for various services and vessel overstay due to the fault of the user, the user will have to pay the charges as it affects entire schedule of the terminal. There have been numerous instances of users immobilizing engines remaining at the berth for long period of time. This misuse has to stop and the vessels have to leave berth once asked to do so. The terminal operator cannot have their assets and other customers wait for berth due to action of vessel operator refusing to vacate the berth when instructed. It must be understood that the terminal operator has no other means of making the vessel vacate the berth other than applying a penal charge for overstay so as to ensure this acts as a deterrent.
(xviii).	(a). The proposal of the NSICT to retain efficiency gain does not appear to be in line with Clause 2.4.1 of the	TAMP in its general revision Order of JNPT (2006) and GTIPL (2006) decided capacity for the said terminals at 15.40 lakh TEUs and 13.30 lakh TEUs.

	revised tariff guidelines. Clause 2.4.1. stipulates that the benchmark for efficiency will be the average of the past performance of the same operator at the same terminal. Comparison of the performance of an operator with different operators at other terminals is not envisaged in the revised tariff guidelines.	The quay length and yard area of JNPT, GTIPL and NSICT are given below: <table><tr><th></th><th>JNPT</th><th>GTIPL</th><th>NSICT</th></tr><tr><td>Quay Length (metres)</td><td>1125</td><td>712</td><td>600</td></tr><tr><td>Yard area (hectares)</td><td>55</td><td>40</td><td>28</td></tr><tr><td>Capacity (lakh TEUs)</td><td>15.40</td><td>13.30</td><td>11.00</td></tr><tr><td>Utilisation</td><td>64.00%</td><td>83.17%</td><td>100%</td></tr></table> Guideline 2.9.10 categorically states that the method of determining the designed capacity of Ports will be standardized. This has been done through the 2008 guidelines, where the normative cost committee has determined the optimal capacity of the terminal based on its physical parameters. TAMP cannot apply different parameters for calculation of optimal/ design capacity of a facility. It would be incorrect to interpret clause 2.9.10 by considering the actual throughput handled by NSICT as its capacity. The Authority has followed such an approach in its earlier Orders of NSICT, JNPT and GTIPL. If such an interpretation was followed, then the actual throughput would equal to capacity and thus the objective of the guideline to provide maximum permissible return for 60% capacity utilisation would be infructuous. Based on the precedent Orders of TAMP and the Optimal Capacity model, the quay capacity for NSICT works out to 11.90 lakh TEUs and yard capacity works out to 10.20 lakh TEUs. The lower among the two (10.20 lakh TEUs) needs to be adopted. Yet, NSICT has adopted 11 lakh TEUs as its optimal capacity. Based on above, the efficiency gains claimed by NSICT are the gains arising from over utilization of the capacity.		JNPT	GTIPL	NSICT	Quay Length (metres)	1125	712	600	Yard area (hectares)	55	40	28	Capacity (lakh TEUs)	15.40	13.30	11.00	Utilisation	64.00%	83.17%	100%
	JNPT	GTIPL	NSICT																			
Quay Length (metres)	1125	712	600																			
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Capacity (lakh TEUs)	15.40	13.30	11.00																			
Utilisation	64.00%	83.17%	100%																			
	(b). Clause 2.4.1. of the revised tariff guidelines further stipulates that the benchmark for efficiency will be the actual cost reduction achieved due to efficiency improvement in the previous tariff cycle. 50% of such cost reduction has to be considered for estimating the relevant expenditure while fixing tariff for the succeeding tariff validity period.	NSICT has retained the gains of over utilization of the capacity and not as specified under clause 2.4.1, which covers the cost reduction.																				
	(c). In this backdrop, the NSICT to furnish an analysis with workings showing a comparison of the relevant items of actual variable cost incurred during the period from 2000-01 to 2004-05 with the corresponding relevant items of actual variable cost incurred during the years 2005-06 to 2007-08. If any cost reduction in the relevant items of variable cost emerges, 50% of such cost reduction may be accounted for in the estimations of corresponding relevant items of variable cost projected for the years 2008, 2009 and 2010.	NSICT has retained the gains of over utilization of the capacity and not as specified under clause 2.4.1, which covers the cost reduction.																				

9.1. A joint hearing on the case in reference was held on 30.6.2008 at the office of this Authority. The NSICT made a power point presentation highlighting the need to allow full pass through of royalty and restrict the tariff computation to an optimum capacity level of 1.1 million TEUs per annum. During the joint hearing, the NSICT, JNPT and the users have made their submissions.

9.2. The JNPT, as agreed at the joint hearing, has furnished a copy of the legal opinion obtained by it on the contention of NSICT about 'change in Law' vide its letter dated 16 July 2008. The NSICT also has submitted a separate legal opinion obtained by it vide its letter dated 31 July 2008. Generally, both the legal opinions deal with the question of 'change in law'.

9.3. The legal opinions obtained by JNPT and NSICT counter each other. While the legal adviser of JNPT has concluded that there is no change of law whereas the advice received by NSICT suggests that the policy of allowing only partial pass through of royalty, which came into effect from March 2005, is a change in law. It appears from both the opinions that the issues deliberated are about seeking or admitting relief for change in law under the Licence Agreement.

10. The NSICT vide its letter dated 3 July 2008 has reiterated its arguments presented at the joint hearing and has furnished its responses arising out of the hearing. The main submissions made by the NSICT are summarized below:

- (i). (a). JNPT invited bids for a container terminal having a 600 metres quay line and 28 hectares of land. Capacity at the time of the bid was assessed at 6 lakh TEUs. JNPT's invitation to bidders envisaged 20% increase in tariff every three years. Tariff computation by major ports was cost based plus a profit margin of around 18-20% on capital employed during the time the bids were submitted.
- (b). NSICT was the highest bidder and accordingly JNPT issued a letter of Intent in February 1997 and the Licence Agreement was signed on 3 July 1997.
- (ii). (a). Tariff plays a major role in ensuring the viability of any business. A situation has arisen where as a result of previous Order, a tariff review is required.
- (b). The LA calls upon NSICT to approach the Authority from time to time for fixation of tariff. Thus, NSICT would approach Authority when need or occasion arises for a tariff review viz. expiry of the tariff validity or when a situation arises which seeks a review.
- (c). NSICT tariff validity expires in August 2008 and its financial viability is being threatened by mounting losses if the current situation prevails. Due to disallowance of royalty, it is estimated that NSICT will earn Rs.6.30 crores in 2009 and start making loss from Rs.15 crores in 2010 to Rs.58 crores by 2013.
- (iii). (a). Guideline 2.9.10 categorically states that the method of determining the designed capacity of Ports will be standardized. This has been done through the 2008 guidelines, where the normative cost committee has determined the optimal capacity of the terminal based on its physical parameters. TAMP cannot apply different parameters for calculation of optimal/ design capacity of a facility.
- (b). It would be incorrect to interpret clause 2.9.10 by considering the actual throughput handled by NSICT as its capacity. The Authority has followed such an approach in its earlier Orders of NSICT, JNPT and GTIPL. If such an interpretation was followed, then the actual throughput would equal to capacity and thus the objective of the guideline to provide maximum permissible return for 60% capacity utilisation would be infructuous.

- (c). Based on the precedent Orders of TAMP and the Optimal Capacity model, the quay capacity for NSICT works out to 11.90 lakh TEUs and yard capacity works out to 10.20 lakh TEUs. The lower among the two (10.20 lakh TEUs) needs to be adopted. Yet, NSICT has adopted 11 lakh TEUs as its optimal capacity.
- (d). It is reiterated that NSICT is neither applying nor seeking application of the 2008 guidelines for computation of tariff. Only the capacity model has been utilized.
- (iv). (a). There is no dissent that royalty is a cost. It was only because of the royalty, that NSICT was given right to construct and operate the facility. The bid conditions did not allow inclusion of royalty in computation of tariff. Even the current allowance of 2nd highest royalty is not line with bid conditions. TAMP in all its Orders except the March 2006 Order have allowed complete royalty in computation of tariff.
- (b). A comparison of the royalties between NSICT and 2nd highest bidder is as below:

Particulars	NSICT	2 nd highest bidder
NPV of royalty quoted (Rs. In crores)	312.00	225.00
Volume guaranteed (in Million TEUs)	15.25	16.60
Total Royalty (Rs. In crores)	4039.00	4345.00
Average royalty per TEU (Rs.)	2601.00	2617.00

- (c). As per the Ministry's Order no. PR/14019/C/2002-PG it has clearly stated that the position of royalty being not factored in is to be clearly indicated in the bid documents, while inviting bids. There were no conditions regarding disallowance of full or part royalty in the JNPT's invitation to bidders.
- (d). Clause 2.8.1 of the guidelines goes against the basic tenets of the bid conditions and results in change of law. This adversely affects NSICT's right to operate the facility. As per the said guideline, royalty will be taken into account as a cost in order to avoid likely loss to the operator. By disallowing part of royalty, loss does occur. Hence if loss arises, full royalty is to be allowed.
- (e). It may be incorrect to use the NPV of the cash flow to the port over the licence period for determination of quantum of royalty paid. Such a method results in a loss to the operator.
- (f). As per Clause 2.8.1, royalty shall be subject to maximum amount quoted by the next lowest bidder. The amount quoted by the next lowest bidder over the licence period was Rs.4345 crores as against Rs.4039 crores by NSICT. The average royalty per TEU of the next lowest bidder works out to Rs.2617/- as against Rs.2601/- of NSICT. Hence full royalty paid by NSICT must be allowed. There can be no other interpretation of the said guideline and hence the position with regard to royalty adopted by TAMP in March 2006 cannot be adopted now.
- (v). (a). The retained earnings arise from over utilisation/ excess utilisation of capacity, which has been done to facilitate and accommodate trade growth. The 50% adjustment as per Clause 2.1.3 has a disincentive to the operator to increase his asset utilisation.
- (b). If NSICT were to operate at the assessed capacity, then the trade would pay Rs.5000/- per TEU resulting in an excess outflow by trade of Rs.135 crores per annum and would have also limited the ability to increase the EXIM trade. The government has benefited from the revenue through

increase in commerce, vessel related charges, royalty payment and growth in EXIM business. Shipping lines have also been benefited by deployment of larger vessels with lower scale of economy, faster turn around time etc. Though every one has benefited from NSICT's over utilisation, NSICT has been penalized through adjustment of gains from over utilisation. This cannot be said to be a fair position.

- (c). Clause 2.4.1 also deal with retention of gains, cost reduction and not with retention of gains from over utilisation of capacity.
 - (d). The adjustment of retained earnings is not in line with the bid conditions or with tariff setting process followed during the bid submissions.
 - (e). Based on the above, NSICT should be allowed to retain the complete gains from over utilisation of capacity. Moreover, there is no prohibition in the guidelines from NSICT retaining the same.
- (vi). If the current practice is followed without consideration to NSICT's submission, the loss position that arises over the next four years to NSICT is as follows:

Volumes (TEUs) per annum	Loss (2008 – 2011) (Rs. In crores)
At 11 lakh TEUs	482
At 14.70 lakh TEUs	698
At 6 lakh TEUs	285

11. The NSICT vide its letter dated 22 July 2008 has reiterated its earlier submissions regarding royalty, efficiency gain, yard capacity and adjustment of past gains for the period 2001 to 2004. The submission of NSICT are summarised below:

- (i). (a). Clause 2.8.1 of the guidelines neither existed as part of port privatisation policy nor in invitation to bid of JNPT at the time of bidding and signing of agreement. The clarification of Government of India made in the year 2003 regarding admissibility of royalty as cost is not applicable for NSICT.
- (b). Though we do not admit Clause 2.8.1 of the guidelines, it denotes that allowable royalty shall be the maximum of the amount quoted by the next lowest bidder, which is in line with our claim.
- (c). In the previous Order of March 2006, the use of Net Present Value in determining the allowable royalty is not correct. The NPV method compares the value of the rupee to day to the value of that some rupee in future on the basis that the purchasing power of rupee declines over time on account of inflation. JNPT used this particular method to determine the successful bidder. This, however, cannot be said to apply in determining of tariff because under no circumstances the purchasing power of the rupee or the time value of money needs to be considered for tariff setting. The only way of determining the amounts is consideration of the total amount bid by NSICT and the second highest bidder which are as follows:

NSICT	-	Rs.40,38,79,75,000
Second highest bidder	-	Rs.43,44,62,50,000

The average royalty per TEU bid by NSICT and the second highest is as follows:

NSICT	-	Rs.2601 per TEU
Second highest bidder	-	Rs.2611 per TEU

NSICT's claim for full royalty is valid.

- (ii). (a). The capacity of NSICT is 11,00,000 TEUs. Our calculations of capacity are in line with the standard design capacity model under guideline 2.9.10 as well as previous capacity for similar terminals at JNPT.
- (b). Traffic to be considered under guidelines 2.5.1 cannot be in excess of the capacity determined under guideline 2.9.10. any attempt to do so would frustrate the objective of the guideline that return needs to be linked to capacity and just and fair returns to ports. The Authority needs to reward the economic use of resources, efficiency in performance and optimum investment. The Authority shall be failing in fulfillment of the objective of rewarding over utilisation of capacity by adopting traffic in excess of 11,00,000 TEUs.
- (c). It is clarified that the applicability of guideline 2.4.1. is not considered as NSICT is dealing with the gains arising from over utilisation of capacity.
- (d). Following is the statement showing ROCE earned as per TAMP guidelines considering efficiency gain:

Sl. No.	Particulars	Years			Total
		2005	2006	2007	
	Traffic (in TEUs)	1311193	1344574	1471723	--
1.	Total operating income	44682.73	39236.92	41672.96	125592.61
2.	Operating cost	14574.59	18465.83	24610.18	57650.60
3.	Depreciation	4853.14	4787.05	4624.88	14265.07
4.	Overheads	2693.98	2059.76	1811.48	6565.22
5.	Operating surplus	22561.03	13924.28	10626.42	47111.73
6.	Loss on sale of assets	116.44	30.88	35.61	182.93
7.	Surplus	22444.59	13955.16	10662.03	47061.77
8.	Capital employed	66016.86	58803.64	54587.31	--
9.	ROCE	9902.53	8820.55	8733.97	27457.05
10.	Net surplus	12542.06	5134.61	1928.06	19604.73
11.	Efficiency gain	(5460.58)	(4422.98)	(5278.64)	15162.21
12.	Net surplus	7081.48	711063	3350.59	4442.52

Calculation of efficiency gain

1.	Volume as per capacity	1100000	1100000	1100000
2.	Actual volume done	1311193	1344574	1471723
3.	Volume achieved due to efficiency	211193	244574	371723
4.	Additional revenue due to efficiency	7185.75	7127.74	10513.92
5.	Less associated Variable cost (including royalty)	1725.17	2704.75	523.28
6.	Contribution	5460.58	4492.98	5278.64

From the above table, it may be noted that the gains of Rs.151.62 crores accrued for the years 2005 to 2007 need to be completely allowed to the operator.

- (iii). The optimal yard capacity is 70% of the maximum number of container that could pass through the yard in a year.
We have considered 6222 ground slots in the calculating of yard capacity of 10,10,052 TEUs. The area utilised by the 6222 ground slots is 110101M². Therefore, utilizing the area of 11 HA actually occupied by ground slots the optimal yard capacity is

$$\frac{0.70 \times 11 \times 2.5 \times 365 \times 283}{2 \times 1.3} = 5,18,862 \text{ TEUs}$$

It may be noted that the yard capacity considered by us is indeed much higher.

- (iv). The Authority adjusted 50% of the gains arising for period 2001 to 2004 in line with guidelines 2.13 in August 2005 order. 1998 guidelines did not contain any stipulation which allowed for such adjustment. Such adjustment in our opinion is not valid and should not be done.

12. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>

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

- (i). The proposal of NSICT is for a general review of its tariff fixed vide the earlier tariff orders dated 22 July 2005 and 7 March 2006 which was valid for a period of 3 years from the date of notification of the former Order. The proposal seeks an increase of about 46% over the existing tariff and has drawn attention to various issues for the consideration of this Authority. The NSICT in its proposal has claimed full pass through of royalty mainly on the grounds that the tariff guidelines 2005 on partial pass through of royalty is against the basic tenets of the bid conditions and tantamount to 'change in law'. It also pleads for fixing tariff with reference to capacity and not based on actual traffic so that the benefit of volume efficiency would be available to the operator. The NSICT has also disputed the correctness of adjustment of past surplus for the period upto 2004-05 as there was no concept of excess returns / computation of efficiency gains prior at the time when it submitted its bids and upto 31 March 2005.
- (ii). (a). The existing terminal-wise cost plus approach to tariff setting takes into account the traffic volumes achieved at a terminal in the past period and the expected growth for the future. The records for the past period show that there is a surge in the volumes handled at the NSICT which is one of the reasons for the tariff reduction effected in the year 2005. Though, one can argue whether the volume increase at the NSICT is solely due to the efforts and efficiency of the operator, it cannot be denied that the NSICT has done well to manage the increased throughput levels at its terminal. Nevertheless, the argument of NSICT that the increased volumes have been handled because of its efficiency and better utilisation of available resources cannot be brushed aside. Clause 2.2. of the tariff guidelines, 2005 requires TAMP to be guided, among other things, by the factors which will encourage competition, economical use of resources, efficiency in performance and optimum investment. There is, therefore, a need to reward performance which enhances output due to efficient use of resources. Tariff fixation cannot be a mere arithmetic exercise in the cost plus framework but the one which balances the interest of users and port operators and needs to take into account the long term financial viability of operators so as to encourage flow of much needed private investment into the port sector.
- (b). This Authority finds it to be a reasonable approach to determine tariff with reference to standard capacity of the terminal instead of the actual volumes achieved or achievable. An operator can handle volumes beyond the standard capacity by improving efficiency and/or by infusing more capital. Such an approach of tariff fixing cannot, however, recognise any expenditure incurred to handle volumes above the standard capacity and the additional capital deployed. At the same time, an operator will not be put to disadvantage by reduced tariff on account of higher volumes handled by him beyond the standard capacity. It is, therefore, a better approach to determine tariff with reference to certain pre determined standards of operations and asset utilisation, instead of relying solely on the actuals of an operator. Such a normative approach benefits an

efficient operation and at the same time protects the interest of the users by not allowing cost of inefficiency to be passed on to the users in the name of actuals. While stipulating that the existing cost plus approach would continue, clause 2.4.1. of the tariff guidelines, 2005 also mentions about the attempts to be made to evolve a normative approach. This Authority constituted a National Level Working Group on normative cost based tariff for container related charges. The Working Group, which was headed by Shri S. Prabhakaran, former Secretary to Govt. of India and included representatives of some of the private container terminals also, could not recommend any specific norms for implementation in respect of the existing terminals and instead suggested that a terminal specific approach towards efficiency improvement as specified in clause 2.4.1. of the tariff guidelines would be the workable option. It has to be recognised that the efficiency improvement dealt by clause 2.4.1 of the tariff guidelines is restricted in its application only to the cost reduction achieved and that too, with reference to the performance level of the same operator in the previous cycle. As pointed out by NSICT, providing cushion for cost reduction may not always reward the whole range of efficiency, particularly the volume increase beyond capacity levels. It, therefore, appears reasonable to adjust the existing approach to recognise the volume efficiency which is possible by considering the traffic level as per the standard capacity of the terminal. The standard capacity level is, however, to be required to be determined by following an established method.

- (c). Clause 2.9.10 of the tariff guidelines, 2005, *inter alia*, mentions about standardizing the method of determining designed capacity of ports. The said provision is used in the context of reducing the return on capital for under-utilisation of capacity. Since no reduction in the return allowed to NSICT is effected in the earlier tariff order, the question of determining the capacity of NSICT based on standard method did not arise in the past. The NSICT bid was evaluated based on a minimum guaranteed volume of about 6 lakh TEUs. The actual volumes handled are, however, much higher. Further, in a standard capacity based tariff setting, an operator cannot be allowed to take benefit on the basis of his own assessment of capacity. The Government has recently announced the policy guidelines for fixing upfront tariff for PPP projects which were notified as tariff guidelines, 2008 in February 2008. These guidelines, *inter alia*, provide the method of determining optimal capacity of a container terminal, which is applied to determine upfront tariff for the new container terminals across the major ports in the country. This Authority would like to treat the method given in Tariff Guidelines of 2008 to determine the optimal capacity as a standard method for time being, till a better alternative is evolved. The formula prescribed in the 2008 guidelines is applied to determine the standard capacity of NSICT to analyse this case.
- (d). This Authority does not find any merit in considering the approach of the NSICT to determine its capacity with reference to the assumed capacity level of Jawaharlal Nehru Port Trust (JNPT) and the Gateway Terminal (India) Private Limited (GTIPL). It has to be recognised that the capacity of JNPT and GTIPL quoted by the NSICT are not determined with reference to the method prescribed in the tariff guidelines of 2008. The capacity needs to be assessed based on the normative asset and performance for a terminal and not by comparing with other terminals in the vicinity. If the method prescribed in the tariff guidelines of 2008 is applied, the standard capacity of NSICT, as explained subsequently, works out to 1.195 million TEUs which is considered as traffic level in this analysis. It is noteworthy that the standard capacity determined for NSICT is nearly double of the minimum throughput guaranteed under the license agreement.

- (iii). (a). While the traffic forecast is restricted to standard capacity, the implications of applying all the norms prescribed for determining operating and capital expenditure in the case of the existing terminals need to be analysed in consultation with all concerned. This Authority, therefore, would like to firm up the revised approach after consulting all concerned on adopting such norms.
- (b). The existing approach permits only partial pass through of royalty / revenue share and that too only in respect of those terminals where bidding process was completed before July 2003. The normative approach as per the 2008 guidelines does not permit any pass through. It is, therefore, not feasible immediately to adopt the 2008 guidelines fully, without suitably adjusting the approach given in those guidelines to meet the requirements of the existing terminals.
- (c). While the tariff computation follows this approach of permitting only partial pass through of royalty, in actual transaction the entire royalty amount has to be paid by an operator to the Port trust. Therefore, the revised approach to be evolved needs to address the issue of providing an avenue which will allow the operator to meet the financial obligations arising from the Concession Agreement through better utilisation of assets, productivity improvements and cost reduction measures. In this context, the existing approach where the past surplus is assessed in every cycle for adjustment in future tariff may have to be revisited.
- (d). Another issue associated with the existing cost plus method which needs consideration is allowing return on net assets. All assets depreciate over a period of time and, therefore, its book value reduces gradually. Consequently, the ROCE reduces over the project period if there is no regular infusion of capital and can theoretically even reach Zero level once the assets are fully depreciated. Concomitantly, the absolute size of return available to an operator thus shrinks over time due to depreciation of assets. On the other hand, the revenue share / royalty outflow increases gradually over the project period due to volume buildup and escalating the unit rate of royalty as per the concession agreement. This impairs the capacity of the operators to meet the cost not considered for tariff computation out of the return allowed to them. At the same time, it is necessary to ensure that an unintended benefit due to revaluation of capital assets does not accrue to the operators. It may be necessary to reexamine the appropriateness of allowing return on the written down value of assets.
- (e). The issues discussed above clearly point towards the need for having a relook at the existing cost plus approach prescribed in the 2005 guidelines. This Authority intends to take appropriate steps to examine all the issues and to revise the approach, if and to the extent necessary. Such a review will require sometime for studying the issues, analysing the possible alternatives and consultation with the relevant stakeholders.

Further, the tariff guidelines of 2005 which were notified on 31 March 2005 have a normal validity of 5 years before which they are to be reviewed to announce the new guidelines. Therefore, this Authority decides to pass an interim order in this case applicable for a period of 1 October 2008 to 30 September 2009 which is subject to review based on the decision to be taken on the approach to be followed in the case of the existing terminals.

- (iv). (a). It is needless to mention that when traffic at standard capacity level is considered, the capital and operating costs of NSICT corresponding to the

standard capacity level should only be considered. As explained earlier, the diminishing value of capital due to depreciation for the purpose of allowing return is an issue which is required to be studied further. The tariff guidelines of 2008 permit the value of assets to be taken at gross value despite allowing depreciation as an item of cost. This may be due to the fact that the investment of an operator is corresponding to the original acquisition cost of assets. In the interim approach, this Authority, therefore, decides to reckon with gross value of assets as per the books of NSICT for the purpose of allowing return in computation of annual revenue requirement for standard capacity. As can be seen in the later part of the analysis, the actual return will be only 16% on the net assets as per the 2005 guidelines, due to adjustment of royalty. It may be relevant here to point out that the gross value of assets considered now will be followed unchanged in the subsequent tariff determination of NSICT. Even if NSICT puts in more investment, it will be taken to be for the purpose of improving efficiency or handling volumes over and above the standard capacity and, therefore, the cost of such investment should be met by the operator out of the revenue from the additional volumes.

- (b). The linked question is allowing operating expenses for the purpose of tariff determination. Since traffic upto the standard capacity is considered, the operating expenditure should also be in line with such capacity, irrespective of the actuals incurred by the operator. As mentioned earlier, adopting a total normative approach on the expenditure front in case of the existing terminals needs to be decided only after a detailed study and consultation. In the interim approach, this Authority is inclined to go by the actuals, of course, upto the level relevant to the standard capacity. The fixed costs are considered fully as they do not have direct nexus to the volume. Variable costs are considered only upto the volumes equivalent to the standard capacity. Depreciation on straight line method corresponding to the capital based is allowed. The details of estimating different components of cost are explained in the subsequent part. It can be seen that the operating expenditure, excluding royalty, determined by this approach is lower than the normative costs prescribed by the tariff guidelines of 2008.
- (v). (a). The NSICT has sought full pass through of royalty payable by it to the Licensor port trust – JNPT under the provisions of the license agreement. The NSICT has elaborately quoted the provision of 'change in law' as per the license agreement which is mentioned in the earlier part of this Order. It may not be necessary for this Authority to dwell upon this aspect as the claim of NSICT about 'change in law' is not relevant for tariff fixing. Arguing, but not admitting, that the policy on royalty pass through constitutes a change in law, the license agreement does not prohibit any such change in law.
- (b). The tariff guidelines of 2005 are issued as a policy direction under section 111 of the Major Port Trust Act by the Government. Any policy direction issued under section 111 of the MPT Act is binding on this Authority. The said policy direction also empowers this Authority to relax the guidelines for reasons to be recorded in writing. Clause 2.8.1 of the tariff guidelines, 2005 requires royalty to be taken into account for tariff computation in the BOT cases where bidding process was finalised before 29 July 2003, in such a manner as to avoid likely loss to the operator on account of the royalty/revenue share not being taken into account subject to a maximum of the amount quoted by the next lowest bidder. Besides this provision in the tariff guidelines 2005, the Government in the year 2006 had explicitly advised this Authority to strictly adhere to the tariff guidelines relating to royalty in the NSICT case. Further, the NSICT withdrew its petition filed before the Hon'ble High Court of Bombay with a

prayer that it would approach the Ministry for consideration of the allowability of the pass through of the royalty paid to the JNPT. Even though, the NSICT has indicated in this proceeding that it has not approached the Government and requested the Authority to take a decision, this Authority is unable to take any stand contrary to the specific policy direction issued in this regard by the Government under section 111 of the MPT Act. It is for the NSICT to approach the Government on this issue, if it desires.

- (c). Without prejudice to their contention that full royalty should be allowed as an item of expenditure, the NSICT has suggested to determine the allowable pass through with reference to the actual average royalty quoted by the second bidder. The NSICT has claimed that the royalty quoted by them is less than the royalty of the second bid and, therefore, a full pass through should be allowed. At the bid evaluation stage, the royalty payable by the bidder was estimated as the product of the minimum guaranteed throughput and the unit rate of royalty quoted by them. The figures differ between the bidders for the different period of time over the project life. In order to bring them to a uniform platform, their bids were evaluated based on NPV method. Therefore, the permissible pass through is also determined based on the NPV method. In this regard, it is necessary to recall the principle followed by the Government when it decided to allow pass through subject to the maximum of the amount quoted by the next lowest bidder. The Government of India decided to adopt the policy of allowing partial pass through of royalty recognising that the difference in the percentage offered by the highest bidder and the next highest bidder reflects aggressive marketing and, therefore, not to be allowed as a pass through. Therefore, the aggressiveness of NSICT in the bidding can be determined only if its bid values and those of the second lowest bid are brought to a common platform of NPV. The argument of NSICT completely ignores the time value of money. Further, it is an absurd situation to consider a winning bid as lower than that of the loser. Having taken advantage of the NPV method of assessment at the bidding stage, the NSICT cannot ask for a different treatment now. Therefore, the maximum permissible pass through is to be pegged at 69.5% of the royalty payment of NSICT, as was done in the previous tariff Order of March 2006.
- (d). Clause 2.8.1. of 2005 tariff guidelines which deals with admissibility of royalty as pass through prescribes the pass through of royalty upto the ceiling level of next lowest bidder in order to avoid loss to the operator. It is, therefore, clear that allowing pass through to the extent of 69.5% of royalty is not automatic. The actual position of NSICT irrespective of the standard capacity position considered in the tariff determination exercise is with a view to decide the extent of loss so that the quantum of pass through of royalty to be allowed can be determined within the prescribed ceiling level. This Authority finds it reasonable to assess the loss with reference to the actual capacity of the operator to meet the operating expenditure and the royalty payment as per the Concession Agreement and earn the stated level of return as per the tariff guidelines of 2005. The contribution from the volumes handled beyond the standard capacity is a source available to meet the residual royalty not considered in the tariff computation. This Authority prefers to adopt this approach in the interim as it envisages progressive reduction in the quantum of royalty, if unit rate of royalty does not undergo a change, with the increase in traffic volumes beyond the standard capacity. The details of determining the quantum of royalty pass through for the interim tariff validity period are explained in the later part of this Order. As can be seen, pass through at the level of 39.73% is sufficient as against the maximum permissible level of 69.5%.

The NSICT, in their arguments, has indicated the tariff implications in a situation where the operator decides to handle volumes around 6 lakh TEUs which is the MGT level as per the Concession Agreement. The interim approach adopted now provides an incentive to the operator to handle higher level of traffic in order to improve his return. Even if the operator chooses to operate at a lower volume level, the users' interest will be protected as the tariff computation will recognize traffic and cost only at the standard capacity level.

- (vi). (a). As recorded in para 10(xii) of the tariff order of 22 July 2005, an additional surplus of Rs.473.42 crores over and above admissible cost and permissible return was quantified for the period 2000-01 to 2004-05. In order to smoothen the impact of this adjustment, the surplus was adjusted over a period of 5 years. Accordingly, a sum of Rs.142.02 crores was adjusted in the estimates for the years 2005-06 to 2007-08. This leaves a sum of Rs.94.68 crores to be adjusted.
- (b). The cost statement filed by NSICT does not contain the abovesaid adjustment as the NSICT has mainly contended that neither the conditions at the time of bidding nor the earlier tariff guidelines contain any provision for effecting such adjustment. It has further argued that such adjustment was disincentive for better utilization of assets by an operator. As mentioned earlier, clause 2.13. of the tariff guidelines requires 50% of the benefit accrued due to estimate variations to be set off while revising the tariff. The condition imposed in the tariff order of 2000 requires the entire (undue) benefit to be adjusted. The NSICT has not challenged the condition prescribed in the tariff order of 2000, which guided the case of NSICT till notification of the tariff guidelines 2005. The NSICT was allowed to retain 50% of the surplus as these guidelines recognise the efforts of the operator in building up volumes. Therefore, adjustment of 50% of surplus coupled with the decision to spread over such adjustment for 5 years was made. That being so, this Authority does not find any force in the argument of NSICT for not considering adjustment of the balance adjustable surplus in the current tariff cycle. Since the present exercise is confined to one year period as an interim measure, one installment of Rs.47.34 crores is considered for adjustment out of the total remaining unadjusted surplus of Rs.94.68 crores pertaining to the period prior to 2005.
- (c). The suo motu tariff orders of 22 July 2005 and 7 March 2006 did not reduce the then prevailing tariff to the level warranted by the surplus position estimated for the tariff validity period of 2005-06 to 2007-08. As recorded in para 10(xvi), the additional surplus (over and above the admissible cost and return) will be assessed at the end of the tariff validity period and will be set off in the tariff to be fixed for the next cycle (i.e. commencing from the year 2008). The NSICT has not explicitly objected to this adjustment now as the cost statements drawn up by it treat such surplus as efficiency gain.

The proposed review mentioned in the earlier paragraphs, if it results in a modified approach, then such approach will be applied prospectively. It is not possible to apply a revised approach retrospectively.

It is significant here to mention that the assessed surplus for the period 2005-06 to 2007-08 arises not because of any estimation error or volume increase achieved by the NSICT, but it arises in the context of the decision of this Authority to moderate the tariff reduction for the earlier cycle and adjust the balance surplus in the following cycle. The surplus, therefore, should be assessed based on the actuals of the admissible items for the relevant period reported by the NSICT for the traffic level

considered in the suo motu Order. Accordingly, the past surplus is quantified by considering the surplus upto the traffic level of 1232470 TEUs per annum, being the traffic estimate for the years 2005-06 to 2007-08 in the suo-motu review of NSICT tariff in March 2006.

Since the difference in the actual traffic and the estimated traffic for the period 2005-06 to 2007-08 is 13.67% which is less than 20%, the surplus on account of the additional traffic is not considered for assessment of past surplus for the period post 2005 in line with clause 2.13. of the revised tariff guidelines.

The net surplus after admissible costs and return for the period April 2005 to September 2008 is assessed at Rs.217.36 crores for the traffic level of 1232470 TEUs per annum. A copy of the cost statement for the period from April 2005 to September 2008 is attached as **Annex-I**.

- (d). Insofar as the adjustment of past surplus is concerned, this Authority will be guided by its earlier decisions and the interim approach to be adopted will not be extended retrospectively. Adjusting all the surplus at one go may artificially bring down the tariff in one cycle and cause a steep escalation in the following period. This Authority prefers to avoid such wide fluctuations in tariff level. Further, it is not necessary to allow the benefit of past surplus adjustment only to the users of the terminal in the next 2 to 3 years period. In case of similar adjustment of deficit, if any, the immediate user will be at a disadvantage. Besides, the decision to spread over of past surplus over a longer period of 5 years was taken by this Authority in the earlier Order of 2005 relating to NSICT. It is also to be noted that the NSICT while withdrawing its Writ Petition filed before the High Court of Bombay has prayed that they would approach Ministry for consideration of allowability of pass through of royalty paid to JNPT. Any decision by the Government other than the existing guideline will have some impact on the surplus position quantified for the said period. This Authority, therefore, finds it desirable to adjust the surplus pertaining to the period April 2005 to September 2008 only after fully adjusting the surplus for the period prior to 2005.
- (e). Since this review is for an interim period of one year, one installment of surplus of Rs.94.68 crores pertaining to the period 2000-01 to 2004-05 amounting to Rs.47.34 crores is adjusted during the period October 2008 to September 2009. Taking into account the unadjusted surplus of Rs.47.34 crores pertaining to the period 2000-01 to 2004-05, a total past surplus of Rs.264.70 Crores would be available with NSICT which will be considered for adjustment in the next review of tariff of NSICT.
- (vii). The interim approach based on capacity is attempted for the first time to decide the tariff revision of an existing terminal and the tariff proposal of the NSICT is analysed with a view to decide an interim tariff for the one year period on a standalone basis. It may be relevant here to mention that the Tariff Guidelines of 2008 are not applied fully in this case for stated reasons and only the formula prescribed for determination of optimal capacity is adopted. Further, certain salient points of the said guidelines are kept in view to test the reasonableness of expenditure. Though the gross value of assets relevant to standard capacity is considered in the computation of revenue requirements, the actual return in adjustment of royalty is based on the net assets as per the Tariff Guidelines of 2005. The royalty is allowed only to the extent required to obtain 16% return on net capital employed. This interim approach should not be construed to be the final view of this Authority on the revised approach. As mentioned earlier, the review of the guidelines to be undertaken may result in a different approach which will be followed commonly for all terminals.

- (viii). The guidelines for upfront tariff setting for PPP Projects at the major port trusts notified by this Authority in February 2008 in compliance of the policy directions issued by the Government of India prescribes the methodology for determination of optimal capacity of a container terminal. The optimal capacity of the container terminal is the lower value of the optimal quay capacity and optimal yard capacity. Following the methodology prescribed therein and considering the quay length of the terminal operated by the NSICT the quay capacity works out to 11,95,740 TEUs. Likewise, the yard capacity works out to 23,11,292 TEUs. Since the quay capacity is lower than the yard capacity, the value of quay capacity of 11,95,740 TEUs is considered as the standard capacity of the terminal operated by the NSICT.

- (ix). (a). In order to achieve the optimal capacity, the tariff guidelines of 2008 specify the normative level of capital assets. The number of Quay gantry cranes, Rail mounted Gantry Crane, Rubber tyre gantry crane, etc. actually deployed by the NSICT is found to be higher than the normative level of equipment required to handle the standard capacity of traffic.

As the traffic only to the extent of the standard capacity level is considered in the interim approach for the purpose of tariff determination for the future period, the capital cost corresponding to such capacity level can only be recognised.

The gross block of assets reported in the Annual Accounts of the NSICT for the year ended on 31 December 2007 is Rs.97193 lakhs. The gross block of container handling assets reported by the NSICT is adjusted and considered for normative level of equipment based on the details of the equipment –wise cost furnished by the NSICT. For all other items, the gross block of assets reported in the Annual Accounts of 2007 are considered as they are within the normative levels. The net additions proposed by the NSICT to the gross block of assets during the year 2008 are reckoned with. Accordingly, the total gross value of assets as on 1 January 2009 relevant for standard capacity under consideration in this exercise is Rs.83864 lakhs.

- (b). Clause 4 of Annex – I (relevant for container terminal) of the 2008 guidelines prescribes normative level of container handling equipments and indicative rate for each unit of handling equipment. The cost of container handling equipments based on the per unit rate of container handling equipment given in the 2008 guidelines for the normative level of equipments prescribed was estimated.

The gross civil cost as at the end of the year 2007 as reported in the Annual Accounts of NSICT is taken into account as the 2008 guidelines require the civil cost to be recognised at the level estimated by the port.

The IT system cost and other capital cost have been worked out applying the prescribed percentage i.e., 2% and 10% of the sum of the civil and equipment cost, respectively as per the guidelines. Accordingly, the sum of the capital cost as per the norms prescribed in the guidelines and adopting the unit rate of equipment indicated in the guidelines works out to Rs.85108 lakhs. This Authority is not inclined to fully rely upon the normative capital cost as per the 2008 guidelines as such approach may allow an unintended benefit of replacement cost of assets to an operator.

- (c). It can thus be seen that the gross block of assets as per the Annual Accounts of NSICT after moderation in the equipment cost relevant to attain the standard capacity of 1.19 million TEUs is well within the capital cost estimation based on the guidelines of 2008. That being so, the gross value of assets required to handle standard capacity of traffic with their

values derived from the books of Accounts of the NSICT is considered in this analysis.

- (x). Return to the tune of Rs.13418 lakhs calculated @ 16% on the gross value of assets of Rs.83864 lakhs is permissible.
- (xi). The estimate of operating expenses furnished by NSICT are for the traffic of 1.1 million TEUs. While drawing up the cost statement for the period October 2008 to September 2009, the operating expenses which are variable in nature, have been moderated in proportion to the standard capacity. Considering the fact that the operator will incur the fixed costs irrespective of volume of the traffic handled, the operating expenses, which are fixed in nature, have been considered as estimated by the NSICT subject to restricting the annual escalation in the cost to the maximum permissible level as explained in the subsequent analysis.
- (xii). The NSICT has considered different escalation factors for estimation of various types of operating expenditure. The annual escalation of the cost estimates is to be regulated in terms of Clause 2.5.1 of the Revised Tariff Guidelines which requires that the expense projections should be in line with traffic adjusted for price fluctuations with reference to current movement of Wholesale Price Index for all commodities as announced by the Government of India. Based on the average inflation rate reported for the financial year 2007-08, annual escalation factor of 4.6% per annum has been adopted for estimation of expenditure projections in the cost statement of tariff cases to be decided during the year 2008-09. Accordingly, the expenditure projections of NSICT are moderated applying the escalation factor of 4.6% per annum. The estimated operating expenses furnished by NSICT for the years 2008 and 2009 are analysed below.

(a). Operating & Direct Labour

The NSICT has estimated this expenditure for 463 employees based on the actual number of employees in the year 2007.

While estimating this expenditure, the NSICT has considered an increase of around 9% in the average cost per employee, as compared to the year 2007 on account of an impending wage settlement. For the purpose of this analysis, the incremental cash outflow anticipated by NSICT on account of the wage settlement has not been taken into account, as the quantum of wage increase is not known now. The estimates furnished by the NSICT for the years 2008 and 2009 has been partially moderated by applying the escalation factor of 4.6%, per annum over the corresponding figure for the respective previous years. .

(b). Maintenance Labour

The NSICT has reported this cost for the year 2007 for 109 employees at an average cost of Rs.5.04 lakh per employee. For the years 2008 to 2009, NSICT has estimated this expenditure for 113 employees on the ground that new staff will be recruited on a higher salary due to higher employee turnover during 2007.

The maintenance labour cost estimates of NSICT for the years 2008 and 2009 are partially modified applying the annual escalation factor at the stated level.

(c). Equipment Running Cost(1). Power Cost

NSICT has reported power consumption of 10.91 units per TEU for the year 2007 and has escalated the quantum of power consumption per TEU by around 8% in the year 2008 and by 5% during the year 2009 on the ground that the average power consumption for the years 2005 to 2007 was 12 units per TEU. Since the actual average power consumption for the years 2005 to 2007 is reported at 12 units per TEU, the estimates for the years 2008 and 2009 are based on 12 units per TEU.

The rate of Rs.6.58 per unit as reflected in the copy of the recent electricity bill furnished by NSICT is considered for the year 2008. The escalation of around 7% considered by NSICT for the year 2009 in the unit cost of electricity, is moderated by applying the applicable escalation factor, taking the unit rate of the year 2008 as base.

(2). Fuel Cost

The fuel consumption of 2.19 litres per TEU considered by NSICT for the years 2008 and 2009 appears to be based on the actual consumption during 2007. Therefore, the estimated fuel consumption is accepted.

The NSICT has considered the diesel cost at Rs.38.56 per litre for the year 2008. This rate is updated to reflect the prevailing diesel rate at Rs.38.93 per litre, which is considered for arriving at the fuel cost for the year 2008. The estimates for the year 2009 is moderated by applying the appropriate escalation factor.

(3). Repairs & Maintenance

NSICT has considered an amount of Rs.988.99 lakhs and Rs.1026.95 lakhs as repair and maintenance cost for the years 2008 and 2009 respectively. If the norm at 1% of gross value of civil assets and 2% of gross value of equipments is considered for arriving at the repairs and maintenance cost as prescribed in the PPP guidelines of 2008, the estimates of NSICT are found to be well within the norms and hence accepted.

(d). Equipment Hire Charges:

As stated by NSICT, the hire charges are on account of hiring of Inter Terminal Vehicles (ITVs) and trailers. NSICT has furnished copies of contracts entered into with private parties. Though the agreed rates are valid upto the year 2008, the contract provides for review of rate to account for fluctuation in fuel price.

NSICT has considered a rate of Rs.256/- per TEU while estimating the equipment hire charge for the year 2008. This Authority is not in a position to verify this rate with reference to the documents furnished by NSICT because the rates for ITVs mentioned in the contract copy are different and depend on the quantum of TEUs handled with ITVs.

The per TEU rate considered by NSICT in its estimates is relied upon for estimating equipment hire charges for 11,95,740 TEUs. The rate per TEU considered for the year 2008 is escalated appropriately for the year 2009.

(e). Other Expenses

The estimates are moderated applying the applicable escalation factor, taking the actual expenditure of Rs.968.25 in the year 2007 as base.

(f). Technical Service Fee

The revised tariff guidelines of 2005 permit payment of Technical Service Fee as an admissible item of cost under certain circumstances. For allowing technical service fee payable by the private operator as an admissible item of cost for tariff purpose, its reasonableness is required to be established by applying the yardstick of "arms length relationship" as per the relevant provision of the Income Tax Act, 1961. From the documentary evidence furnished by NSICT, it is seen that the concerned Income Tax authority has not disallowed this expenditure in their assessment for the financial year 2001-02. Relying on the assessment made by the Income Tax authority regarding payment of technical service fee by NSICT to the associated enterprises in the past year, it can be presumed that such payment will be similarly treated for the subsequent years from 2005 to 2010 also. The NSICT has considered actual technical service fee paid by it of about Rs.326.98 lakhs during the year 2007, as the estimated amount in this regard for the years 2008 to 2010. The estimates of NSICT are accepted. However, the NSICT should produce assessment certificates in support of admissibility of Technical Service Fee by the Income Tax authorities for the financial year 2002-03 onwards for verification during the next of its tariff.

(g). Depreciation:

NSICT has provided Depreciation on the Straight Line Method as per the provisions of the Companies Act, 1956. The depreciation is calculated on the capital base adopting the depreciation rate on equipment indicated by the NSICT.

(h). Overheads:(1). Management & Administration Overheads

This item of expenditure is mainly the salary of the management staff. For the years 2008 and 2009, the NSICT has considered strength of 36 employees as against 34 reported in the year 2007. The recruitment of additional personnel is a management decision and hence this Authority accepts the increase in the number of employees in the years 2008 and 2009.

The estimates of the NSICT are partially moderated by applying the escalation factor at the applicable level.

(2). General Overheads

The estimates for the years 2008 and 2009 are moderated by applying the applicable escalation factor taking the actuals for the year 2007 as base.

(3). Preliminary Expenses

The upfront payment of Rs.7.20 crores made by NSICT to JNPT is amortised equally over the licence period of 30 years. The annualized value of Rs.24 lakhs is allowed as an item of cost in this analysis.

(4). Others

The NSICT has reported that the 16% increase in this expenditure in the year 2008 over the actuals of 2007 is on account of upgrading the terminals operation software to the tune of Rs.70 lakhs in the first quarter of 2008. NSICT has furnished documentary evidence to substantiate its claim. The justification for the increase under this head of expenditure is accepted. For the subsequent years the estimates of NSICT are moderated by applying an escalation factor of 4.6% per annum, taking the year 2008 as base.

- (xiii). Subject to the above modification, the estimated total expense for the years 2008 and 2009 works out to Rs.15321 lakhs and Rs.16223 lakhs respectively. Since this Order is for an interim period of one year, the expenses corresponding to the optimal capacity level for the period October 2008 to September 2009 works out to Rs.15998 lakhs.

The reasonableness of the estimates based on the actuals furnished by the NSICT is tested with reference to the operating cost based on the norms prescribed in the 2008 guidelines. For this purpose, power and fuel cost are estimated based on the consumption norms prescribed in the guidelines of 2008 and adopting the prevailing unit rate of power and fuel explained in the analysis earlier. Depreciation on the normative value of assets is calculated at the rates prescribed in the Companies Act. The estimate of repairs and maintenance cost, insurance cost and other expenses are determined following the norms prescribed in the guidelines. The total operating cost following the norms prescribed in the guidelines works out to Rs.18514 lakhs.

Since the operating cost for normative level of capacity estimated at Rs.15998 lakhs for the period October 2008 to September 2009 based on past actuals is well within the operating cost as per the norms, the operating cost of Rs.15998 lakhs is considered in this analysis for arriving at normative revenue requirement.

- (xiv). The total Operating cost of Rs.15998 lakhs and the Return of Rs.13418 lakhs on the Gross Fixed Assets constitute the Annual Revenue Requirement for the year 2008. Thus, the Annual Revenue Requirement for the year 2008 works out to Rs.29416 lakhs, without the royalty component.
- (xv). The Normative approach adopted by the Tariff Guidelines of 2008 does not recognise revenue share / royalty as an item of cost. However, there is a specific direction to allow part of royalty as pass through in the case of terminals which came before July 2003 in tariff guidelines of 2005. The determination of quantum of royalty as pass through for the interim period is discussed as hereinunder:
- (a). For arriving at the quantum of royalty to be admitted as passthrough, the actual position of the NSICT irrespective of standard capacity position considered for determination of annual revenue requirement is to be seen. The NSICT has achieved a traffic of 14,71,723 TEUs in the past. If this traffic level is presumed to be maintained for the period October 2008 to September 2009, the total royalty payable by NSICT to JNPT is Rs.24361 lakhs.
 - (b). The revenue requirement for the traffic level of 1.47 million TEUs will be Rs.36206 lakhs for the period October 2008 to September 2009 based on the revenue requirement for the standard capacity explained earlier.
 - (c). The total estimated expenditure (excluding royalty payment) for the traffic of 1.47 million TEUs based on the actuals of 2007 and applying the

annual escalation factor as per the 2005 guidelines works out to Rs.17604 lakhs for the period October 2008 to September 2009.

- (d). The net fixed assets as estimated by the NSICT for the year 2008 and 2009 are considered for assessing the actual cost position for the full traffic of 1.47 million TEUs.

The NSICT has arrived at negative working capital for the years 2008 and 2009. The negative working capital has been adjusted by NSICT from the net fixed assets for arriving at the capital employed.

The working capital has been assessed in line with Clause 2.9.9. of the tariff guidelines for the purpose of this analysis. The working capital so assessed is Rs.89.10 lakhs for the year 2008 and Rs.478.41 lakhs for the year 2009 which has been considered for arriving at the capital employed.

Subject to the above modification, the capital employed works out to Rs.57012 lakhs and 53112 lakhs for the year 2008 and 2009, respectively.

Return on capital employed at the rate of 16% is allowed on the modified capital employed and considered for the period October 2008 to September 2009.

It can thus be seen while assessing the actual cost position, the return on capital employed has been allowed on the net block of fixed assets irrespective of the fact that return on Gross Asset was considered to determine the revenue requirement for standard capacity.

- (e). Taking into consideration the revenue requirement of Rs.36206 lakhs and total expenditure of Rs.17604 lakhs for the actual traffic at 1.47 million TEUs and admissible return on capital employed, the net surplus after return for the period October 2008 to September 2009 is Rs.9948 lakhs.
- (f). For the traffic level of 1.47 million TEUs, the royalty payable by NSICT to JNPT works out to Rs.24,361 lakhs. The net surplus of Rs.9948 lakhs is a source to meet the royalty payment of Rs.24,361 lakhs.
- (g). As stated earlier, one installment of the past surplus for period prior to 2005 to the tune of Rs.9468 lakhs is to be adjusted. Since the interim approach envisages tariff for one year, the NSICT is in a position to meet the remaining royalty payment from one installment of Rs.4734 lakhs which otherwise would have been set-off in the first year of the current tariff cycle. In that case, the royalty payment not covered even after adjustment of Rs.4734 lakhs is seen to be at Rs.9679 lakhs for a traffic level of 1.47 Million TEUs. The corresponding uncovered royalty for the standard capacity level works out to Rs.7864 lakhs, which is 39.73% of the actual royalty for the standard traffic. If this expenditure is not admitted as pass through, the operator may not achieve a return of 16% on the net assets which will be a loss to them. So, in order to avoid loss, pass through of royalty to the extent of 39.73% is sufficient.
- (xvi). The targeted revenue requirement after providing for a royalty payment of 39.73% as pass through works out to Rs.37280 lakhs. The actual container related revenue reported by the NSICT in its Annual Accounts for the year 2007 is Rs.41592 lakhs for the actual traffic of 1.47 Million TEUs. The actual revenue is considered to determine the revenue for the standard capacity level of 1.19 Million TEUs on pro-rata basis. This works out to Rs.33793 lakhs. Hence, the gap between the revenue at the existing tariff level and the targeted revenue requirement is estimated at Rs.3488 lakhs for the period October 2008 to

September 2009. That being so, the existing tariff is required to be increased by 10.30% to bridge the revenue gap of Rs.3488 lakhs. Therefore, this Authority decides to increase the existing tariff by 10.3% as against an increase of 46% sought by the NSICT. A complete set of calculations is attached as **Annex-II**.

- (xvii). The proposed definition for “NSICTPL” includes NSICT’s successors and assigns. The proposed definition for NSICT is slightly modified to include “successors and permitted assigns” reflecting the definition of “licensee” incorporated in the License Agreement.
- (xviii). In order to make known the course of action to the defaulting party, the NSICT has proposed a provision for timing of payment and the course of action in case of default. Section 58 of the Major Port Trusts Act, 1963 already contains a provision for timing of payments. Section 59 of the MPT Act also provides for port’s lien for rates in case of default by the users to pay the prescribed charges as stipulated in Section 58. Therefore, a separate provision in this regard in the Scale of Rates is not required.
- (xix). The rate of penal interest on delayed payments by users and delayed refund by the NSICT should be 2% above the PLR of SBI in terms of Clause 2.18.2 of the revised tariff guidelines. The NSICT is agreeable to this position and has proposed the penal interest at 14.25% per annum. The proposed penal interest rate is modified to reflect the prevailing PLR of 13.75%.
- (xx). The MANSA has objected to the proposed conditionality to govern levy of penalties for non performance by the NSICT / users. Since the proposed conditionality permits unguided discretion to NSICT to set contractual condition, on case to case basis for performance and penalties, this Authority is not in a position to approve the proposed conditionality. In a recently decided case relating to review of tariff at the Chennai Container Terminal Ltd., (CCTL), the CCTL was advised to propose a suitable efficiency linked tariff model with built-in penalty and reward scheme. Likewise, if NSICT proposes a suitable efficiency linked tariff model with built-in penalty and reward scheme, such a proposal will be taken up for consideration.
- (xxi). Since the berth hire charges for vessels handled by NSICT are collected by the JNPT as per the terms of the LA, the NSICT was requested to incorporate a conditionality to allow rebate equivalent to berth hire charges to the vessels for the period when the vessels idle at its terminal when operations cannot take place due to failure / break down of the shore based facilities. This flows from the principle of not requiring user to pay for delays beyond the reasonable level attributable to the port / operator. Though the NSICT has agreed to include this provision in the Scale of Rates, the operator has insisted for incorporation of a conditionality to govern levy of penalties for non-performance by the NSICT / users as discussed in the previous paragraph.

The conditionality to allow rebate equivalent to berth hire charges has been prescribed in the Scale of Rates of many other private terminals. A condition has been prescribed in the Scale of Rates of some major ports, which came for revision after implementation of revised tariff guidelines to the effect that berth hire charges shall not be levied for the period of idling of vessels for reasons attributable to the port.

There is no reason why the provision prescribed in case of other terminals in this regard should not be made applicable to the NSICT particularly when such provision is based on the principles set out in the tariff policy guidelines issued by the Government. A suitable conditionality requiring the NSICT to allow rebate equivalent to berth hire accrued during the period of idling of vessels on account of reasons attributable to the terminal is included in the Scale of Rates of the NSICT.

The general principle stipulated in Clause 2.15. of the revised tariff guidelines that the users will not be required to pay charges beyond the reasonable level attributable to the NSICT is also incorporated in the Scale of Rates of NSICT, as agreed by the operator. The NSICT has also agreed to our suggestion to include a conditionality to state that the users will not have to pay storage charges for the period during which NSICT is not in a position to deliver / shift the container when requested by the users, which is incorporated in the Scale of Rates.

- (xxii). The container handling charges are prescribed under Section 1 to 4 of the Scale of Rates. Each of the said four tariff items does not list out the services proposed to be rendered for levy of the proposed rates. Mere indication of activity of each tariff item will not suffice for the users to know about the details of services proposed to be rendered under each tariff item. The NSICT is advised to list out separately the services proposed to be rendered for levy of rates in Section 1 to 4 of the Scale of Rates in the next review of its tariff.
- (xxiii). The NSICT has proposed 58% premium over the existing rates prescribed for handling hazardous cargo containers on the grounds of more time taken to handle hazardous containers, constrained yard space and time taken to comply with regulatory requirements. Clause 5.7.3. of the revised tariff guidelines prescribes premium to the extent of 25% for handling and storage charges of hazardous containers. The NSICT has agreed for 25% premium on storage charges. The premium of 25% is allowed as per the guidelines on the handling charges of hazardous containers also.
- (xxiv). The concessional rates for coastal container are prescribed in line with clause 4.3 of the revised tariff guidelines.
- (xxv). The NSICT has made a request to maintain the unit of levy on 24 hours basis for levy of charges for reefer monitoring and connection on the ground that the 24 hour basis levy is an existing practice. Clause 5.7.1 of the tariff guidelines stipulates the unit of levy at 4 hourly basis. Therefore, the request of the NSICT to continue with the existing practice cannot be acceded to. The existing charges for reefer monitoring and connection at the NSICT, if proportionately calculated for 4 hours will work out to US\$ 4.56 which is comparable with the rates prescribed in the Scale of Rates of JNPT (US\$ 3.502), GTIPL (US\$ 4.860) and CCTL (US\$ 3.220).
- (xxvi). The operator has linked the first seven days free storage period prescribed for ICD containers to submission of ICD documents by the users within 48 hours of discharge of containers on the ground that the responsibility of trains at the terminal is of the users. While it may be reasonable to stipulate a time limit for the users to submit the requisite documents to the operator, it does not appear to be justified for the NSICT to deny any free period for the ICD containers for non submission of the documents. In such cases, the free storage period prescribed for normal container will be applicable. The proposed conditionality is suitably modified.
- (xxvii). The NSICT has proposed a note to govern levy of storage charges on empty "auction container". To a query raised in this regard, the NSICT responded saying that the proposed note is a clarification in the case of container under auction where destuffing is done on the terminal and container changes status from loaded to empty container. Since the dwell time charges for storage of containers will apply to empty containers also, the proposed separate note to govern levy of storage charges on empty "auction container" is not necessary.
- (xxviii). NSICT has proposed different rates for 20' and 40' containers for non-declaration / mis-declaration of hazardous containers. The rate proposed for a 40' container is at 1½ times of the rate proposed for 20' container. In the case relating to tariff

fixing at the Chennai Container Terminal Ltd., this Authority held that the rate need not vary with reference to the size of the container for the purpose of levy of charge for non-declaration / mis-declaration, and prescribed uniform rates for 20' container and 40' container. If non-declaration / mis-declaration of container leads to any additional activity, as stated by the NSICT, cost details are required to justify the increase proposed for 40' containers which are not furnished. The proposed rate for 20' container will be applicable for 40' container also.

- (xxix). With reference to the proposed charges for one door opening, MANSA has suggested for continuation of the existing practice. To a query in this regard, the NSICT has confirmed that it is not charging for this service as the service is being rendered so far by the shipping lines. A similar tariff item is approved in the Scale of Rates of other container terminals like CCTL and VCTPL. Since the service is optimal and will be rendered by the NSICT only at the request of users, the proposed uniform rate of Rs.1000 per container is approved.
- (xxx). As regards the rates proposed for the services towards movement of containers from terminal to rail or rail to terminal, the MANSA has suggested to remove this tariff item on the ground that the charges are included under ICD charges. As confirmed by the NSICT, these charges are payable if there is additional movement carried out by the terminal. However, the proposed charges are in replacement of the existing rate of Rs.400/- per TEU towards Inter Terminal Rail Handling Operation (ITRHO) as clarified by the NSICT. This Authority approved a rate of Rs.400/- per TEU an adhoc basis towards ITRHO vide Order dated 28 June 2007. This rate has been incorporated in the Scale of Rates of NSICT and the extended validity of the rate is upto 30 September 2008. Since an adhoc rate is already available in the Scale of Rates of NSICT, pending review, the proposed rates for additional movement of ICD containers are not approved.
- (xxxi). The NSICT has proposed to impose a penalty of US\$ 5000/- per hour for overstay of the vessel at the terminal of NSICT due to user's fault. The objection raised by MANSA in this regard is with reference to the provision contained in the Scale of Rates of JNPT for levy of penal berth hire charges for overstays of the vessels berthed at the terminal operated by the NSICT. As per the provision contained in the Scale of Rates of JNPT, penal berth hire charge shall be levied at the prescribed rates in addition to berth hire charges, if a container vessel occupies the berth beyond 2 hours after completion of operations. In the views of MANSA, it is a double penalty for the same default, if NSICT also levies charges for overstay of the vessel at its terminal.

It has to be recognized that when a vessel overstays at the berth it not only occupies the berth after the operations are over but also the landward facilities of the NSICT are clogged; and, the revenue earning time of NSICT is wasted.

As such the penal berth hire contained in JNPT Scale of Rates is in compensation of the strain passed on to JNPT's operations due to overstay of the vessel whereas the NSICT's proposal to impose a penalty for overstay of vessel at its terminal is for compensating the loss of its revenue generating time. In view of this position, the proposal of NSICT to impose penalty does not amount to double charging.

Though the Licence Agreement entered into between JNPT and NSICT does not authorise the NSICT to collect vessel related charges, it has to be kept in view that the charge proposed by the NSICT is in the form a penalty for overstay of vessel at its terminal.

Considering handling rate of 25 moves per hour, and 6 quay cranes and taking into account 70% utilization of cranes, as followed for determining standard capacity, the NSICT may lose revenue contribution on account of not being able to handle 105 TEUs per hour. If an amount of Rs.500/- per TEU is considered as

such revenue contribution on ad-hoc basis, loss will be around Rs.52,500/- per hour. Since the levy is in the form of penalty to act as a deterrent, a penalty of Rs.1,00,000/- per hour is, therefore, prescribed for overstay of the vessel at the berth beyond 2 hours after completion of operations due to user's fault.

14.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the Scale of Rates of the NSICT which is attached as **Annex-III**.

14.2. Normally, the revised charges will come into effect after expiry of 30 days from the date of Gazette Notification, unless a different arrangement is specifically mentioned in the tariff Order as stipulated in Clause 3.2.8 of the 2005 Guidelines. Since the financial position considered in this interim Order takes into account the financial position for the period of one year from 1 October 2008, the revised charges shall come into force from 1 October 2008 and remain valid till 30 September 2009. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.

14.3. The gist of the approach adopted in deciding this case is as follows:

- (i). Pending review of the terminalwise cost plus approach prescribed in the 2005 guidelines, an interim Order in this case is passed applicable for a period of one year.
- (ii). (a). Regarding adjustment of past surplus the existing guidelines and the decisions in the earlier tariff Order will apply.
- (b). Since the interim Order is confined to one year period, one instalment of Rs. 47.34 Crores out of 94.68 Crores pertaining to the period 2000-01 to 2004-05 is adjusted.
- (c). The past surplus for the period April 2005 to September 2008 is assessed at Rs. 217.36 Crores. This will be adjusted in future tariff after completely adjusting the surplus relating to the period prior to April 2005.
- (iii). In order to encourage volume efficiency, standard capacity based tariff approach is adopted. The level of standard capacity is determined by applying the formula provided in the tariff guidelines of 2008.
- (iv). The gross value of assets required to handle standard capacity of traffic with their values derived from the annual accounts of NSICT is considered. Depreciation is calculated as per the existing guidelines and return at 16% on the gross value of assets is taken into account in the computation of annual revenue requirement.
- (v). The estimate of operating expenses is considered for the standard capacity, which has been subjected to the test of reasonableness based on the norms furnished in the Tariff Guidelines of 2008.
- (vi). The annual revenue requirement constituting the total operating cost and the return on capital employed is assessed without the royalty component. It was observed that at this level of revenue the operator will not get 16% return on net assets.
- (vii). The 2005 guidelines requires royalty to be taken into account for tariff computation subject to the maximum of the amount quoted by the next lowest bidder provided there is loss. Therefore, the actual position of the NSICT irrespective of standard capacity based position considered in determination of revenue requirement is to be seen. The quantum of royalty pass through which will provide a return as per the tariff guidelines of 2005 is determined after meeting all cost and the royalty payment as per the Concession Agreement. After adjusting one installment of

past surplus, it was seen that a pass through at the level of 39.73% is sufficient, as against the maximum permissible level of 69.5%.

- (viii). Revised targeted revenue requirement with admissible royalty expenditure is calculated and compared with the existing revenue. The analysis reveals a revenue gap of 10.3% which is decided to be met by an across-the-board tariff increase.
- (ix). This interim approach provides a framework that would encourage an operator to bring efficiency in operations to handle volumes higher than the standard capacity level considered for tariff computation in order to improve return on investment. With rising volume of throughput, an operator would be in a position to meet the payment of royalty which is not allowed as pass through. With increase in volumes handled, it is possible to progressively reduce the level of permissible level of royalty pass through in tariff. Also, rising volumes will benefit port users and trade at large. Besides, this approach will also discourage capacity under utilization.

14.4. The validity of the existing Scale of Rates of the NSICT is deemed to have been extended beyond 3 August 2008 till the effective date of implementation of the revised Scale of Rates.

14.5. The NSICT is required to furnish to this Authority a report of the actual physical and financial performance within 15 days of completion of each quarter of the year beginning from the 1st quarter ending on 31 December 2008, in the same format in which the cost statement for the tariff proposal is filed.

(Brahm Dutt)
Chairman

SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS AND ARGUMENTS MADE IN THE JOINT HEARING BEFORE THE AUTHORITY

F. No.TAMP/14/2008-NSICT - Proposal from the Nhava Sheva International Container Terminal Limited for review of its tariff.

1. A Summary of comments received from the Jawaharlal Nehru Port Trust, port users/ representative bodies of port users and response of NSICT are tabulated below:

Sl. No.	Comments of users	Comments of NSICT on the comments of users
	<u>The Shipping Corporation of India Ltd (SCI)</u>	
(i).	The proposal of NSICT to reduce free dwell time for export boxes, from seven days to three days will be detrimental for the trade. Our service loads exports between 1200-1500 TEUs on each sailing with a carting period of seven days. Reduction in free days will burden the lines unduly or they may be forced to allow carting during the proposed free period, which will create Gate congestion and other associated problems.	With frequent yard congestion mainly arising from export containers, the proposal is made for reduction which will reduce congestion. The intention of keeping slightly higher tariff and lower slab is to discourage congestion at port. Clause 5.8.1 of the guidelines issued by TAMP in March 2005 allowed port to propose free days in the port. Both GTIPL and JNPT have been permitted by TAMP to provide 3 free days for export containers. Hence this is not a new condition. In view of the above the comment of SCI is not true.
(ii).	The proposal for levy of US\$ 5000 per hour for vessel over stay due to user fault is unwarranted. Any other terminal in India does not levy this charge. The vessel may be delayed due to various factors beyond vessel operators control for e.g., weather enroute, delay at previous terminal, congestion at gate etc.	Demands made on the terminal infrastructure is enormous. With fixed window for various services, overstay of the vessel due to user fault affects the entire schedule of the terminal. There have been numerous instances of users immobilizing engine and remaining at the berth for long period of time. This misuse has to stop and the vessels have to leave berth once asked to do so. The terminal operator can not have their assets and other customers wait for a berth due to action of vessel operator refusing to vacate the berth when instructed. The terminal operator has no other means of making the vessel vacate the berth than applying a penal charge for overstay as a deterrent.
	<u>Mumbai and Nhava-Sheva Ship-agents' Association (MANSA)</u>	
(i).	Clause 2.11 needs to be deleted. If the terminal wishes to have an agreement separately with the Line they may do so without affecting the TAMP Agreement.	In order to enable the terminal operator to operate at "optimum capacity", NSICT needs to ensure the performance standards agreed with the customers are adhere to. The Clause is introduced to ensure that if terminal agrees to contractual conditions which are superior to the performance standards specified in the tariff application and there is mutually agreed payment for better performance or penalty incase of non-performance by NSICT, then NSICT is entitled to the same.

		The intent of this Clause is not to undermine the applicability of tariff specified by TAMP or charge additional tariff. The performance incentive or penalty is subject to mutual agreement.
(ii).	The Note (1) under Section 7 – Shut outs / Renomination of Containers should read as follows: “ If a container enters the Terminal as export intakes for a particular vessel (as indicated by Vessel Identification Advise Number i.e., VIA No.) and is not connected to the vessel for reasons attributed to the Port Users, then the container is termed a shutout container.” No charges to be accrued if the fault lies with the terminal.	The present Clause is in line with existing Scale of Rates and approved by TAMP for other terminals also. The vessels are planned and loaded based on advice from users and shut out charge is applicable for recovery of the additional efforts for shifting and planning the containers again. If the containers entering the terminal cannot be connected to the vessel for which they enter terminal and the fault lies with terminal, terminal has not been charging.
(iii).	The Note No. 3 to Section 10- Dwell Time Charges, Charges for Container storage should read as follows: “In case of ICD container, if ICD documentation is submitted within 48 hours (instead of ‘with’ 48 hours) of discharging of containers, the storage upto loading of container on the rail is free; else the storage charges shall be applicable from the day following the date of landing upto the date of loading / delivery of containers”. Whatever be the case; there is no justification for increase of Dwell time charges and reduction in the Free Period for ICD containers and Transshipment Containers as proposed by NSICT. Further this Note No. 3 should be deleted altogether as it is contradicting to the charges tabulated at Sr. No. 3 of the table given above.	The responsibility of trains at the terminal is not that of operator. It is the responsibility of the line as the line has direct relationship. Accordingly, free time of 7 days as recommended by the port will be available only if ICD documentation is submitted within 48 hours of discharging of containers. The Clause is reworded as follows to ensure that there is no confusion: “In case of ICD container, if the documentation is submitted within 48 hours of the date of landing of the container, the storage period of 7 free days for loading the container on rail will be applicable else the storage charges shall be applicable from the day following the date of landing upto the date of loading / delivery of the container.” The reduction in the free period has already been agreed in case of JNPT by the lines. The comments of lines and users have been taken into account in its Order No.TAMP/33/2006-JNPT dated 28.6.2006. We have the same point as explained in the case of JNPT. We are operating out of same area. The practice is same. We have reworded Note No.3 which may be considered.
(iv).	The Note No. 9 (iii) to Section 10 – Dwell time Charges, Charges for Container Storage should read as “the Line shall resume custody of container along with cargo and either take it back (instead of back it) or remove it from the port premises”. The charges should not exceed 75 days Dwell Time.	This is typographical error. “Back it” should be corrected as “it back”. Wirth respect to charges, storage will be applicable till the date upto which the container is not taken out.
(v).	Note No. 9 (iv) to Section 10 – Dwell time Charges, Charges for Container Storage should read as “ the Line shall pay all port charges accrued on the Container before resuming custody of the Container.” The words “Cargo and” should be deleted from the sentence.	In case terminal is forced to arrange for auction, the cargo storage charges, if any, will be the responsibility of line. Hence, no change is required.

(vi)	In Section 10 I. Transhipment between JNPT & NSICT, the words "Transhipment between GTI & NSICT" needs to be added.	The operation process between GTIPL and NSICT is not same as that of JNPT and NSICT since JNPT and NSICT are adjacent to each other. The transhipment to GTIPL is covered under shifting charges as it is totally different operation.
(vii).	Section 11 – Miscellaneous Charges, in the table:	
	(a). Sr. No. (v): This item needs to be deleted to avoid double charging, since these charges already appear under ICD Charges.	These charges are payable only if there is additional movement carried out by the terminal. In case of normal movement of ICD containers, comprehensive tariff considers normal movement. Hence, this will not be applicable if no additional movement is involved.
	(b). Sr. No. (viii). This item needs to be removed and we strongly recommend the existing practice to continue.	The charges applicable only on request of shipping lines. Presently, the shipping lines carry out the operations of opening the door for onion containers just out side the terminal gate. By introducing this tariff item, an option is given to the shipping lines to avail the services of NSICT to carry out the activity within the terminal.
	(c). The last two serial numbers need to be renumbered as (xii) & (xiii) because of repetition.	Agreed.
(viii).	(a). Our comments on re-numbered Clause No. (x) renumbered as Sr. No. (xii) is "This item is not acceptable to us since these charges are already charged by JNPT as per TAMP tariff and hence needs to be deleted.	Demands made on the terminal infrastructure is enormous. With fixed window for various services, overstay of the vessel due to user fault affects the entire schedule of the terminal. There have been numerous instances of users immobilizing engine and remaining at the berth for long period of time. This misuse has to stop and the vessels have to leave berth once asked to do so. The terminal operator can not have their assets and other customers wait for a berth due to action of vessel operator refusing to vacate the berth when instructed. The terminal operator has no other means of making the vessel vacate the berth than applying a penal charge for overstay as a deterrent.
	(b). Our comments on re-numbered Clause No. (xi) renumbered as Sr. No. (xiii) is "This item is not acceptable to us and should be deleted because it is part of the Terminal's responsibility and duty to provide Equipment Interchange Report (EIR) which has been included in the Box Rate. Inclusion of such items would escalate the cost and be detrimental to trade.	These charges are administrative charges where the EIR is cancelled / changed at the request of customers.
(ix).	Note No. 6 below the table in Section 11 should be deleted.	The stacking of the container in the terminal is based on mode of transport and the destination for speedy evacuation. However, any change in the mode of transport results in shifting of container. If there is no such request from the customer, nothing is charged.
(x).	The overall enhancement of charges is unjustified since throughput has gone up substantially (approximately 24%) year on	The detailed submission on the reasoning of increase in tariff forms part of NSICT proposal and presentation made at the joint hearing. The

	year. The request of the NSICT to hike the charges need not be considered.	existing tariff of NSICT is lower than the tariff applicable at the time of commencement of operations in the year 1999. In view of significant increase in input cost and royalty payments the increase requested is absolutely necessary.
	<u>Association of Multimodal Transport Operators of India (AMTOI)</u>	
(i).	This being one of the first projects in ports on BOT basis, the major hurdle faced by all the concerned parties was lack of information. This had an impact on the ability to correctly forecast and evaluate the business dynamics. Keeping this in mind, both the parties (lessee and lessor) interest should be considered while evaluating the proposal. The DP World should be allowed to earn returns as per the agreed rate of 16% ROCE.	We agree to the comments. Our proposal is based on 16% return on capital employed at optimum capacity and all cost being allowed on the cost plus approach being followed by TAMP.
(ii).	In view of increasing competition between the existing terminals, market forces will pay an important role in keeping a check on the tariff structure.	
(iii).	Past performance of the terminal shows that the average total volume handled during the past years (Y-2, Y-1 and Y) has been around 13,76,000 TEUs whereas volume considered for estimating the revenues for the future 3 years has been considered at 11,00,000 TEUs. This reduced estimation (by 20%) has a significant impact on the revenues. Even the Governments estimates of volumes show an increase of 20% year on year. Hence, the average volumes handled during the previous few years should be considered as a base for estimating the tariff increase. Any downward value will negatively affect the revenues and in return affect the quantum of tariff hike.	Clause 2.9.10 of March 2005 guidelines states that the method of determining design capacity of ports will be standardized. Clause 3.3.1 of the guidelines for upfront tariff setting at major ports states that optimal capacity for a terminal should be determined taking into consideration various components of a facility that may be required to be created, equipment and plant and machineries to be provided, productivity level and utilisation level as per norms prescribed. Annex-I of the said guidelines states that the optimal capacity of the terminal is the lower value of the optimum quay capacity and optimum stack yard capacity. Following the methodology laid out in the said annex, the optimal capacity for NSICT is only 1000000 TEUs. We have used the same. However, our tariff application is based on a capacity of 1100000 TEUs per annum. Different standards cannot be adopted for capacity calculation. Therefore, the capacity as defined in the upfront tariff setting guidelines has been utilised for determination of the capacity under clause 2.9.10 of the March 2005 guidelines.
(iv).	The capital employed also needs to be correctly projected. As this project has been operational since a long period, the assets employed would have been substantially depreciated. This will have a bearing on the total capital employed.	Capital employed has been correctly projected on the basis of written down values and shows a declining trend.
(v).	The above points will have a significant impact for achieving the required ROCE. It may so happen that NSICT will achieve 16% ROCE without any significant impact on the tariff.	The tariff application justifies the increase after considering optimum utilisation of the capacity and 16% return
	<u>Bombay Chamber of Commerce & Industry (BCCI)</u>	
(i).	The D.P. World's contention of "Change in Law", is not appropriate in the light of TAMP's comprehensive explanation given in para 11	In the March 2006 Order TAMP has drawn inference that NSICT had agreed to the second highest royalty at a meeting convened by the then

	of its Order dated 7 March 2006. Hence, any further argument on the basis of this presumption does not merit a consideration, particular when the matter was settled in the Hon'ble Minister's Chamber on August 5, 2003.	Hon'ble Minister of Shipping. In this regard NSICT states the following: (i). NSICT was not a participant at the said meeting. (ii). The minutes of the said meeting record that the same is not applicable to NSICT. (iii). Person occupying Board position across Corporate Entities cannot determine the applicability of agreements across companies they represent. (iv). The policy direction of the Ministry of Shipping to TAMP clearly applies only to CCTL. Tariff is a crucial element in the determination of viability of a project. NSICT was the first private terminal under the privatization guidelines. There was no disallowance of royalty. TAMP also considered 100% royalty in the computation of tariff. Only in March 2006 TAMP chose to disallow part of royalty based on its guidelines. There is no credible basis to consider royalty to the extent of the second highest bidder. TAMP is vitiating the bidding process and the Government policy by adopting such a stand. While doing so, a position which results in Change in Law has arisen. Therefore, the contention of BCCI that Change of Law is not appropriate and to be outright rejected.
(ii).	The tariff proposal is based on the presumption that the maximum throughput shall be 1.10 million TEUs, which in itself is calculated by NSICT on its own on the basis of the throughput achieved by JNPT and after factoring the prorated quay length, NSICT has not borne the fact in mind the fact that as a Government Undertaking running the Terminal, JNPT has various compulsions and constraints. If these limitations are factored empirically in calculating the throughput on an efficiency bar, perhaps, JNPT's throughput, on a rationale note, will be higher than that of NSICT. Hence, limiting the throughput for all accounting calculations is not correct.	
(iii).	NSICT has considered the income calculation purely on the basis of above-mentioned limited volume of 1.10 million TEUs per annum. Does this imply that any further volume will be handled free of cost by NSICT. In our view, the entire premises on which the tariff proposal is made, is unacceptable. It in fact, tantamounts to setting the terms for TAMP's functioning.	NSICT has just drawn a comparison of the infrastructure of JNPT. TAMP has established the capacity of JNPT container terminal and GTIPL at 15.40 lakh TEUs and 13.30 lakh TEUs respectively vide Order No.TAMP/48/2005-JNPT. Based on this NSICT has established its capacity at 1100000 TEUs.
(iv).	NSICT contends "No adjustment of excess profits prior to 2005 is made since there was no concept of excess returns / computation of efficiency gains at the time of submission of bids and upto March 31, 2005". TAMP in its Order dated July 22, 2005 vide para (xvi) had	There were no norms for adjustment of surplus prior to March 2005 guidelines. Therefore, this cannot be deemed to be applicable to review the NSICT tariff. Further, surplus arises due to over utilisation of capacity.

	given the assurance that "The additional surplus (i.e., over and above the admissible cost and return) will be assessed at the end of the tariff validity period and will be set off in the tariff to be fixed for the next cycle (i.e., commencing from the year 2008)". BCCI would like to draw TAMP's attention to Para (xvii) of the same Order. BCCI hopes that TAMP will take into account these accumulated surpluses and suitably adjust the same as assured by the Authority in its July 22, 2005 Order.	
(v).	There should not be any increase in the tariff, given the track record of NSICT extensively quoted by TAMP, in one of its most articulated Orders dated July 22, 2005. As the proposed increase is 46%, our members are concerned regarding whether there is a proposal for the corresponding increase in services.	The reason for tariff increase sought is mainly on account of increase in royalty burden. NSICT will not be in a position to carry the increase in royalty burden in coming years. If tariff increase does not come through, only alternative will be to reduce loss by reducing volume. Royalty is a cost for NSICT and the complete amount should be allowed. NSICT requests tariff increase to facilitate growth in JN port.
(vi).	The charges for hazardous cargo containers have been increased by 58%. The very concept of having a separate tariff for hazardous cargo containers is not clear when there is no additional cost involved. Except one container pit, NSICT has not provided any additional service nor incurred any additional cost in handling hazardous cargo containers. This being the case, no separate additional tariff should be allowed for handling hazardous cargo. Since the NSICT has been having a separate tariff for hazardous cargo container till date, TAMP should call for detailed services and costs report relating to handling of hazardous cargo containers, the extra manpower, machinery, precautionary implements etc. stocked and utilized by the Terminal for handling hazardous cargo.	The charges for hazardous containers will be 125% of the normal handling charges applicable to container as per March 2005 guidelines. Hazardous containers were charged at only 115% based on existing tariff. Therefore, the proposed increase in hazardous containers appears higher. The tariff of hazardous container justifies higher tariff in view of the following reasons: (i). Time taken to handle this container is more than normal container. NSICT needs to exercise extra precaution thereby reducing productivity. (ii). These containers need to be stacked separately from other containers. This makes the already constrained yard space more constrained thereby reducing capacity. (iii). There are many instances where these containers leak and have taken enormous management time to comply with all legal and environmental requirements.
(vii).	With regard to shut-out / re-nomination of containers, if the shut-out is on account of Terminal, then no charges should be applied to the container.	If shut out is on account of terminal, it is not charged presently and it will not be charged in future.
(viii).	In the case of one-door-open containers (Section XI miscellaneous charges), NSICT has proposed a rate of Rs.1000/- per container. In our view this should not be allowed, as it will seriously affect export of onions. If there is any requirement in terms of keeping the door secured, NSICT can request the customer to attend to the same, rather than imposing a heavy penalty of Rs.1000/- per container.	The charges are applicable only on request of shipping lines. Presently, the shipping lines carry out the operations of opening the door for onion containers just outside the terminal gate. By introducing this tariff item, an option is given to the shipping lines to avail the services of NSICT to carry out the activity within the terminal. Due to safety and security reasons, NSICT will not be in a position to allow customer to enter the terminal to attend such requirement.

(ix).	For fixing/removal of seals, NSICT has proposed a 100% increase on the charges under this head. This is completely unreasonable and should not be allowed. TAMP should request NSICT to explain the cost details with regard to this head.	All import containers discharged in India require seal as per present regulations of Customs. Being custodian of the container while in the port, terminal has to record the seal number while discharging them and inform the Lines and Customs. Accordingly, while discharging the container if it is observed that seal is missing, the Line is immediately informed and the seal is put. Such instances are increasing. The increase in rate is proposed to discourage Shipping Lines from this practice and to encourage them to take proactive steps at the loading port to ensure that the seal is put.
(x).	There is actually a merit in reduction of the present tariff of NSICT, if the earlier accumulated surpluses are factored for set off as commented by TAMP in its earlier Order. TAMP had repeatedly, in its Order dated July 22, 2005, mentioned that the surplus prior to 2005 could be much higher than the assessed surplus. However, these could not be quantified because proper records have not been provided by NSICT, it had steadfastly denied providing such information and even continuously questioned the Authority of TAMP. It speaks volume for the resilience of TAMP that despite continuous prevarication it was far more considerate towards NSICT and produced one of the most well argued Orders vide its Order dated July 22, 2005. TAMP should look at the present proposal of NSICT also with the same objectivity.	(i). NSICT has submitted all the financial statements to TAMP. (ii). NSICT tariff proposal is based on the following base considerations: (a). Full royalty is allowed as cost since the NSICT concession is issued prior to change in guidelines relating to disallowance of royalty and results in "Change in Law" which affects the rights of NSICT. (b). NSICT has adopted the norms of capacity for the revenue and cost estimates based on Clause 2.9.10 of March 2005 guidelines which states that the method of determining design capacity of ports will be standardised. (c). There were no norms for adjustment of surplus prior to March 2005 guidelines. Future profits should not be adjusted while determining this proposal. (d). There should not be any adjustment of excess return in NSICT tariff proposal. The gains from performing above its capacity should be retained by it. There is no excess return earned by NSICT. (e). The efficiency gain which arises from cost reductions and stated in 2005 guidelines can not be compared to the returns available for over utilisation of capacity. (f). The existing volume handled by NSICT is 2.5 times the assessed capacity of 600000 TEUs in 1997. NSICT has established new bench marks / standards in terms of defining the capacity. (g). Clause 2.4.1 of March 2005 relates to retention of gains achieved through cost reduction. TAMP has consistently allowed a complete return of 16% on full capital employed. The contention of NSICT for

		retention of the over utilisation of capacity is not against the principles and spirit of the guidelines. The guidelines follow the approach that full return be allowed on full utilisation of optimal capacity. Any gains, over and above this, need to be to the benefit of the operator as a just reward for his ability and motivation to achieve greater heights and bench marks in his operation. (h). There are no provisions in the guidelines that prevent NSICT from seeking to retain the additional return generated from over utilisation of optimal capacity. The adjustment of these gains is also not valid under the guidelines of March 2005. (i). Clause 2.1.3 of the guidelines with reference to “the projections relied upon” is also not applicable in this case as NSICT is not operating below capacity. The contentions of BCCI are invalid.
	Jawaharlal Nehru Port Trust (JNPT)	
(i).	The crux of the matter seems to be NSICT's contention that the non-allowability / partial allowability of royalty as a deduction amounts to change of law under Article 14 of the Licence Agreement. In their proposal, royalty has been considered as fully allowed for the purpose of computing return on capital employed (ROCE). JNPT has referred the matter for an expert legal opinion. However, port is examining the legal opinion and has not taken a final view in the matter. TAMP may process their proposal in line with the current policy of treating royalty payment to the licensor as pass-through while computing the tariff of the licensee.	The bid documents had no disallowance with regard to full royalty being allowed as pass through. TAMP is requested to exercise its powers specified in Clauses 1.6, 1.7, 2.2 & 2.10 of the tariff guidelines and consider the tariff review application. Once the TAMP approves upward revision of tariff to ensure just and fair return to the NSICT, the need to review legal opinion regarding remedies under “Change of Law” under the concession agreement by JNPT will not be relevant. Further, NSICT may not subscribe to the position of JNPT. TAMP is requested to proceed with the review of tariff and not wait for legal opinion from JNPT
(ii).	In each of NSICT's future tariff projections for the years 2008, 2009 and 2010, it has considered 1.10 million TEUs. Apart from deriving this, using the JNPCT traffic, NSICT has also used the recent tariff guidelines applicable to PPP Projects. However, these guidelines are not applicable to existing BOT operator. This has resulted in the traffic being understated by 30% compared to the estimate in 2007. Apart from this, the adjustment of excess profit in the past may be looked into by TAMP appropriately.	NSICT has just drawn a comparison of the infrastructure of JNPT. TAMP has established the capacity of JNPT container terminal and GTIPL at 15.40 lakh TEUs and 13.30 lakh TEUs respectively vide Order No.TAMP/48/2005-JNPT. Based on this NSICT has established its capacity at 1100000 TEUs. Clause 2.9.10 of March 2005 guidelines states that the method of determining design capacity of ports will be standardized. Clause 3.3.1 of the guidelines for upfront tariff setting at major ports states that optimal capacity for a terminal should be determined taking into consideration various components of a facility that may be required to be created, equipment and plant and machineries to be provided, productivity level and utilisation level

		as per norms prescribed. Annex-I of the said guidelines states that the optimal capacity of the terminal is the lower value of the optimum quay capacity and optimum stack yard capacity. Following the methodology laid out in the said annex, the optimal capacity for NSICT is only 1000000 TEUs. We have used the same. However, our tariff application is based on a capacity of 1100000 TEUs per annum. There were no norms for adjustment of surplus prior to March 2005 guidelines. Therefore, this cannot be deemed to be applicable to review the tariff of NSICT.									
(iii).	The calculations seem to have been done on a calendar year basis rather than a financial year basis. This can be seen from the difference in actual traffic as per JNPT's records and that stated in the proposal. <table border="1"> <thead> <tr> <th>Particulars</th><th>2005</th><th>2006</th></tr> </thead> <tbody> <tr> <td>TEU as per proposal</td><td>13,11,193</td><td>13,44,574</td></tr> <tr> <td>TEU as per JNPT (Financial year)</td><td>13,23,801 (2005-06)</td><td>13,59,125 (2006-07)</td></tr> </tbody> </table>	Particulars	2005	2006	TEU as per proposal	13,11,193	13,44,574	TEU as per JNPT (Financial year)	13,23,801 (2005-06)	13,59,125 (2006-07)	The general instruction to the tariff revision format prescribed by TAMP covers the following: “While filing the tariff proposal, yearly details should pertain to the accounting year followed by the respective terminal (April to March or January to December as the case may be)”. Based on this, NSICT has adopted calendar year as a period of reviewing data. NSICT's statutory year end as per Companies Act is December ever since it commenced commercial operations.
Particulars	2005	2006									
TEU as per proposal	13,11,193	13,44,574									
TEU as per JNPT (Financial year)	13,23,801 (2005-06)	13,59,125 (2006-07)									

2. A joint hearing on the case in reference was held on 30.6.2008 at the office of this Authority. During the joint hearing, the NSICT, JNPT and the users made the following submissions:

Nhava Sheva International Container Terminal Limited (NSICT)

- (i). Explained the proposal by highlighting the loss with reference to future ROCE and royalty disallowed.
- (ii). If royalty is not allowed as pass through, the premier container terminal will be in financial crisis.
- (iii). Given the physical parameters of the terminal, 1.1 million TEUs is the best possible achievable capacity. We get the same figure under 2005 & 2008 tariff guidelines.
- (iv). Allowing pass through based on 2nd bid is not appropriate, as bids were evaluated based on Upfront, MGT & Royalty.
- (v). Disallowing royalty is a change in law affecting our ability to operate.
- (vi). Retained earning should not be adjusted. JNPT has benefited because of our volumes. Shipping lines are benefited. Past surplus arises because of better utilisation of assets by us. We must be allowed to retain the benefit.
- (vii). If we do 1.47 million TEUs our loss in next four years will be around Rs.600 crores at the existing tariff which does not recognise full pass through of royalty.
- (viii). We have not appealed to Govt. as per the terms of the High Court Order. We have applied to TAMP. TAMP may take a reasonable view.

- (ix). We request reduction of free period for ICD to be decided soon. This is already decided in JNPT case.

Jawaharlal Nehru Port Trust (JNPT)

- (i). We have sought legal opinion on 'Change in law' claim of NSICT. We will furnish our views within a week.
- (ii). Normative capacity can't be applied to NSICT. They have handled 1.4 million TEUs last year. TAMP may apply the relevant guidelines to determine tariff.

Mumbai and Nhava Sheva Ship agents Association (MANSA)

- (i). We have highlighted certain problems in the proposed conditionalities. Please consider our written submission.
- (ii). The ELT Scheme proposed is discriminatory. In capacity constraint situation we will be forced to pay more by agreeing to the cut off level proposed by NSICT.
- (iii). Penal berth hire is levied by JNPT. If NSICT also levies a penalty, it is a double penalty for the same default.

Indian Merchants Chamber (IMC)

We support the proposal of NSICT to levy penalty for overstay of vessel. It encourages better utilisation of berth.

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Annex I

NHAVA SHEVA INTERNATIONAL CONTAINER TERMINAL LIMITED					
Cost Statement for the period April 2005 to September 2008					
Sr. No.	Particulars	Actuals			
		2005 *	2006	2007	2008 **
	Traffic (In MTs / TEUs)	983395	1344574	1471723	1103792
I	Total Operating Income				
	Container handling income	33,459.59	39,185.57	41,626.64	31,219.98
	Others	52.46	51.35	46.32	34.74
	Total	33,512.05	39,236.92	41,672.96	31,254.72
II	Operating Costs				
	Operating & Direct Labour	862.31	1,162.22	1,253.67	980.70
	Maintenance Labour	340.87	535.70	548.98	446.79
	Equipment Running Costs	2,052.72	2,992.71	2,786.31	2,554.35
	Royalty / revenue share	3,375.40	6,998.35	10,661.97	10,494.42
	Equipment Hire	1,648.04	2,574.78	3,385.02	2,655.55
	Other expenses	793.18	810.10	968.25	759.59
	Technical Service Fee	377.17	320.75	326.98	245.24
	Total	9,449.69	15,394.61	19,931.18	18,136.64
III	Depreciation	3,639.86	4,787.05	4,624.88	3,428.16
IV	Overheads				
	Management & Administration overheads	199.61	519.45	386.49	344.52
	General Overheads	85.25	99.14	93.30	73.19
	Preliminary expenses & Upfront Payment write-off	18.00	24.00	24.00	18.00
	Others	1,717.62	1,417.17	1,307.68	1,138.79
	Total	2,020.48	2,059.76	1,811.48	1,574.50
V	Operating Surplus / (Deficit) (I) – (II) – (III) - (IV)	18,402.02	16,995.49	15,305.43	8,115.42
VI	Finance & Miscellaneous Income (FMI)				
	Profit on sale of assets	0.00	30.88	35.61	0.00
	Total	0.00	30.88	35.61	0.00
VII	Finance & Miscellaneous Expenses (FME)				
	Loss on sale of assets	87.33	0.00	0.00	0.00
	Total	87.33	0.00	0.00	0.00
VIII	FMI Less FME (VI) - (VII)	87.33	0.00	0.00	0.00
IX	Surplus Before Interest and Tax (V) + (VIII)	18,314.69	17,026.37	15,341.04	8,115.42
X	Capital Employed	69,363.98	65,316.76	60,292.55	57,012.13
XI	Return on Capital Employed	7,803.45	9,797.51	9,646.81	6,841.46
XII	Net Surplus / (Deficit) (IX) - (XI)	10,511.24	7,228.86	5,694.23	1,273.97
XIII	Total Net Surplus for the traffic level of 1232470 TEUs per annum for the period April 2005 to September 2008.	21736.14			
XIV	Surplus assessed in the 2005 tariff Order pertaining to the period 2000 to 2004 to be adjusted	9,468.00			

Notes:

** The estimates is considered for the period from October to December 2008 in the current tariff review cycle.

** The estimates for the period 2009 is considered for the period January 2009 to September 2009.

ANNEX - II

COST CALCULATION FOR TARIFF REVIEW OF NHAVA SHEVA INTERNATIONAL CONTAINER TERMINAL PRIVATE LIMITED

1) Calculation of Optimal Capacity of NSICT.

1 Optimal Quay Capacity:

Optimal Quay Capacity = $A * B * C * D * E$ TEUs

where,

A = Number of Gantry Cranes deployed for work in an year.
B = Number of working hours of gantry cranes in an year.
C = Average number of moves per gantry crane.
D = TEU ratio
E = 70%

Norms	Capacity based on <u>6 Cranes</u>
= Berth Length / 100	= 600 metres / 100 6
= 24 * 365 hours	= 24 * 365 hours 8760
= 25 moves per hour	= 25 moves per hour 25
= 1.3	= 1.3 1.3
= 70%	= 70% 70%
	1195740 TEUs

2 Optimal Yard Capacity:

Optimal Yard Capacity = $0.7 * \frac{G * H * P}{S * D}$ TEUs

where,

G = Total Ground Slot in TEUs
H = Average Stack height
P = Period in number of days
S = Surge factor
D = Average Dwell Time

Norms	Capacity based on norms
= 720 TEUs per hectare	= 720 * 19.6 14112
= 2.50	= 2.50 2.50
= 365	= 365 365
= 1.3	= 1.3 1.3
= 4 days for Import & 2 days for Export	= 3 days 3
	2311292 TEUs

Therefore, Optimal Capacity of the NSICT is

1195740 TEUs

Note:

Total area allotted

28 Hectares

Considering available yard area as prescribed for Coal/ Iron Ore in PPP guidelines at 70%

19.6 Hectares

2) Calculation of Capital cost

Particulars	Gross Block of Assets as on 01.01.2009 & adjusted for normative level of equipment (Rupees In Lakhs)	Workings
Civil Cost	43849	Gross Value of Buildings as on 31.12.2007 as per Annual Accounts of NSICT.
Container handling Equipment		Gross Value of Machinery & Speed Boat as on 31.12.2007 as per Annual Accounts is Rs.50432 lakhs. (I) Based on the number of equipments and their related values as given by NSICT, the following values are excluded to arrive at the actual value for the normative number of equipments as prescribed in PPP guidelines of 2008.
- Quay Gantry Crane	19167	Rs.25556.16 Lakhs / 8 * 2 Cranes = 6389
- Rail Mounted Gantry Crane	2433	Rs.3648.97 Lakhs/ 3 * 1 Crane = 1216
- Rubber Tyred Gantry Crane	10696	Rs.17232.01 Lakhs/ 29 * 11 RTGs = 6536
- Reach Stacker/ Top Lift Truck	335	Rs.501.89 Lakhs/ 3 * 1 Reachstaker = 167
- Tractor Trailers	1495	(Rs.1316.42 Lakhs / 41 * 5 Tractors) 245
- Others	1752	+ (Rs.424.41 Lakhs / 45 * 9 Trailers) _____
		Rs.14554 Lakhs (II)
	35878	Value of the Container Handling Equipment considered in this analysis (I - II) = Rs.35878
IT System Cost	1641	Gross Value of Computers & Software as on 31.12.2007 as per Annual Accounts of NSICT.
Furniture & Fixtures	329	Gross Value of Furniture & Fittings and Office Equipment as on 31.12.2007 as per Annual Accounts of NSICT.
Vehicles	222	Gross Value of Vehicles as on 31.12.2007 as per Annual Accounts of NSICT.
Upfront Fee	720	Gross Value of Upfront Paymant as on 31.12.2007 as per Annual Accounts of NSICT.
GROSS FIXED ASSETS AS ON 31.12.2007	82639	
Net Additions proposed to the gross block of assets during the year 2008	1225	
GROSS FIXED ASSETS AS ON 1.1.2009	83864	
Actual Net block as per Annual Accounts (1.1.08)		60293

3) Actual Operating cost for normative level of traffic for the period from October 2008 to September 2009.

Particulars	(Rupees In Lakhs)		
	2008 (3 months)	2009 (9 months)	Total
Operating & Direct Labour	327	1026	1353
Maintenance Labour	149	467	616
Equipment Running Costs	738	2311	3050
Equipment Hire	802	2515	3317
Other expenses	253	795	1048
Technical Service Fee	82	245	327
Depreciation	955	3163	4118
Management & Administration	115	360	475
General Overheads	24	77	101
Preliminary expenses & Upfront	6	18	24
Payment write-off			
Others	380	1191	1571
TOTAL OPERATING COST	3831	12168	15998

4) Return on Capital Employed

Particulars	Norms	Workings	Rupees in Lakhs
Return on Capital Employed	@ 16% of Gross Fixed Assets	16% * Rs.83684 lakhs	13418

5) Normative Annual Revenue Requirement:

	Rs. In Lakhs
Operating Cost	15998
Return on Capital Employed	13418
	29416

(b). Normative revenue requirement for the period from October 2008 to September 2009 after applying annual escalation .

	Rs. In Lakhs
For the period from October 2008 to March 2009 (on prorata basis)	14708
For the period from April 2009 to September 2009 applying escalation of 2.76% (i.e. 60% of 4.6%)	15114
Total Revenue requirement	29822

6) Estimated Operating Cost for the actual traffic of 1.47 million TEUs for the period from October 2008 to September 2009.

	Rs. In lakhs		
Particulars	2008 (for three months from October 2008)	2009 (for nine months upto September	Total Expenses for one year
Operating & Direct Labour	327	1026	1353
Maintenance Labour	149	467	616
Equipment Running Costs	852	2666	3519
Equipment Hire	885	2778	3663
Other expenses	253	795	1048
Technical Service Fee	82	245	327
Depreciation	1143	3765	4908
overheads	115	360	475
General Overheads	24	77	101
Payment write-off	6	18	24
Others	380	1191	1571
Total Expense excluding Royalty	4216	13388	17604

7) Computation to arrive at the Quantum of Royalty admissible within the maximum of the second quote of 69.5%

		Rs. In lakhs		
Sr.No.	Particulars	2008 (for three months from October to December 2008)	2009 (for nine months upto September 2009)	TOTAL
1	(TEUs)	367931	1103792	1471723
2	Operating Revenue based (on normative level i.e. as per step 5 (b) for the actual estimated traffic of 1.47 million TEUs)	9051	27154	36206
3	Total Expenditure (from 6 above) {excluding royalty}	4216	13388	17604
4	Capital Employed	57,012	53,112	
5	Return on Capital Employed	2,280	6,373	8,654
6	Net Surplus after total Expense and ROCE (2 - 3)	2555	7393	9948
7	Full Royalty	5033	19328	24361
8	Royalty not covered by net surplus (7 - 6)	2477	11935	14413
9	One instalment of past surplus for the period 2000-04.			4734
10	Royalty not covered even after adjustment of past			9679
11	Royalty to be added to the normative revenue requirement for the normative capacity level of 1.19 million TEUs			7864

(9679 * 1195740 /1471723)

8) Targetted normative revenue after allowing royalty as in (7) above for normative capacity of 1.19 million TEUs

	Rs. In lakhs
Normative Revenue as in 5 above (traffic)	29416
	7864
Targetted revenue requirement	37280

9) Tariff

Increase / Decrease in existing tariff required

Targetted Normative Revenue Requirement for the period from October 2008 to September 2009 (from 8)	37280
TEUs	41592
1195740 TEUs	33793
Revenue Gap	3488
% Increase in existing tariff required	10.3%

SCALE OF RATES
NHAVA SHEVA INTERNATIONAL CONTAINER TERMINAL PRIVATE LIMITED

PREFACE

This Scale of Rates sets out the charges payable to Nhava Sheva International Container Terminal Limited for use of services and facilities provided at the Nhava Sheva International Container Terminal.

1.0 DEFINITIONS

In this Scale of Rates, unless the context otherwise requires, the following definitions shall apply:

- 1.1** "NSICT" means Nhava Sheva International Container Terminal, a company incorporated in India, its successors and assigns.
- 1.2** "Coastal Vessel" shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal license issued by the competent authority.
- 1.3** "Container" means the standard ISO container, suitable for the transport and stacking of cargo and must be capable of being handled as a unit and lifted by a crane with a container spreader.
- 1.4** "FCL" means Containers said to contain Full Container Load.
- 1.5** "Foreign going Vessel" shall mean any vessel other than a coastal vessel.
- 1.6** "Hazardous container" means a Container containing hazardous goods as classified under IMO.
- 1.7** "ICD" means Inland Container Depot.
- 1.8**
"LCL" means Containers said to contain Less than full Container Load (Container having cargo of more than one importer/ exporter).
- 1.9** "Over Dimensional Container" means a Container carrying over dimensional cargo beyond the normal size of standard containers and needing special devices like slings, shackles, lifting beam, etc. Damaged Containers (including boxes having corner casting problem) and Container requiring special devices for lifting is also classified as Over Dimensional Container.
- 1.10** "Per day" means per calendar day or part thereof.
- 1.11**
"Reefer" means any Container for the purpose of the carriage of goods, which require power supply to maintain the desired temperature.
- 1.12** "Port" means Jawaharlal Nehru Port Trust.
- 1.13** "Shut Out Container" means a container, which has entered the terminal for export for a vessel as indicated by VIAN and is not connected to the vessel for whatsoever reason.
- 1.14** "Transshipment container" means a Container discharged from one vessel, stored in NSICT and transported through another vessel.
- 1.15** "VIAN" means Vessel Identification Advise Number.

2.0 GENERAL

- 2.1** Containers less than and upto 20' in length will be reckoned as one TEU for the purpose of tariff.
- 2.2** In general all charges for containers more than 20 feet in length and upto 40 in length will be 150% of the applicable charges.
- 2.3** Handling charges for containers more than 40' in length and upto 45' in length will be 200% of the applicable charges.
- 2.4** Containers other than that of standard size requiring special devices / slings / handling will be charged as per Section 4 below. Such containers will also include damaged containers and any other type requiring special devices.
- 2.5** Containerrelated charges denominated in US dollar terms shall be collected in equivalent Indian rupees. For this purpose, the market buying rate notified by the Reserve Bank of India, State Bank of India or its subsidiary or any other Public Sector Bank as may be specified from time to time prevalent on the date of entry of the vessel into the port limits (in case of import containers) and on the date of arrival of containers in the Terminal premises (in case of export containers) shall be applied for reconversion of the dollardenominated charges into Indian rupees.
- 2.6** All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.
- 2.7** (i) The user shall pay penal interest on delayed payments of any charge under this Scale of Rates. Likewise, the NSICTL shall pay penal interest on delayed refunds.
- (ii). The rate of penal interest will be 15.75% per annum. The penal rate chosen will apply to both the NSICTL and the port users equally.

(iii). The delay in refunds will be counted only 20 days from the date of completion of services or on production of all the documents required from the users, whichever is later.

(iv). The delay in payments by the users will be counted only 10 days after the date of raising the bills by the NSICTL. This provision shall, however, not apply to the cases where payment is to be made before availing the services as stipulated in the Major Port Trusts Act and/or where payment of charges in advance is prescribed in this Scale of Rates.

2.8 (i) A foreigngoing vessel of Indian flag having a General Trading Licence can convert to coastal run on the basis of a Customs Conversion Order.

(ii). A foreign going vessel of foreign flag can convert to coastal run on the basis of a Coastal Voyage Licence issued by the Director General of Shipping.

(iii). In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.

(iv). In cases of such conversion coastal rates shall be chargeable only till the vessel completes coastal cargo discharging operations; immediately thereafter, foreign going rates shall be chargeable by discharge ports.

(v). For dedicated Indian coastal vessels having a Coastal licence from the Director General of Shipping, no other documents will be required to be entitled to coastal rates.

2.9 The consolidated charges as above include the following elements, viz Stevedoring, use of Gantry crane, use of transfer crane, lashing / unlashng, stowage planning etc., wharfage on tare weight of containers and containerized cargo, transportation and contribution towards railway infrastructure.

2.10 The users will not be required to pay charges for delays beyond a reasonable level attributable to the NSICT.

2.11 Incase vessel idle due to non-availability or breakdown of the shore based facilities of NSICT or any other reasons attributable to the NSICT, rebate equivalent to berth hire charges payable to JNPT accrued during the period of idling shall be allowed.

Consolidated charges for movement and handling of containers and containerized cargo.

SECTION – 1 CHARGES FOR ALL NORMAL AND REEFER CONTAINERS

A. Ship to yard / yard to ship using port crane.

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
<u>Per Loaded Container</u>		
Not Exceeding 20' in length	2524	1514
Exceeding 20' and upto 40' in length	3786	2272
Over 40" in length	5048	3029
<u>Per ICD Container</u>		
Not Exceeding 20' in length	2524	1514
Exceeding 20' and upto 40' in length	3786	2272
Over 40" in length	5048	3029
<u>Per Empty Container</u>		
Not Exceeding 20' in length	2038	1223
Exceeding 20' and upto 40' in length	3057	1834
Over 40" in length	4076	2446

B. Yard to CFS / CFS to yard – Transport and lifts at CFS

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
<u>Per Loaded Container</u>		
Not Exceeding 20' in length	898	898
Exceeding 20' and upto 40' in length	1347	1347
Over 40" in length	1796	1796
<u>Per Empty Container</u>		
Not Exceeding 20' in length	898	898
Exceeding 20' and upto 40' in length	1347	1347
Over 40" in length	1796	1796

C. Yard to Rail / Rail to Yard for ICDs only

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
<u>ICD Container</u>		
Not Exceeding 20' in length	1262	1262
Exceeding 20' and upto 40' in length	1893	1893
Over 40" in length	2524	2524

D. Yard to Truck / Truck to Yard

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
<u>Loaded Container</u>		
Not Exceeding 20' in length	388	388
Exceeding 20' and upto 40' in length	582	582
Over 40" in length	776	776
<u>Empty Container</u>		
Not Exceeding 20' in length	388	388
Exceeding 20' and upto 40' in length	582	582
Over 40" in length	776	776

Note: Normal containers are the general type containers, not falling under any special categories mentioned subsequently.

SECTION – 2 CHARGES FOR ALL TRANSHIPMENT CONTAINERS

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
<u>Loaded Container</u>		
Not Exceeding 20' in length	2912	1747
Exceeding 20' and upto 40' in length	4368	2621
Over 40" in length	5824	3494
<u>Empty Container</u>		
Not Exceeding 20' in length	2524	1514
Exceeding 20' and upto 40' in length	3786	2272
Over 40" in length	5048	3029

Note:

- 1 A transshipment container is the one, which is discharged from one ship, Stored in the yard and transported through other vessel. A transshipment container sent to CFS, ICD or taken delivery locally shall be charged the local container rate.
- 2 A Shut out charge as per Section 7 shall apply if -
 - (a). The vessel nomination is changed ; or
 - (b). If the vessel nomination is changed from a later vessel to an earlier vessel after the earlier vessel is berthed.

SECTION – 3 CHARGES FOR ALL HAZARDOUS CONTAINER**A. Ship to yard using port crane.**

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
<u>Loaded Container</u>		
Not Exceeding 20' in length	3155	1893
Exceeding 20' and upto 40' in length	4733	2839
Over 40" in length	6310	3786
<u>ICD Container</u>		
Not Exceeding 20' in length	3155	1893
Exceeding 20' and upto 40' in length	4733	2839
Over 40" in length	6310	3786
<u>Transshipment Container</u>		
Not Exceeding 20' in length	3640	2184
Exceeding 20' and upto 40' in length	5460	3276
Over 40" in length	7280	4368

B. Yard to CFS – Transport and lifts at CFS

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
<u>Loaded Container</u>		
Not Exceeding 20' in length	971	971
Exceeding 20' and upto 40' in length	1456	1456
Over 40" in length	1941	1941

C. Yard to Rail for ICDs only

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
<u>ICD</u>		
Not Exceeding 20' in length	1456	1456
Exceeding 20' and upto 40' in length	2184	2184
Over 40" in length	2912	2912

D. Yard to truck

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
<u>Loaded</u>		
Not Exceeding 20' in length	485	485
Exceeding 20' and upto 40' in length	728	728
Over 40" in length	971	971

SECTION – 4 CHARGES FOR ALL OVER DIMENSIONAL CARGO CONTAINERS.

A. Ship to yard using port crane.

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
<u>Loaded</u>		
Not Exceeding 20' in length	5047	3028
Exceeding 20' and upto 40' in length	7571	4542
Over 40" in length	10094	6056
<u>ICD</u>		
Not Exceeding 20' in length	5047	3028
Exceeding 20' and upto 40' in length	7571	4542
Over 40" in length	10094	6056
<u>Transshipment</u>		
Not Exceeding 20' in length	5047	3028
Exceeding 20' and upto 40' in length	7571	4542
Over 40" in length	10094	6056
<u>Empty</u>		
Not Exceeding 20' in length	4077	2446
Exceeding 20' and upto 40' in length	6115	3669
Over 40" in length	8153	4892

B. Yard to CFS – Transport and lifts at CFS

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
<u>Loaded Container</u>		
Not Exceeding 20' in length	1796	1796
Exceeding 20' and upto 40' in length	2694	2694
Over 40" in length	3591	3591
<u>Empty Container</u>		
Not Exceeding 20' in length	1796	1796
Exceeding 20' and upto 40' in length	2694	2694
Over 40" in length	3591	3591

C. Yard to Rail for ICDs only .

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
<u>ICD</u>		
Not Exceeding 20' in length	2524	2524
Exceeding 20' and upto 40' in length	3786	3786
Over 40" in length	5048	5048
<u>Empty</u>		
Not Exceeding 20' in length	2524	2524
Exceeding 20' and upto 40' in length	3786	3786
Over 40" in length	5048	5048

D. Yard to truck

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
<u>Loaded Container</u>		
Not Exceeding 20' in length	777	777
Exceeding 20' and upto 40' in length	1165	1165
Over 40" in length	1553	1553
<u>Empty Container</u>		
Not Exceeding 20' in length	777	777
Exceeding 20' and upto 40' in length	1165	1165
Over 40" in length	1553	1553

SECTION 5 – Hatchcovers of vessels

Opening hatchcover and replacing it (charge per hatchcover)

- A. When placing the hatchcover on the quay
- B. Without placing the hatchcover on the quay

Rate in US\$
77.59
31.04

SECTION 6 – Restows FCLs & MTs

Shifting containers within the vessel (per move)

A. Hatch to Hatch shifting

FCL & MT 40'

FCL & MT 20'

B. Other than (A).

FCL & MT 40'

FCL & MT 20'

Rate in US\$
38.79
25.87
155.17
103.45

Handling charges for containers more than 40' length and up to 45' in length will be 200% of the applicable charges.

SECTION 7 - Shut outs/ Renomination of containers**A. Shutouts Charges**

FCL & MT 40'

FCL & MT 20'

B. Transportation of shutout containers

FCL & MT 40'

FCL & MT 20'

Rate in US\$
77.59
51.73
Rate in Rs.
2482
1655

Note : In the case of Shutout Container, the free storage period will be given to the Container in accordance with free storage period prescribed at Serial no.5 of Section 9 from the time the container is first received till the shutout event. If the free storage period is exceeded, storage charges shall be calculated after the expiry of the free period up to the time of lift on.

SECTION 8 – Reefer Monitoring and Connection (per 4 hours)

FCL & MT 20'

FCL & MT 40'

Pre- Trip inspection (including supply of electricity)**Clearing of containers**

FCL & MT 20'

FCL & MT 40'

Rate in US\$
5.17
7.75
50.00
2.00
4.00

Note : 1 A refrigerated container used for carriage of perishable goods with provision for electrical supply to maintain the desired temperature is considered a reefer container.

2 Above tariff does not include parameter setting or repair and maintenance of malfunctioning reefers. Charges are also applicable to restow reefer containers.

3 Pre- trip inspection of the reefer containers, connection or disconnection services on board the vessel and cleaning of containers are optional services and shall be rendered when requested

4 Additional electricity charges of US\$ 31.04 for 20' & US\$ 46.56 for 40' per calendar day will be applicable in case of Reefer Restow Containers also.

SECTION 9 – Dwell time charges

Charges for Container storage

Sl. No.	Particulars	Rate per container per day or part thereof (in US \$)		
		Upto 20' in length	Above 20' and upto 40' in length	Above 40' in length
1	Import-FCL & LCL 0- 3 days 4-15 days 16-30 days Beyond 30 days	Free 3.58 7.17 14.34	Free 7.17 14.34 28.68	Free 10.75 21.51 43.02
2	Export – FCL & LCL 0- 7 days 8-15 days 16-30 days Beyond 30 days	Free 3.15 6.31 12.62	Free 6.31 12.62 25.24	Free 9.46 18.93 37.87
3	Export / Import – Empty containers First 15 days 16-30 days Beyond 30 days	3.58 7.17 14.34	7.16 14.34 28.68	10.75 21.51 43.02
4	ICD – Import & Export – Loaded & empty (Moved by Rail) First 7 days 8-15 days 16-30 days 31 - 45 days Thereafter	Free 1.57 3.14 6.31 12.62	Free 3.14 6.29 12.62 25.24	Free 4.71 9.43 18.93 37.86
5	Transshipment – Loaded First 7 days 8-45 days Thereafter	Free 3.58 7.17	Free 7.17 14.34	Free 10.75 21.51
6	Transshipment – Empty First 15 days 16-30 days Beyond 30 days	3.58 7.17 14.34	7.17 14.34 28.68	10.75 21.51 43.02
7	Shutout – Loaded & empty First 15 days 16-30 days Beyond 30 days	3.58 7.17 14.34	7.17 14.34 28.68	10.75 21.51 43.02
8	Change of status to local delivery First 3 days 4—15 days 16-30 days Beyond 30 days	Free 3.58 7.17 14.34	Free 7.17 14.34 28.68	Free 10.75 21.51 43.02

- Storage period for a container shall be reckoned from the day following the day of landing upto the day of loading / delivery / removal of container. Free dwell time (storage) allowed shall be exclusive of customs notified holidays and port non-working days.
- Transshipment containers whose status is subsequently changed to local FCL/LCL/ICD shall lose the concessional storage charges. The storage charges for such containers shall be recovered at par with the relevant import containers storage tariff.
- In case of ICD container, if documentation is submitted within 48 hours of date of landing of containers, the storage period of 7 free days for loading the container on rail will be applicable. Else the free storage period prescribed for normal containers will be applicable.
- Normal import containers subsequently changing the mode of dispatch to rail will enjoy the free period applicable to normal import containers only.
- The total storage period for a shutout container shall be calculated from the day following the day when the container has become shutout till the day of Shipment / delivery.
- Over high and over dimensional containers shall attract thrice the normal applicable charges.
- For hazardous container, the storage charges shall be 25% more under the respective slab as given above.
- The users will not have to pay storage charges for the period during which NSICT is not in a position to deliver/ shift the containers when requested by the users.

9 The storage charges on abandoned FCL containers/shipper owned containers shall be levied upto the date of receipt of intimation of abandonment in writing or 75 days from the date of landing of container, whichever is earlier subject to the following conditions:

- (i) The consignee can issue a letter of abandonment at any time.
- (ii) If the consignee chooses not to issue such letter of abandonment, the container Agent/MLO can also issue abandonment letter subject to the condition that,
- (iii) the Line shall resume custody of container along with cargo and either take it back or remove it from the port premises; and
- (iv) the Line shall pay all port charges accrued on the cargo and container before resuming custody of the container.
- (v) The container Agent/MLO shall observe the necessary formalities and bear the cost of transportation and destuffing. In case of their failure to take such action within the stipulated period, the storage charge on container shall be continued to be levied till such time all necessary actions are taken by the shipping lines for destuffing the cargo.
- (vi) Where the container is seized/confiscated by the Custom Authorities and the same cannot be destuffed within the prescribed time limit of 75 days, the storage charges will cease to apply from the date the Customs order release of the cargo subject to lines observing the necessary formalities and bearing the cost of transportation and destuffing. Otherwise, seized/confiscated containers should be removed by the Lines/consignee from the port premises to the Customs bonded area and in that case the storage charge shall cease to apply from the date of such removal.

SECTION 10 - Procedure and Charges for Inter Terminal Transfer of Transshipment Containers between NSICT & JNPT.

The following procedure and charges for inter-terminal transfer of transshipment containers between JNPT and NSICT:

- (i) **Procedure for handling transshipment (TP) containers :**
 - a TP containers discharged at the JNPT and bound to be loaded at the NSICT will be transported by the JNP TTs; and, the JNP RTGCs will discharge these containers in the NSICT yard of 4G.
 - b Similarly, TP containers discharged at the NSICT and bound to be loaded at the JNPT will be discharged by the NSICT by using its RTGCs and TTs in CY31 of the JNPT.
- (ii) **Charges for handling TP Containers:**
 - a If a container is discharged by the JNPT and loaded by the NSICT at its terminal, the charges will be as under :
 - (i) 50% of transshipment container handling charges as per the JNPT Scale of Rates will be charged to the Line by the JNPT.
 - (ii) For the same container the NSICT will charge 50% of the transshipment container handling charges as per its Scale of Rates and, in addition, also levy a charge of Rs.1575/- (for 20') or Rs. 2363/- (for 40') towards inter-terminal transfer.
 - b If a container is discharged by the NSICT and loaded by the JNPT at its terminal, the charges will be as under:
 - (i) The NSICT will charge 50% of transshipment container handling charges to the Line as per its Scale of Rates.
 - (ii) For the same container the JNPT will charge 50% of TP handling charges and in addition, also levy charge towards inter-terminal transfer as per its Scale of Rates.

Section 11 - Miscellaneous Charges

S. No.	Particulars	Rate per Container (in Rs.)	
		Not exceeding 20' in length	Exceeding 20' in length and upto 40' in length
(i).	Fixing/ removal of seal	200	200
(ii).	Additional service charge for stacking containers in the designated yard for customs examination or for any other purpose, by prior arrangement.	200	300
(iii).	Charges for shifting within the Terminal for customs examination or any other purpose and subsequent loading of containers for delivery with Prior arrangement with user.	1875	2813
(iv).	POD Change	2482	3723
(v).	Change of status of Container from Rail to Road or vice-versa	2482	3723
(vi).	Fixing/removal of Hazardous Sticker (per container)	200	200
(vii).	One Door Open Charges per container	1000	1000
(viii).	Cancellation of documents - per EIR	100	100
(ix).	Non- declaration / Mis declaration of Hazardous containers	3000	3000
(x).	On- Wheel Customs inspection (per container)	600	600
(xi).	Vessel overstay due to User's fault - Rate per hour	100000	100000
(xii).	Sending Containers survey report/Photo at Gate through electronic process per container	400	400

Notes

- 1 Cancellation charges applies when EIR is cancelled at the request of customers.
- 2 "One Door Open" charge is applicable for handling container which requires only one door to be kept open (eg. Onion) and when door opening and securing is carried by the terminal.
- 3 "Fixing of Seal ". Bottle seals shall be fixed on every container arriving at the terminal - by rail /road/sea without a proper bottle seal on it, prior to allowing its entry. This shall be done without the written consent of the shipping line. The list of such containers on which a seal is affixed by the terminal shall be intimated to the lines. Seal charges will be applicable for removal of seals also.
- 4 "Fixing/ removal of Hazardous Sticker". Hazardous stickers indicating IMCO class only shall be affixed on a container carrying hazardous cargo. Similarly old stickers on the container shall be removed from a container carrying non-hazardous cargo. In either case, the customer has to intimate in writing to NSICT to undertake the said activity, within the terminal.
- 5 On- Wheel Customs inspection. The on-wheel inspection of a container shall be allowed a the nominated point only, on the written request of the customer. The container doors can be opened only under customs supervision. No stuffing/ destuffing, even partially, shall be permitted within the terminal premises.
- 6 Non- Declaration / Mis-declaration of Hazardous container. The Customer has to declare the hazardous nature of the cargo as per the IMCO rules and furnish the relevant hazardous details to NSICT. The above charges are only for non-declaration/mis-declaration of the hazardous nature of the container. The liabilities and cost towards the consequences arising due to non declaration or mis declaration shall, however , be on the customers account.