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TARIFF AUTHORITY FOR MAJOR PORTS

GNo.214

New Delhi,

30 December, 2008

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from M/s.PSA SICAL Terminals Limited for revision of tariff as in the Order appended hereto.

(Brahm Dutt)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/52/2005-PSA SICAL

PSA SICAL Terminals Limited

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Applicant

ORDER

(Passed on this 17th day of December 2008)

This case relates to a proposal received from the PSA SICAL Terminals Limited (PSA SICAL) for revision of its tariff.

2. This Authority passed an Order on 20 September 2002 on the proposal received from the PSA SICAL for revision of its tariff for its operations at the Tuticorin Port Trust (TPT). By the said Order the (then) prevailing rates were reduced by 15% and the (then) existing tariff item for lashing / unlashings, stowage and supervision was deleted from the Scale of Rates.

3.1. The PSA SICAL filed Writ Petition Nos. 40637 to 40639 of 2002 in the Hon'ble High Court at Madras challenging the said Order and also filed Writ Miscellaneous petitions in the Hon'ble High Court at Madras for an interim direction to stay the Order of this Authority.

3.2. The Hon'ble High Court passed interim orders on 8 November 2002 staying the Order of this Authority and permitted PSA SICAL to charge tariff for all services rendered by them, based on the tariff prevailing prior to the passing of the Order dated 20 September 2002. Subsequently, the Hon'ble High Court at Madras vide its Order dated 17 June 2005 confirmed its interim order. This Authority immediately filed an appeal against the Order of the single bench.

3.3. Subsequently, the PSA SICAL filed a representation to understand the scope of tariff guidelines issued in March 2005. A personal hearing was given to them on 26 July 2005 and it was made known to PSA SICAL that this Authority would deal with formal tariff proposal if and when received from them subject to the Hon'ble High Court giving clearance to deal the case in view of the pending Writ Petitions. The PSA SICAL filed its formal proposal dated 8 August 2005 just before the matter was due for hearing by the Hon'ble High Court of Madras.

3.4. The case was heard on 16 and 17 August 2005 by the Hon'ble High Court at Madras. A Memorandum of Compromise was signed by the concerned parties on 17 August 2005. The Hon'ble High Court of Madras took the Memorandum of Compromise on record and passed an Order on 17 August 2005 closing the writ petitions as withdrawn. The salient points of the Memorandum of Compromise are given below:

- (i). The PSA SICAL will continue to charge the 1999 tariff till a new tariff is gazetted.
- (ii). The PSA SICAL's proposal dated 8 August 2005 for fixation of tariff will be disposed of according to law and a tariff will be formulated and gazetted and such tariff will be applicable prospectively 30 days after the date on which it is published in the Gazette of India.
- (iii). The PSA SICAL will make a proposal to the Ministry of Shipping, Road Transport and Highways (MSRTH) in the matter of fixation of quantum of royalty that may be permitted to be allowed as a "pass through" as a revenue expenditure for tariff fixation prior to 31 March 2005. The Central Government may consider the same and pass appropriate orders consistent with the policy decisions of the Government of India in the matter of Chennai Container Terminal Limited dated 5 August 2003 and accordingly, issue a directive under Section 111 of the Major Port Trust Act.

For the period after 31 March 2005, the new guidelines provide the manner and mode in which this has to be done.

- (iv). Any advantage / gains, that the PSA SICAL has enjoyed by virtue of non-implementation of the 2002 tariff in view of the stay granted by the Hon'ble High Court will be quantified by TAMP and such advantages / gain will be adjusted / set

off in the proposed new tariff and such set off will be spread over a period of three years.

- (v). In arriving at the quantum of gains, TAMP will bear in mind that the 2002 tariff did not permit pass through of royalty and adjustment from the same will be made as per the directive of the Government of India as stated above. To the extent that the 2002 tariff has been arrived at on the basis of estimates, appropriate adjustments in the quantum of gains will be made if the actual figures, which are now available for the relevant periods are different.
- (vi). Before determining the advantage / gains for adjustment / set off, the TAMP shall give an opportunity to the PSA SICAL to be personally heard.

4.1. In this backdrop, the proposal of the PSA SICAL dated 8 August 2005 was taken up for further consideration.

4.2. The PSA SICAL has estimated a total deficit of Rs.717 lakhs for the years 2006 to 2008 at the tariff level of 1999. The average deficit works out to 2.87% for the three years. The PSA SICAL has proposed across the board 30% increase in its existing tariff (1999). It has submitted that efficiency gain is to be recognised as an additional item while revising the tariff which justifies the proposed increase of 30%. The highlights of the PSA SICAL proposal dated 8 August 2005 are summarised below:

(i). Cost statement:

- (a). The actual royalty paid / payable has been considered pending recommendation of the Committee formed by the Government of India on treatment of royalty in tariff fixing exercise.
- (b). Designed capacity of the terminal is assessed at 3,39,300 TEUs per annum based on the capacity indicated by the National Working Group on Normative Cost for container related charges (constituted by the TAMP) in their Draft Report of July 2005.
- (c). Net surplus / deficit reflected by the cost statement furnished by the PSA SICAL before factoring is tabulated below:

Years	Income (Rs. in lakhs)	Net surplus / deficit before considering efficiency gains	
		Net surplus / deficit (Rs. in lakhs)	Net surplus / deficit as a % of operating income (estimated at 1999 tariff)
2006	7467	(+) 597	8%
2007	8279	(-) 257	(-) 3%
2008	9199	(-) 1057	(-) 11%
Total	24945	(-) 717	Average (-) 2.87%

(ii). Efficiency Gains:

The PSA SICAL has emphasised efficiency gains / productivity improvement achieved by its terminal and has requested to consider this aspect while fixing the tariff.

It has computed efficiency gains based on some benchmark adopted from international report of what the cost / investment should be for a reasonably efficient terminal and compared with its actual which is briefly explained hereunder:

- (a). For the purpose of estimating efficiency gains, employee cost is considered at Rs.3 lakhs per employee per year assuming that even a reasonably efficient terminal will achieve labour productivity of 1000 TEUs/ employee. The total employee cost arrived based on this assumption is compared with

the actual employee cost of PSA SICAL for the years 2002 to 2004 and estimates for 2005 and 2008.

- (b). Equipment, Repairs Running and Maintenance (RRM) cost is considered at Rs.350/- per TEU in 1999 and escalated by 5% per annum to derive at the cost and compared with its actuals / estimates (from 2005 to 2008) to estimate the efficiency gains in RRM cost.
- (c). Efficiency gains due to resource utilisation and optimum investment has also been estimated based on such assumption.
- (d). Accordingly, the total efficiency gain estimated by the PSA SICAL is as under:

(Rs. in lakhs)	
2005	5038
2006	5542
2007	6669
2008	7340
Total	24589

(iii). Proposed increase in tariff:

- (a). The prevailing tariff (approved by this Authority in 1999) is proposed to be increased by 30%.

Lashing and unlashing charge of US\$ 8.04 per container has been merged with the stevedorage charge (i.e. Quay crane charge) and then *proposed to be increased by 30% (It is relevant to mention that this Authority in its September 2002 Order had disallowed the lashing / unlashing charge).*

- (b). Likewise, while arriving at the proposed tariff for shifting of containers within vessels, the lashing / unlashing charges has been clubbed with the shifting charge and then proposed to be increased by 30%.
- (c). New tariff items for certain miscellaneous services like direct loading, trucking and reshuffling charge in container status, etc., are proposed to be introduced.

4.3. The PSA SICAL has clarified that formal process for developing the 8th berth as container terminal has just been commenced by the TPT and the exact timing of commencement of operation will be known when the RFP is finalised. Based on the preliminary information about the volume anticipated at this new berth, it expects reduction in the revenue of its terminal by 28% in 2007 and 43% in 2008. It has, therefore, requested to allow it to make adjustment during this tariff fixing process as and when the RFP document for the 2nd container terminal is released by the TPT.

5. The PSA SICAL in its proposal of 8 August 2005 had not computed advantage / gain accrued on account of non-implementation of 2002 tariff Order as per the term of the MOC. The PSA SICAL has subsequently furnished gain / loss as follows for the years 2002 to 2004:

Years	Net gain / loss (Rs. in lakhs)
2002	(-) 759.84
2003	460.62
2004	(-) 107.16
Total	(-) 406.38

6. The PSA SICAL has requested that some of the information contained in the proposal are commercially sensitive and agreed only for circulation of the traffic projections, consolidated cost statement with details of income and expenses, assumptions, and efficiency gain statement (Table 7.4.). The PSA SICAL did not explain any specific reasons for classifying its other documents as confidential as required by the revised tariff guidelines. The documents agreed to be circulated by PSA SICAL along with the statement relating to capital employed and Annexes upto

Table 7.4. were circulated to the TPT and other concerned user organisations seeking their comments.

All the user organisations were also informed about the Order passed by the Hon'ble High Court on 17 August 2005 alongwith the salient points of the MOC.

7.1. The TPT and the various user organisations have furnished their comments on PSA SICAL proposal. Some of the main points made by them are summarised below:

- (i). Recognising the huge profits reported as per the financial records of PSA SICAL, the instant proposal may be rejected. PSA SICAL may be advised to adopt the tariff fixed by this Authority vide Order dated 20 September 2002 with retrospective effect.
- (ii). The terminal operator has quoted very high royalty in the tender in the interest of obtaining the tender and now trying to include such royalty as a part of the cost of operation. Such an action on the part of the terminal operator would tantamount to exploitation of the trade. The terminal operator should alone pay the Royalty from out of their operational performance and its efficiency and they should not look upon the trade and enhance the rates for the purpose of payment of royalty.
- (iii). PSA SICAL has tried to club the lashing / unlashng charges together with the quay crane charge and applied 30% increase on the whole. The lashing / unlashng charges have to be excluded as it was not accepted by TAMP in the previous tariff approval.
- (iv). The TPT has stated that the point made by the PSA SICAL about a strong relationship between efficiency gains, competitive tariff and statutory obligations and suggestion to factor this in during tariff fixing exercise may be considered in the light of the revised guidelines issued by this Authority.
- (v). The TPT has stated that there are fixed and variable elements involved in Repairs, Running and Maintenance (RRM) cost and hence calculation of efficiency gain from RRM cost with the assumption of 100% variability may not be correct.

7.2. The comments received from the TPT, various users / user organisations were forwarded to PSA SICAL as feedback information / comments. The PSA SICAL has responded to the comments of the TPT and other user organisations.

8. Based on a preliminary scrutiny of the proposal and information furnished by PSA SICAL additional information / clarification on various points were sought. Some of the important queries raised by us and response of PSA SICAL is tabulated below:

Sl. No.	Queries raised by us	Response of the PSA SICAL
(i).	Assessment of gain for the years 2003 and 2004 has been prepared by us and sent to PSA SICAL for illustrative purpose. PSA SICAL has been requested to prepare a complete statement on these lines for the entire period starting from October 2002 to December 2005. ➤ Annual License fee for CITOS was not admitted as cost during the last general revision Order. With reference to its submissions it was clarified that the revised tariff guidelines have been notified from 31 March 2005 and hence cannot be	It has furnished revised statement of gain and losses due to non-implementation of Order. (It has however, not considered appropriate adjustments in the actuals which were considered while approving 2002 Order for arriving at the gain / loss due to non-implementation of this Authority's Order.) It has made the following submissions: <u>Annual license fee for CITOS</u> (a). As per the revised guidelines, technical fee (which was the foremost reason for disallowing this item of cost) is an allowable expense now. The only condition is that it must be reasonable by applying yardstick of 'arms length relationship'. In our case, arms length price

applied for the period prior to that. Even for admitting CITOS expense as item of cost for the period subsequent to 31 March 2005, the operator is required to establish arms length relationship of this transaction. In this regard, furnish a copy of the Income Tax Assessment Orders of previous years admitting this expense. ➤ Deferred revenue expenditure of Rs.686.98 lakhs reported as on 31 December 2001 may be spread over the remaining project period. Furnish the breakup of other deferred revenue expenditure considered under the head Deferred Revenue expenditure. In case the total expenditure and explain the basis of phasing this expenditure. ➤ Foreign exchange loss incurred in repayment of foreign currency loans, if any, can only be admitted as an expense. Please clarify whether the foreign exchange loss reported under the head 'other expenses' in the Annual Accounts for the years 2002, 2004 and 2005 relates to repayment of foreign currency loss.	is supplied in the quotation. (b). TAMP had admitted that some capital cost would have been incurred if it had been procured from elsewhere. If this is the case, then the same system must have annual charges also, as this is an accepted industry practice. This is evident from cost statements of other terminals where TAMP has allowed such cost. (c). It is, therefore, not just and fair to disallow the cost. As per the revised guideline, the reasons for disallowing the cost do not exist anymore. (d). It is agreed that the revised guidelines cannot be applied for the prior period. But, at the same time it is also true that these guidelines are revised based on the experience gained after the application of previous guidelines. In the revised guidelines intent is clear about this expense. Although these guidelines are applicable from period on or after April 1st, 2005 these can very well provide the direction to settle some of the old issues. (e). The Income Tax proceedings are in progress and have not yet attained finality and hence IT Assessment Order cannot be furnished. It has, however, clarified that the Income Tax department has not asked for any clarification regarding annual licence fee pertaining to CITOS. <u>Deferred Revenue expenditure</u> (a). "Guidance Note on Treatment of Expenditure during Construction Period" issued by Institute of Chartered Accountants of India (ICAI) recommends writing-off these expense in 3 to 5 years. It has taken higher side ceiling of 5 years in case of preliminary expenses. In case of Royalty payment it is amortised over period of 10 years. (b). It is agreed that the preliminary expenses are related with project hence only are allowed as a cost (but the same argument cannot be a basis for treatment taken) and if allowed then burden on tariff in initial period, certainly, cannot be the basis for spreading it over entire license period against Generally Accepted Accounting Principles for such expenses. There are several foreign currency transactions which are incurred as legitimate business expenditure. Its practice is to book the expenditure at the prevailing exchange rate at the time of passing the entry in books of accounts. The foreign currency transaction actually takes place subsequently and the actual 'Indian Rs.' exchanged is informed by the bank. The difference is again booked in the accounts as "Foreign Exchange Gain /
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	➤ As stated in para 15 (xiii) of our last Order, only the funds from reserves invested in admissible assets will qualify for return. In view of the modification suggested in the treatment of deferred revenue expenses in line with the principle followed in the last tariff Order, suitable adjustment may be done in computation of share holders fund and return thereon. Return on Equity should be adjusted for capacity utilisation.	Loss". Hence, only the combination of both the entries will give the exact expenditure incurred. Thus in this case, the specific entry in the accounts relates to the actual transaction and is part of the actual expenditure. The details of such transaction during 2003, 2004 & 2005 are furnished which include transaction pertaining to purchase of spares, payment of lease rentals of RTG's, etc. apart from Annual License fee for CITOS. <u>Computation of Capital Employed.</u> (a). Para 2.9.4. of the revised guidelines states that working capital means current assets (excluding of cash / deposit balances of funds) less current liabilities. It is clear from above that cash balance and deposit balances of funds will not be considered under current assets. This cash and deposit balances are not those which are required for smooth functioning of any business, but, represent those balances in specific funds created out of free reserves. Cash balance considered by it under working capital is totally different form the cash balance referred in clause 2.9.4 of the revised tariff guidelines. Same is the case with deposit balances also. (b). Unlike cash balance, guidelines do not contain any specific limit for deposit balance while considering it as an item of working capital. Hence, admissibility of such balances would be governed by the justification of keeping such balances and its reasonableness. (c). Cash in bank is part of the total capital employed in its business for strategic purposes. This current asset is required to get the best terms for the financial facilities availed, viz., favourable interest rate, Bank Guarantee to TPT, etc. (d). PSA SICAL is a typical case with low operating cost and very low net fixed assets. Therefore, such a buffer is required to maintain competitive tariff with increasing royalty commitment, thus facilitating us to discharge our legally binding obligations. Even with this, its capital employed is very small in comparison to other private terminal operators and the return is inadequate to cover the difference between the first and the second highest royalty quote.
(ii).	Explain how the assessed capacity for the year 2003 to 2004 (at 2,26,200) be lower than the MGT prescribed in the LA. The designed capacity of the terminal for the years 2003 to 2008 may be assessed taking into consideration the factors relevant to the PSA SICAL based on equipment deployed / proposed to be	(a). MGT of 3,00,000 TEUs is not the bid document condition; but is part of the quote by PSA SICAL. It is a commercial figure which will vary from bidder to bidder. Hence, MGT cannot be the assessed capacity. (b). The assessed terminal capacity is a function of the physical resources

	deployed and the actual productivity level achieved / to be achieved. employed in the berth/ yard. No terminal in this country has handled 3,00,000 TEUs with 2 QCs and 4 RTGs. TAMP has allowed much lower terminal capacity norm for other private terminals. (c). It is the accepted international practice to plan the capacity 30% above the projected traffic. Even the draft Maritime Sector policy of the Government endorses this fact and appropriate change has been brought in the revised tariff guidelines. (d). The Study Group for the "Normative Cost" was constituted by TAMP with experts in the field and they evolved a professional assessment using physical assets. In the absence of any other objective assessment, it is only fair that TAMP admits this benchmark. Accordingly, the designed capacity of the terminal for the years 2002 to 2008 is given below: <table border="1"> <thead> <tr> <th>Year</th><th>Capacity in TEUs</th></tr> </thead> <tbody> <tr> <td>2002</td><td>226,200</td></tr> <tr> <td>2003</td><td>226,200</td></tr> <tr> <td>2004</td><td>226,200</td></tr> <tr> <td>2005</td><td>339,300</td></tr> <tr> <td>2006</td><td>339,300</td></tr> <tr> <td>2007</td><td>339,300</td></tr> <tr> <td>2008</td><td>339,300</td></tr> </tbody> </table>	Year	Capacity in TEUs	2002	226,200	2003	226,200	2004	226,200	2005	339,300	2006	339,300	2007	339,300	2008	339,300
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(iii).	With reference to the submissions made by PSA SICAL justifying an increase of 37% in the year 2005 over the previous years, actuals, it was clarified the actuals for the year 2005 already takes into account the effect of additional equipment i.e. 1 QC, 4 RTG's, 4 prime movers and other equipment deployed during the year. The 4 RTGs were fully commissioned by 8 Jan 2005 and they were under warranty till 7 Jan 2006. Similarly, 1 QC was fully commissioned by 9 June 2005 and will be under warranty till 8 June 2006. The RRM expenditure of 2005 does not take into account the effect of additional equipment. The increase in percentage appears to be exorbitant since it is from a very low base. The actual quantum is more relevant than the actual % of increase; both due to fleet increase & low base. The actual quantum of increase in repairs & maintenance is only Rs.1.25 crores in 2006, Rs.0.85 crores in 2007 and Rs.0.2 crores in 2008.																
(iv).	The admissibility of royalty / revenue share as an item of cost for the period subsequent to 31 March 2005 will be as per the revised tariff guidelines ROCE for the years 2006, 2007 and 2008 is only around Rs.11 crores per annum whereas the actual royalty for the same period varies from Rs.22.43 crores to Rs.49.6 crores. Hence, ROCE alone is not sufficient to cover 100% of the Royalty paid as legitimate business expenditure. Even if TAMP allows 100% of the royalty, its tariff will still be competitive. When viewed in the background of our most efficient service, this will be in the best interest of the trade and the investors. Hence, TAMP is requested that 100% of the royalty paid to Tuticorin Port Trust be allowed as legitimate business expenditure for the period beginning after 31 March 2005.																

(v).	(a). Indicate additional equipment, if any, taken on hire and substantiate the estimates furnishing copies of the equipment hire contracts. (b). With reference to the lease agreement entered with Dacca PTE Ltd., for lease of QC and RTG on payment of lease rental, please clarify whether the firm was selected based on competitive bidding and also certify the arms length relationship of this transaction for admitting this expense as an item of cost.	(a). The civil and electrical works, yard expansion and purchase of 4 new Prime Movers and Trailers were done using its own funds. The addition of 1 used QC and 4 used RTGs was done through an operating lease arrangement for five years with a Singapore based company, viz., Dacca Pte. Ltd. The monthly lease pay out is USD 58,800 for QC and USD 44,800 for RTGs. Copies of the lease agreement has been furnished to substantiate this estimate. (b). The lease agreement with Dacca PTE Ltd. for lease of QC and RTG is based on competitive bidding. Prices are reasonable and are based on arms length relationship of the transaction. A copy of transfer pricing report from KPMG is also furnished for determining reasonableness of the prices.
(vi).	Confirm that the depreciation has been computed on straight-line method, with life norms adopted as per the Companies Act or based on the life norms prescribed in the Concession Agreement whichever is higher.	Depreciation is calculated on a straight-line method with the life norms adopted as per the Companies Act.
(vii).	The increase in estimation of insurance cost from Rs.39 lakhs in 2004 to Rs.57 lakhs in 2005 under the head 'other expenses' may be substantiated with documentary support. Explain the reasons for estimating the insurance cost to increase during 2007 and 2008 though no addition is proposed to the gross block. In fact the value of the assets for which insurance cover is taken will depreciate year after year and hence the insurance cost should also reduce.	As per clause 10.6.2 of the License Agreement insurance will have to be based on "replacement value" of assets. This is also good commercial prudence and an accepted business practice. Hence the insurance cost will marginally go up and not come down. It has furnished documentary support to justify these estimates.
(viii).	The estimation of working capital may be modified in line with the tariff guidelines.	(a). The revised guidelines limits sundry debtors to two month's estate income (such as store rent in our case) & terminal handling charges. These expenses are very much relevant to PSA SICAL. Also, these charges are not collected in advance; but they are collected after the services are rendered. That being so, PSA SICAL has estimated the working capital @ 10 days of the billing to take care of exigencies. This is much less than what TAMP normally allows i.e. equal to 2 months revenue. (b). With reference to estimation of cash, it is submitted that cash & bank balance includes cash in hand as well as bank balance. While cash in hand is as per the limit provided in the guidelines, the balance in bank, in absence of any specific limit, is governed by the justification of keeping such balances and its reasonableness. The bank balance is the part of the total capital employed in PSA SICAL's terminal business for strategic purposes. This

		current asset is required to get the best terms for the financial facilities availed, viz., favourable interest rate, furnishing non-funded facilities like Bank Guarantee to TPT, relaxation in corporate guarantee requirement, etc. Periodically this is also used to fund capital additions and replacement requirements of IT products which have high obsolescence rate. The financial leverage available helps us in reducing costs in many other areas. PSA SICAL is a typical case with low operating cost and very low net fixed assets. Therefore, such a buffer is required to maintain a competitive tariff with increasing royalty commitment, thus facilitating us to discharge our legally binding obligations. Even with this bank balance, PSA SICAL's capital employed is very small and the return is inadequate to cover the difference between the first and the second highest royalty quote.
(ix).	As per the revised tariff guidelines, benchmark to measure efficiency improvement is the average performance of the same terminal achieved in the preceding cycle. Reference to performance of other terminals and also the tariff levied thereat are not relevant. PSA SICAL is advised to quantify cost reduction, if any, achieved during the past period and establish that the cost reduction is due to efficiency improvement of its terminal and claim its share in the relevant estimates of expenditure for fixing tariff for the tariff validity period under consideration as per the relevant clause of the revised tariff guidelines.	Ever since the commencement of commercial operation, PSA SICAL has worked very hard to achieve efficiency leadership and cost leadership. The data (both past and projected) submitted to TAMP reflect this achievement. It has, therefore, to consider its request as a test case for competitive tariff based on normative cost approach. While noble intention of law is to provide for incentives for better performance and disincentives for performance below the benchmark but the literal interpretations of the guidelines does not translate this noble intention into the actions. This is because of the fact that these provisions for incentives are introduced in between and that too without any transitional provisions to provide for a situation where all operators are not at equilibrium in terms of performance level. This Authority is requested to consider the intent of policy and establish the scope wherein this Authority can apply its discretion to serve the objective of the newly introduced provisions in favour of an operator whose tariff is lowest in the country despite meeting the best performance benchmarks.
(x).	The proposed condition about reckoning the date of Actual Time of Berthing (ATB) of the vessel into the terminal for the purpose of conversion of dollar denominated tariff into rupee terms is not found to be in line with clause 2.19.1. and 2.19.2. of the revised tariff guidelines. In case of storage charge on export containers, the conversion will not be from the date of arrival of containers in the port premises but from the date of arrival of	TAMP is requested to give us the flexibility of using Actual Time of Berthing (ATB) for conversion of dollar rates into rupees rates, since this will result in uniform exchange rate for all the export boxes going into a particular vessel and make the billing process simpler. Generally, the export boxes are all received just 2 to 3 days prior to ATB and hence the differences will be insignificant. Since both TPT and PSA SICAL are

	container into the terminal.	involved in storing and collecting storage charges, the proposed provision is right.
(xi).	Incorporate clause 2.19.3. of the revised tariff guidelines prescribing regular review of exchange rate.	Vessels are turned around in around 14 to 18 hours, hence the said clause of 2.19.3 of revised guidelines is not applicable.
(xii).	The proposed provisions about collecting deposit from users in case where transactions are not routed through Electric Data Interface (EDI) are not found to be in line with clauses 2.18.2 and 2.18.3 of the revised tariff guidelines. The proposed provision at 2.6. may, therefore, be modified in line with the clause 2.18.2. to 2.18.3. of revised tariff guidelines. Update the exact rate of penal interest for delayed payment by users / delayed refund by the operator at 2% above the prime lending rate of the State Bank of India as stated in tariff guidelines.	The EDI route for transactions with customers has been stabilised with proper tripartite arrangements. Therefore, there will be no deposits. This is similar to the EDI arrangement of TPT and has been well accepted by all our customers. It has not proposed any provision for levy of penal interest for delay in payment by users / delay in refund by terminal. It has proposed a provision to state that all transactions to its Custom are only through Electronic Data Interface (EDI) with proper tripartite agreement.
(xiii).	Explain the reasons for introducing the proposed note number 10 about shifting of import laden container to Off dock CFS for disposal under Section 48 of Customs Act if such cargo is not cleared within 25 days from the date of landing. Furnish a copy of the relevant order of the Customs in this regard. The Major Port Trust Act 1963, specifically prescribes the provisions under Sections 61 and 62 for disposal of goods not removed from the premises within the stipulated time limit or in case rates or rent are not paid.	It has amended the provision in accordance with the revised Customs notification. A copy of the same has been submitted.
(xiv).	Explain the reasons for not proposing a composite box rate with discounts for services not offered.	Composite box rate is not possible due to involvement of CHAs & MLOs while invoicing and due to USD component for some of the tariff items.
(xv).	This Authority vide its Order dated 20 September 2002 (which has been stayed) had deleted the lashing / unlashsing charge of US \$ 8.04 per container for reasons elaborately explained the said Order. The proposed rate for stevedorage charge of normal container / transshipment container and charges for shifting of container are arrived at by clubbing the existing lashing / unlashsing charge with the stevedorage charge and proposing hike of 30% thereof. This works out to almost 100% to 124% increase from the tariff level approved in the Order of September 2002 for these items. Justify the proposed rate with reference to the cost of services provided.	The MOC provides for PSA SICAL to continue to collect charges based on 1999 tariff till a new tariff is notified. Hence it is logical to apply the upward revision of 30% based on 1999 tariff.
(xvi).	Furnish detailed cost sheet for each equipment or service center for which tariff has been proposed to determine the reasonableness of individual tariff items with reference to the actual cost of providing the service.	A container terminal offers comprehensive service of receiving export boxes & loading on to ship and vice-versa for import boxes. This is different from a major port which offers variety of services like loading / unloading, handling varieties of cargo, covered & uncovered storage, land use allotment, etc. In the case of a container

		operation, cross subsidisation is not relevant. The different rates, conventionally proposed is for flexibility in billing and due to presence of dollar denominated tariff. It is not possible to split the cost under each equipment or service center. The overall rate increase is justified only through total revenue and total cost position.
(xvii).	Prescribe concessional tariff for coastal containers at Schedule 1.1, 1.2, 1.3, 1.4, 1.5 and 1.9 at the level not exceeding 60% of tariff proposed for normal containers in line with our Order number TAMP/4/2004-Genl dated 7 January 2005.	Tariff for coastal vessels is prescribed at level the concession envisaged by TAMP.
(xviii).	Indicate the benchmark levels of productivity as stipulated under clause 6.8. of the tariff guidelines. Propose incentive for better performance of the terminal and disincentives for performance below the benchmark levels. Also, explain the basis for proposing such benchmark levels and the incentives / dis-incentives.	It has been the most efficient terminal in the country from day one in terms of both productivity and reliability. It never had any monetary incentive for its superior performance so far. Earlier exercises in the past, like, "Efficiency-linked Tariff Scheme" and "Normative cost based on container handling charges with benchmarks" have not yielded the desired results.
(xix).	Flowing from the principle prescribed in clause 2.15 of the revised tariff guidelines, incorporate a conditionality of allowing refund equivalent to berth hire charges for the period when the vessels idle at its terminal when operations cannot take place due to failure / breakdown of the shore based facilities of the PSA SICAL.	On several occasions, it has turned around the vessel faster due to our superior productivity and have provided "catch-up" services for delayed vessels. Vessels / MLOs do not pay extra for this reduced berth usage. Also, this clause will only result in more disputes rather than helping the cause of the port customers.
(xx).	Incorporate a provision clarifying the rates applicable on a container from foreign port landing at PSA SICAL for subsequent transshipment to an Indian Port on coastal voyage or vice versa.	It has incorporated a necessary provision based on this observations.
(xxi).	Justify the proposed increased of around 53% in lift off / lift on, Hatch cover handling, Extra movement, Reefer related charges, Shut out and Wharfage over the rate approved in TAMP Order of September 2002 with reference to the cost of services provided.	The MOC allows PSA SICAL to continue to collect charges based on 1999 tariff till a new tariff is notified. Hence it logical to apply the upward revision of 30% based on 1999 tariff.
(xxii).	The unit of levy of charges for supply of electricity to reefer container may be prescribed on 4 hourly basis in line with clause 5.7.1. of the tariff guidelines. While doing so, corresponding adjustment may be done in the rates proposed. Also, justify the proposed increase in the charges for the supply of electricity with reference to the present tariff of the power supply and the average consumption of electricity per shift.	It has modified the unit of levy of supply of electricity to reefer containers on 4 hourly basis. The electricity charges have gone up by 46% from the time it commenced the operation where as its proposal envisages only 30% increase from the 1999 rates.
(xxiii).	Modify the proposed note about commencement of free storage period for import loaded and empty container in terms of clause 5.8.2. of the revised tariff guidelines.	The proposed note is amended to comply with clause 5.8.2 of revised guidelines.

(xxiv).	The proposed note number 5 about time limit for levy of storage charge in case of abandoned containers is found to be incomplete. Modify the said note to include various provisions prescribed in Clause 5.8.3. of the tariff guidelines.	It has revised the provision in line with the new Customs notification to state that where the container is seized / confiscated by the Custom Authorities and the same cannot be destuffed within the prescribed time, the storage charges will cease to apply from the day the Custom order release 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 line / consignee from the port premises to the Customs bonded area and in that case the storage charge shall cease to apply from the day of such removal.
(xxv).	Incorporate a conditionality to state that the storage charges shall not accrue for the period during which the PSA SICAL is not in a position to deliver / ship the containers, when requested by the user.	The wordings of this conditionality should be unambiguous. It should not result in subjective interpretations resulting in disputes than helping customers' cause. There should be a national consensus and all the terminals should follow this.
(xxvi).	Explain the basis of the proposed tariff of Rs.1000/- per transaction / report under Schedule 2.3 for specialised system service and also state explicitly the specialised services proposed to be offered for levy of this tariff. Such services must not be those arising in the ordinary course of terminal operation.	This relates to generation of any special reports/ information from its system which is not routine in nature, but based on customer's request. The revised proposed Scale of Rates explains the services for which the proposed tariff will be levied.

9. The Tuticorin Port Trust (TPT) has also been requested to furnish additional information / clarification on the following points. The TPT has furnished the requisite information. A summary of queries raised by us and the TPT's reply are tabulated below:

Sl. No.	Queries raised by us	Reply furnished by TPT
(i).	Furnish NPV analysis of the bids of all the bidders made in term of Clause 5.6 (b & c) and 4.9.2 of the Tender to select the successful bidder.	It has furnished the requisite information. The net present value of the amount quoted by the second highest bidder is Rs.6521.18 lakhs as against Rs.13,914.88 lakhs quoted by PSA SICAL.
(ii).	Furnish comments on the reasonableness of the proposed investments of PSA SICAL to the tune of Rs.259 lakhs in plant and machinery and Rs.462 lakhs in IT during the year 2006 and also confirm whether it is as per the terms of the CLA.	It has not made any specific comments. The TPT has stated that as per CLA Clause No.6.1.5. the licensee shall use best effort to promote and develop the commerce at the Licensed Premises and / or the Container Terminal in order to achieve its maximum utilisation and shall at all times, give foremost consideration to this objective consistent with sound business practices in its manner of operation. As per Article 6, Clause No.6.1.1. of the LA, the licensee has to make available all necessary resources including capital investment for operation, maintenance and repair of the Container Terminal.
(iii).	Comment on the designed capacity of the PSA SICAL Terminal for the years 2003 to 2008 taking into consideration the equipment deployed / proposed to be deployed.	Terminal capacity mentioned in the BOT concession agreement is 300,000 TEUs per annum with its modern handling equipment and information system support. The length of the berth is 370 meters and

		draught is 10.7 mtrs. The berth was initially provided with 4 Rubber tyred gantry cranes, 2 Rail mounted quay cranes and supporting facilities such as tractors and trailers etc. as stipulated in the BOT agreement. An area measuring 10ha (1,00,000 sq.m.) of land has been provided for handling and stacking of containers. The area is sufficient to handle 4,00,000 TEUs of containers. However, to handle these containers, the equipment provided were not sufficient and the operator was requested to provide additional equipment to facilitate handling of more traffic. In compliance with the port's request, the terminal operator installed one more RMQC, four RTGC and required prime movers, besides yard expansion. The additional infrastructure was in place by end of March 2005. Hence the projections made by the Terminal Operator at 356100 TEUs, 391710 TEUs and 430881 TEUs for the year 2006-2007 and 2008 respectively are in order.
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10. A joint hearing in this case was held on 9 December 2005. At the joint hearing, the PSA SICAL, TPT and the concerned users made their submissions. Indian Chamber of Commerce and Industry (ICCI), Tuticorin Custom House Agents' Association (TCHAA), Tuticorin Steamer Agents' Association (TSAA) and Tuticorin Port Handling Agents Association have filed further written submissions reiterating the points made by them earlier.

11. The PSA SICAL has subsequently vide letter dated 16 January 2006 made further submissions emphasising on considering efficiency gains on the computation of its tariff. It has furnished revised calculation of efficiency gains as per the norms of performance given by the Working Group on Normative Cost based tariff wherever available and considered the report published by the World Bank (Measuring Port Performance) by Patrick. In line with the approach followed by it in its initial proposal, the efficiency gains assessed by the PSA SICAL as per the revised calculation for the period from the years 2000 to 2005 is Rs.228.88 crores and 50% thereof i.e. Rs.114.44 crores has been claimed as efficiency gain.

It has submitted that the 2005 guidelines provide to reward an operator for efficiency achieved in operations by benchmarking it against the average performance in previous tariff cycle. But the selection of such benchmark suffers from the deficiency to deal with situations arising because of its introduction in-between and that to in a heterogeneous market where all the players are not performing at the same level.

The cumulative effect of the above arguments demands an independent benchmark as transitional provision for incentivising efficiency gains. This needs a deviation from what is given in the guidelines regarding efficiency gains.

Referring to clause 1.7. of the tariff guidelines it has concluded that the guidelines empower TAMP to deviate from the provision prescribed in the tariff guidelines. TAMP may exercise this discretion while dealing with this issue in its case to serve in general the intent of law and policies in particular the objective behind privatisation.

12. The PSA SICAL was given an opportunity of hearing on quantification of gain / loss on 20 July 2006 at the office of this Authority.

13. This Authority passed an Order on 23 August 2006 in compliance with the terms of the MOC drawn on 17 August 2005 between the PSA SICAL, TAMP and the Ministry of Shipping, Government of India and the direction received from the Ministry of Shipping on 17 April 2006 about treatment of royalty for the period prior to 31 March 2005. The said Order passed by this Authority was notified in the Gazette of India on 15 September 2006 vide Gazette No.140. In the said Order

this Authority has assessed the gain approved to PSA SICAL due to non-implementation of the 2002 tariff Order at Rs.72.63 crores for the period from November 2002 to September 2006. The gain assessed for the past period was adjusted over 3 years period from October 2006 to September 2009. The net surplus for the period October 2006 to September 2009 after adjustment of the gain accrued to PSA SICAL in the past was estimated at Rs.14288.11 lakhs (i.e. 54.3% of the operating income). Based on the cost position reflected, this Authority ordered 50% tariff reduction over the 1999 tariff and deleted the charges for lashing / unlashing

14.1. The PSA SICAL filed Writ Petition Nos.38845 and 38846 of 2006 challenging the Order passed by this Authority on 23 August 2006 before the Hon'ble High Court of Madras.

14.2. The Hon'ble High Court of Madras based on the Writ Petitions filed by the PSA SICAL had granted interim stay on the operation of impugned Order and allowed the PSA SICAL to charge tariff as per the tariff Order of December 1999 until further Orders on these Writ Petitions. The interim stay granted was extended from time to time by the Hon'ble High Court at Madras.

14.3. Subsequently, the Hon'ble High Court of Madras disposed of the Writ Petition filed by the PSA SICAL through its Order dated 22 August 2007. The operative portion of the Order is reproduced below:

"So far as the impugned order dated 23.08.2006 passed by the first respondent is concerned, it is apparent that no opportunity was afforded as agreed in the memo of compromise dated 17.08.2005. Indeed, the learned senior counsel for respondents 1 and 3 submitted that the hearing was conducted only by the Chairman of TAMP. In so far as the impugned order dated 17.04.2006 passed by the Union of India is concerned, this Court is of the view that sufficient opportunity has not been granted. Taking into consideration of the same, the impugned orders passed by respondents 1 and 3 are quashed on that ground. If the petitioners intend to submit a representation, if any, to the first and third respondents, they are permitted to do so, within a period of two weeks from today, on receipt of the same, the said respondents are directed to give personal hearing to the petitioner and pass orders on merits in accordance with law within a period of four weeks and six weeks respectively thereafter."

14.4. As TAMP can fix tariff for PSA SICAL only after the Government issues a policy direction on the issue of pass through of royalty for the period prior to 31 March 2005, a joint memo was also filed on behalf of the Petitioner and TAMP on 5 September 2007 before the Hon'ble High Court to modify the Order dated 22 August 2007. The learned Judge after perusing the Order of 22 August 2007 observed that it was not necessary to modify or clarify the earlier Order. On receipt of the representation, the TAMP could seek appropriate direction from the Ministry and pass Orders accordingly.

15. The PSA SICAL vide letter dated 4 September 2007 has filed a representation. It has mainly emphasised on internalisation of efficiency gain in the tariff which will help PSA SICAL to cover its unmet operating costs through revenue stream while maintaining the tariff at globally competitive level. The representation was updated based on the presentation made by PSA SICAL subsequently. It has also drawn reference to the submissions made by it earlier in Annexure E of letter dated 16 January 2007 as regards efficiency gain. Some of the main submissions made by the PSA SICAL in its representation and its letter of 16 January 2007 referred herein are summarised below:

- (i). The operating cost estimated to be incurred (including royalty), the royalty to be paid and the estimated average tariff that will be allowed by the TAMP during the life of the License Agreement derived based on the principles followed in 2002 tariff Order and 2006 tariff Order are tabulated below:

Rs. / TEU (based on 2002 tariff order)			
Year	Tariff	Total Expenses (including royalty)	Royalty paid
2002-05	1637	1498	366
2006-08	1104*	1923	895

2009-11	1070*	2795	1792
2012-14	1078*	3545	2534
2015-17	1235*	4124	2956
2018-20	2045*	5399	3421
2021-23	2098*	5990	3959
2024-28	2476*	6998	4589

* Calculated tariff based on concepts followed in 2002 tariff Order.

The above table clearly show that revenue generated by PSA SICAL based on the tariff recommended by TAMP does not cover the operating cost incurred by PSA SICAL even if the fixed royalty paid by PSA SICAL to Tuticorin Port Trust (TPT) is excluded from the operating cost.

- (ii). Referring to the efficiency gain computed by it at Rs.228.88 crores for the years 2000 to 2005, in its earlier letter dated 16 January 2006, it has stated that if tariff for the typical three years after recognising efficiency gain should have been as follows:

(in Rs.)	
2003	3069
2004	2787
2005	3157

The above tariff is well within the tariff ordered by TAMP to the other container terminals in our country. Using the discretionary powers available to TAMP as per clause 1.7. of the tariff guidelines and using the policy statement applicable to Maritime Sector providing TAMP with flexibility to reward efficient container terminal, TAMP must incentivise PSA SICAL for sustaining and enhancing its efficiency.

- (iii). If PSA SICAL is allowed to internalize efficiency gains as a part of the tariff it charges to its customers, it will be in a position to atleast meet a certain percentage of its unmet operating costs. Otherwise the return allowed by TAMP will not cover the disallowed portion of the royalty.

Year	Likely ROCE allowed by TAMP (Rs./TEU)	Disallowed portion of royalty (Rs./TEU)
2006-08	157	475
2009-11	46	952
2012-14	12	1346
2015-17	15	1571

Basis: 30 year finance model in its proposal of August 2005.

- (iv). For the period 2002 to 2004 it has actually handled 743,465 TEUs which is 71,274 TEUs more than projections made in 2002 tariff Order. The excess volume handled is less than 20% of the volume projected in 2002 tariff Order. Juxtaposing this reality with paragraph 2.13. of the revised guidelines, implies that PSA SICAL needs to be compensated for its efficient operations while setting the tariff at the end of each tariff cycle or the resultant gains may be appropriately be allowed to be retained while assessing the gains / loss for the past period. According to PSA SICAL this amount which is ordered to be recovered by TAMP in the gains / loss calculations is to the tune of Rs.12.74 crores.
- (v). To summarise, PSA SICAL has requested to allow internalisation of efficiency gains in its tariff to meet a certain percentage of unmet operating costs by exercising the policy space provided under the revised guidelines of tariff fixation and by the Maritime Policy.

16.1. In compliance with the Order of the Hon'ble High Court dated 22 August 2007, and in terms of Clause 9 of the MOC, a personal hearing was given to PSA SICAL on 21 September 2007 by this Authority with required quorum before determining the advantage / gains accrued to PSA SICAL in the past for adjustment / set off. PSA SICAL was earlier called upon to furnish all

relevant documents and necessary analysis required for quantification of the gain, if any, accrued to it, as per the MOC before the date of hearing.

16.2. At the hearing, the contents of para 6 of the Order of the High Court of 22 August 2007 were read out and the purpose of the personal hearing was explained to PSA SICAL. The fact that both TAMP and PSA SICAL had filed a joint memo for rectification of the time limits prescribed by the High Court for passing an appropriate orders by the TAMP was also recalled. PSA SICAL agreed that the time limit for TAMP should be read as six weeks as this Authority has to take into consideration the order to be passed by the Government within four weeks from the date of filing of the representation by the PSA SICAL.

16.3. PSA SICAL made a power point presentation highlighting certain facts (like the second highest royalty quoted as cost, efficiency gains due to PSA SICAL, volume gains, reasonableness of the cost estimates and treating certain items of expenditure as per the Accounting Standard and Audited Accounts) to be recognised while fixing the tariff. Some of the points explained by the PSA SICAL in its proposal did not reflect the correct position. When pointed out, the PSA SICAL agreed to furnish amended copy of its presentation. During the presentation, the PSA SICAL, interalia, made the following points:

- (i). It does not challenge the calculations contained in the earlier orders of TAMP. They have only challenged some of the concepts and principles of guidelines followed by TAMP.
- (ii). With ageing of assets, the Return allowed on capital in tariff computation decreases over time. In contrast, the payment on account of royalty rises due to increase in unit rate of royalty payable and the growth in volume handled. They do not have any source other than tariff to meet the uncovered portion of royalty which is disallowed as pass through. Accordingly, the Authority should devise some mechanism and compensate the operator in some form, for the disallowed portion of royalty. One such source is meeting such burden out of efficiency gain to be allowed in tariff.
- (iii). By allowing partial pass through of royalty, the Authority and the Government have recognised the fact that it is a legitimate outflow to the company. Therefore, it is necessary for the Authority to provide suitable avenue in tariff to meet the uncovered royalty.
- (iv). They are well aware of the requirement spelt out under clause 2.4.1 of the revised tariff guidelines relating to sharing of efficiency gain. PSA SICAL is rated very high for its efficiency and cost effectiveness. However, they cannot establish any efficiency gain for the relevant period as required by the guidelines since they had commenced operations from a very high level of efficiency and therefore setting a very high benchmark which is comparable with any international terminal. The scope for continuous improvement is, therefore, limited.
- (v). TAMP should not confine its attention to clause 2.4.1. of the revised tariff guidelines alone. It should recognise the other provisions in the guidelines which call for ensuring fair and reasonable return to private investors. Clause 1.7. of the tariff guidelines permit the Authority to deviate from the prescribed guidelines. The Authority should be ready to exercise its discretion to relax the requirement of clause 2.4.1 bearing in mind the requirement imposed to recognise efficiency elsewhere in the guidelines or the policy of the Government.

16.4. PSA SICAL did not furnish any fresh information required to quantify the advantage/gain accrued to them for the past period before the scheduled hearing. At the hearing, the PSA SICAL confirmed that it had already furnished all relevant information and did not propose to make any further submissions.

17. As agreed in the hearing, PSA SICAL submitted the revised presentation slides and has also filed written submissions of the points put forward by them during the hearing. The PSA SICAL has mostly reiterated the points made on efficiency gains and the need to allow pass through of royalty.

18. This case could not be taken for consideration by the Authority after the personal hearing given to PSA SICAL since the fresh direction from the Ministry of Shipping, Road Transport and Highways (MSRTH) on treatment of royalty for the period prior to 31 March 2005 in compliance with the Order of the Hon'ble High Court dated 22 August 2007 was not received at that time.

In the meanwhile, there was change in the composition of this Authority. This Authority therefore decided to give a fresh personal hearing to PSA SICAL as required by clause 9 of the Memorandum of Compromise.

19. In pursuance to the Order of the Hon'ble High Court dated 22 August 2007, the Ministry of Shipping, Road Transport and Highways (MSRTH) vide its letter No.PR-14019/6/2002-PG (Vol-I) dated 20 February 2008 has issued a direction under Section 111 of the Major Port Trusts Act, 1963 to this Authority about the treatment of royalty in the case of PSA SICAL for the period prior to 31 March 2005. The operative part of the directions of MSRTH is reproduced below:

- “12. *The submissions made by PSA SICAL during the course of hearing have been carefully analysed. The Hon'ble High Court, Madras has directed that the matter be decided on merits and in accordance with law. To conform to the aforesaid requirements, as per the directive of the Hon'ble Court, the decision in the case of PSA SICAL should be in line with the decisions taken in respect of similarly placed cases, especially the earlier decided case of Chennai Container Terminal Limited (CCTL). In the CCTL case, the Government has already decided the extent of royalty/revenue share as an item of cost and has issued a policy direction to TAMP. Therefore, in the instant case of PSA SICAL, the Govt directs that TAMP should follow the same method of computation and treatment of royalty, as in case of CCTL, for the period prior to 31.03.2005.*
13. *As regards import of the word “loss”, the same interpretation made in the case of CCTL should be applied in the present case of PSA SICAL.*
14. *While computing the tariff in the case of PSA SICAL vide order dated September 2002, TAMP allowed some additional surplus to be retained by PSA SICAL, over and above the prescribed return on the capital employed. However retention of extra benefit has not been allowed by TAMP to CCTL for the period when pass through of revenue share was allowed in that case. Therefore, TAMP should take this also into account, so as to ensure uniformity of approach vis-à-vis that in respect of CCTL.*
15. *TAMP should also take a decision on the issue of interest on the surplus retained by the Terminal Operators in the previous periods and whether this interest accrued is to be factored in and offset while computing tariff for the future period.”*

20.1. A personal hearing earlier fixed on 30 June 2008 by this Authority had been deferred at the request made by the PSA SICAL seeking additional time for analysing and documentation to be compiled for the hearing.

20.2. A personal hearing was given to PSA SICAL on 16 September 2008 at Chennai by this Authority with the required quorum before determining the advantage / gains accrued to PSA SICAL in the past.

While issuing the notice for personal hearing, the PSA SICAL was again called upon to furnish all relevant documents and necessary analysis required for quantification of gain, if any, accrued to it as per clause 7 and 8 of the Memorandum of Compromise. It was also advised to furnish any other details it may necessary with respect to proposal dated 8 August 2005. A copy of the fresh direction received from the Ministry of Shipping dated 20 February 2008 on treatment of royalty for the period prior to 31 March 2005 was also forwarded to the PSA SICAL.

20.3. At the hearing on 16 September 2008, the PSA SICAL without going into the substantive issues, filed a written submission requesting further extension of time till 15 October 2008.

It was made known to PSA SICAL that the repeated requests made by it seeking time for submitting its arguments is unduly delaying the final disposal of the case. The PSA SICAL was granted two

weeks time to make its further submissions during the next personal hearing schedule on 30 September 2008.

21.1. As scheduled, PSA SICAL was given a personal hearing on 30 September 2008 at New Delhi by Chairman (TAMP) and Member thus constituting the required quorum.

21.2. At the hearing, the PSA SICAL made the following submissions:

- (i). When the bids of Tuticorin Container Terminal were submitted, TAMP had not finalised its guidelines. Therefore, they had no means to understand the tariff policy before submitting their financial bid.
- (ii). TAMP guidelines on royalty pass through do not take cognizance of the provisions of individual the License Agreements.
- (iii). The absolute size of return is falling over the period of time due to depreciation of assets. There is an inconsistency in the approach, as 16% return is inadequate to cover the part of royalty not allowed as pass through.
- (iv). TAMP may consider full pass through of royalty and revise the guidelines specific to licensee. TAMP may also recommend renegotiation of LA to TPT /GOI.
- (v). Please interpret Article 7.3.5.1 of LA in right spirit to fix reasonable tariff.
- (vi). TAMP may continue with 1999 tariff while the process to review the guidelines is initiated.
- (vii). TAMP may consider whether the Memorandum of Compromise of 2005 still survives. We feel, the MOC 2005 has lost its relevance with the passing of tariff order in 2006.
- (viii). TAMP may consider
 - (a). 'efficiency gain' as calculated in their proposal as revised by them.
 - (b). Royalty to be allowed as pass through.
 - (c). CITOS payment may be allowed as cost.
 - (d). Deferred revenue to be considered for amortisation as per accounting policy.
- (ix). The approach followed by TAMP was to determine royalty of the second bid on NPV basis. It is requested to consider year-to-year position for the 9 year block of 1999-2008 for this purpose.
- (x). Full pass through of royalty beyond MGT should be considered.
- (xi). Please set off past surplus in 3 cycles.

21.3. The PSA SICAL has also filed a written submission and submitted Audited Annual Accounts for the years 2005, 2006 and 2007. It has stated that the submissions are based on the tariff Order of 23 August 2006 passed by this Authority, the directions given by the Hon'ble High Court on 22 August 2007 and taking into consideration the fresh direction from the MSRTH dated 20 February 2008 on the treatment of royalty for the period prior to 31 March 2005.

21.4. The PSA SICAL has furnished revised calculation of efficiency gain and recalculated the net gain accrued to them for the past period. The highlights of the written submissions made by the PSA SICAL is explained below:

- (i). **Revised computation of Efficiency Gains:**

- (a). In the fresh calculations, the PSA SICAL has computed efficiency gain on employee cost, equipment running and repairs cost, depreciation and overheads with reference to its own cost parameters with reference to the previous years.

The cost parameters over a tariff cycle is considered and savings per year is arrived at. It has computed efficiency gain for the years 2000 to 2002 as the first cycle, second cycle as 2003 to 2005 and third as 2006 to 2007.

- (b). While calculating the Efficiency Gains for each of the cost items, inflation factor based on the Wholesale Price Index (WPI) published by the Reserve Bank of India is taken into account to eliminate the inflation impact.
- (c). Detailed computation of efficiency gain in respect of above mentioned cost parameters claimed by PSA SICAL is tabulated below:

(i). Operating Labour Cost

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Operating Labour Cost (Rs. in lakhs)	266	264	313	379	387	439	506	465	576
Operating Labour Cost (Rs. per TEU)	176	130	146	161	131	137	142	108	128
Operating Labour Cost inflation adjusted (Rs. per TEU)	176	124	127	132	102	98	91	64	68
3 years average Operating Labour Cost (Rs. per TEU)	142			111			74		
Efficiency Savings (Rs. per TEU)					32			36	
50% Retainable (Rs. per TEU)					16			18	

(ii). Equipment Running Cost:

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Equipment running cost (Rs. in lakhs)	238	399	383	379	525	640	899	905	1168
Equipment running cost (Rs. per TEU)	158	196	179	161	178	200	253	209	260
Equipment running cost inflation adjusted (Rs. per TEU)	158	188	155	132	139	142	162	124	139
3 years average equipment running cost (Rs. per TEU)	167			138			141		
Efficiency Savings (Rs. per TEU)					29			-4	
50% Retainable (Rs. per TEU)					15			0	

- (iii). It has similarly computed efficiency gain in overheads at Rs.47 per TEU for the block 2003-05 and Rs.37 per TEU for the years 2006-08.

Efficiency savings in depreciation is assessed at Rs.55 per TEU for the block 2003-05 and Rs.34 per TEU for the block 2006-08.

- (iv). Accordingly, the total efficiency gain assessed by PSA SICAL is tabulated below:

(Rs in lakhs)	
2003	310

2004	389
2005	423
2006	319
2007	387
2008	403
Total	2231

(ii). **Royalty:**

As per Memorandum of Compromise signed between PSA SICAL, TAMP and the Ministry on 17 August 2005, the period of applicability of royalty treatment should be consistent with the policy decision taken by the Government of India in the matter of CCTL.

(a). **Pass through of Second Highest Royalty:**

- (i). As per the workings given below, it may be observed that if the royalty paid is not factored in, it would result in net cash deficit to the operator:

(Rs. in lakhs)						
Sl. No.	Particulars	2002	2003	2004	2005	2006
A.	Net Surplus/Deficit before payment of royalty (as per annual audited statements)	2166	1788	2437	2799	3159
B.	Net gain as determined by the TAMP	1441	1492	1791	1995	2324
C.	Retainable Surplus (A-B)	725	296	646	804	835
D.	Less Royalty paid	540	776	1095	1535	2352
E.	Net Cash Deficit to operator (C-E)	185	-480	-449	-732	-1517

It has, therefore, requested to consider royalty pass through of second highest bidder from July 2003 onwards (period prior to 1 April 2005).

- (ii). It has furnished the computation of the second highest royalty by comparing the NPV of the financial parameters quoted by it with that of the second highest bidder on the actual throughput achieved from the date of commencement of operations till the year 2007. As per its workings, the second highest bidder's offer of royalty plus upfront payment works out to 61% of amount quoted by PSA SICAL. It has, therefore, requested to consider the second highest royalty pass through to the extent of 61% as per its computation.

(b). **Full royalty on throughput achieved beyond Minimum Guaranteed Throughput (MGT):**

Though as per the License Agreement PSA SICAL is only contracted to achieve its MGT, it has infact exceeded the volume and also paid royalty on the actual throughput. It has requested that on the differential throughput beyond the MGT, the full royalty must be allowed as pass through in order to give a fair return to the Terminal operator.

(iii). **Annual License fee and exchange loss for the period prior to 31 March 2005:**

The TAMP has admitted the license fee and exchange loss from 31 March 2005 relying on the certificate issued by the Chartered Accountants establishing arms length relationship between PSA SICAL and CITOS. Since the relationship prior to

2005 between the companies was not different from the period subsequent to 31 March 2005, it is requested to reconsider admitting the license fee and exchange loss for the prior period also.

(iv). **Deferred Revenue Expenditure:**

The treatment of deferred revenue expenses covering license fees to Licensor may be allowed following the Indian Accounting Practices instead of amortising it over the entire project period.

(v). Accordingly, revised net gain calculated by the PSA SICAL is as follows:

	2002 (2 months)	2003	2004	2005	2006 (9 months)	Total as per 2006 Order (2002-06)	2006 (3 months)	2007	Total from (Oct. 2002 to Dec. 2007)
Net gain as determined by TAMP in 2006 Order	241	1492	1791	1995	1743	7262			
Less:									
Efficiency Gain retainable	-	310	389	423	239	1362	80	387	1829
Royalty offered by 2 nd highest bidder @ 61.98% claimed	-	240	679	426	305	1650	102	2258	4010
Royalty paid above MGT 38.02% thereof	-	-	-	32	88	120	29	376	525
Annual Licence Fee to CITOS to be taken into account	10	80	76	77	40	283	13	21	317
Deferred Revenue not considered in 2006 Order to be taken into account		86	86	21		193			
Revised net gain	231	775	561	1017	1070	3655			

(vi). **Spreading over of the past period surplus over 3 tariff cycles:**

It has sought permission from the Ministry as per its letter dated 25 September 2008 to set off gains accrued for the past period, if any, over the next 3 tariff cycles (i.e. 9 years) instead of 1 cycle (i.e. 3 years). Since the Memorandum of Compromise entered on 17 August 2005 reflected the set off over three years period, it has requested to factor the set off period in next three tariff cycles (i.e. 9 years), if applicable, based on the Ministry's approval.

(vii). It has further submitted that the guidelines for fixation of tariff issued in March 2005 are inappropriate for its terminal for the simple reason that if tariffs are fixed as per the guidelines, it would result in the terminal operating at loss. Indeed, it would soon be faced with a situation where the tariff fixed will actually be lower than the royalty committed in the License Agreement. This anomaly has arisen for the following reasons:

- (a). PSA SICAL submitted its bid for the terminal to the Tuticorin Port Trust on 24 October 1997. In this bid, it offered a royalty payment scheme to the Port Trust that provided for rapid increase in royalty over the years. TAMP had not formulated their guidelines for tariff fixation at the time it submitted the bid.
- (b). The License Agreement with the Tuticorin Port Trust was signed on 15 July 1998. As per Article 7.3.1 of the License Agreement, it agreed to tariff ceilings to be fixed by TAMP.
- (c). In 2002 tariff Order, (an order stayed by the Honorable High Court of Madras), royalty committed by it was not allowed as cost. The immediate implication of this was that the terminal would become unviable.

- (d). It expected that TAMP, a statutorily created body would fix a fair tariff which would allow a reasonable margin to it after accounting for the cost of operations and the royalty payable to the Port Trust.

The TAMP guidelines of 1998 did not give any indication that our legitimate expectation of a reasonable tariff was misplaced. In particular, the guidelines did not say that royalty would not be taken into account when fixing tariffs. The guidelines only provided that the basis for fixation of tariff was cost plus 20% return on equity (later changed to 16% return on capital employed).

- (e). If NPV basis is adopted as the yardstick for determining pass through, only 46% of the royalty payment would be allowed as pass through.

The pass through upto second quote of royalty will not prevent the terminal from going into the red. From 15 July 2008 the per TEU royalty payable to TPT is Rs.1313 per TEU. If only 46% is allowed as pass through, this will leave Rs.709 per TEU uncovered. In 2020 the royalty amount is Rs.3504 per TEU. That would leave Rs.1892 per TEU uncovered. Thus, even if the pass through as allowed is applied it is a matter of time that tariff will fall even below royalty. The root cause is that the tariff fixation guidelines and the policy directives do not adequately take into account the specifics of our case.

- (viii). (a). Full royalty paid should be allowed as pass through and, if need be, TAMP may prevail upon the Government of India to issue a suitable policy directive.
- (b). Revised tariff fixation guidelines may be formulated exclusive for PSA SICAL.
- (c). Renegotiation of its License Agreement with the Tuticorin Port Trust may be recommended with a view to reduce the royalty committed in such a way that the existing TAMP guidelines would become reasonable in its case too.
- (d). Past period surplus may be spread over 3 tariff cycles based on approval from Ministry.
- (e). Article 7.3.1 of the License Agreement may be beneficially interpreted to set the tariff and give relief to the Licensee.

22.1. At the hearing, the PSA SICAL was advised to initiate the following action and furnish the requisite information by 3 October 2008:

- (i). The computation of efficiency gain and assessment of past surplus furnished by PSA SICAL did not contain detailed working and break up of fixed and variable costs. PSA SICAL was, therefore, advised to file its analysis of past surplus for the period upto September 2008 in the same proforma in which tariff application is furnished.
- (ii). Actuals for the period from January 2008 to September 2008 should be furnished.
- (iii). Tariff fixation based on standard capacity to be determined based on the formula given in the 2008 guidelines may be examined and its comments may be furnished.

22.2. The PSA SICAL has, accordingly, vide letter dated 3 October 2008 furnished the following:

- (i). The computation of past gain has been updated for the year 2008 upto September based on the actuals for the period from January 2008 to September 2008. It has submitted that for the period January 2008 to September 2008 the accounts are yet to be audited.
- (ii). The overall fixed and variable cost per TEU are furnished. Computation of efficiency gain does not recognise the variable and fixed cost. The revised efficiency gain calculation furnished by PSA SICAL is tabulated below:

(Rs in lakhs)	
2003	310
2004	389
2005	423
2006	358
2007	434
2008	358
Total	2272

- (iii). The net gain assessed by PSA SICAL for the period 2002 to September 2008 with and without after considering efficiency gain is tabulated below:

(Rs. in lakhs)			
Year	Net gain assessed by the PSA SICAL before considering efficiency gain	Efficiency gain claimed by PSA SICAL	Net gain assessed by the PSA SICAL with efficiency gain
2002 (for two months on prorata basis)	280.83	0	280.83
2003	1572	310	1262
2004	1658	389	1269
2005	1132	423	709
2006	723	358	365
2007	738	434	304
2008 (upto September)	-284	358	(-642) *
Total gain accrued to PSA SICAL due to non implementation of 2002 tariff Order	5819.83	2272	3547.83
	5724.83 *	2391 *	3333.83 *

* These are after considering the 2008 figures furnished by PSA SICAL upto September 2008 prorated for full year.

- (iv). The computation of second quote royalty earlier arrived at 61% based on the NPV model for the actuals throughput handled by the PSA SICAL is updated with 2008 actuals upto September. Based on this computation it has submitted that the second highest royalty to be allowed as pass through is 57%.
- (v). It has submitted that TAMP may consider the annual escalation factor of 8% in fuel and power cost as estimated by it which is well below the 10.6% actuals that prevailed in 2007 (based on WPI).
- (vi). With reference to tariff computation based on standard capacity following 2008 upfront tariff guidelines, the PSA SICAL has submitted that the total stacking area for 1 hectare of land using rubber tyred gantry cranes works out to maximum of 360 TEUs per hectare. It has, accordingly, after applying the modified factor for ground slots arrived at yard capacity of its terminal at 326394 TEUs.
- (vii). It has also forwarded its letter to the Ministry of Shipping dated 25 September 2008 requesting the Ministry to issue suitable direction to TAMP to set off the gain accrued, if any, over next 3 tariff cycles i.e. 9 years instead of one tariff cycle stated in the Memorandum of Understanding signed in August 2005. Apart from this it has reiterated its earlier submissions made during the hearing.

- (viii). It has stated that without prejudice to its position that 2002 tariff Order is not valid and its subsequent Writ Petition was withdrawn to facilitate out of Court settlement, the contention in its earlier Writ including 2002 Writ Petition remain valid.

23.1. The PSA SICAL has subsequently vide letter dated 24 October 2008 made further submissions with a copy endorsed to the MSRTH. It has clarified that these submissions are without prejudice to the larger submissions made in its letter dated 3 October 2008. Some of the main points made by PSA SICAL are given below:

- (i). TAMP, in their Order of November 2000, have permitted full royalty as pass through for the Nhava Sheva International Container Terminal (NSICT) at JNPT. Such pass through continued to be available to NSICT upto 2005 and without the condition that there should have been a loss to the terminal on account of the royalty not being taken as pass through.
- (ii). It is hence requested that full pass through of royalty may be allowed in its case also upto 2005, if need be, in consultation with the Government of India in view of any directives the latter may have issued to TAMP.
- (iii). Not extending the same benefit to PSA SICAL as was extended to the NSICT would be discriminatory.
- (iv). Given the escalating stream of royalty offered by it to the Tuticorin Port Trust, it is essential that full royalty pass through be allowed for the entire period of the concession. Otherwise, there will soon be a situation where tariff fixed will be lower than royalty due to the port. It is hence again requested to allow full royalty pass through for the entire period of the concession. Alternatively, to propose some other satisfactory solution to the problem.

23.2. It has also forwarded a similar letter addressed to the Ministry of Shipping, Road Transport and Highways dated 29 October 2008 for treatment of royalty as pass through on par with NSICT.

24.1. The PSA SICAL has subsequently vide its e-mail dated 10 November 2008 forwarded a copy of the review petition dated 7 November 2008 submitted by it to the MSRTH about full pass through of royalty and on other matters. In its review petition, it has requested the Government to direct TAMP to allow full pass through of royalty for the entire period of Concession and allow adjustment the gain accrued for the past period over 3 tariff cycle of 3 years each (i.e. 9 years). It has requested this Authority to wait for the response of the Ministry before passing any Order in respect of its application dated 3 October 2008.

24.2. The MSRTH has already issued a policy direction on the matter relating to treatment of royalty for the period prior to March 2005 in compliance with the Order of the High Court dated 22 August 2007. The directive is binding on this Authority. Merely because a review application is filed before the Government, this Authority on its own cannot suspend implementation of the policy direction, unless it is specifically required so either by the Government or the Hon'ble High Court. This Authority, therefore, decided to proceed with review of PSA SICAL tariff in compliance with the Order of the High Court.

25. 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>.

26. With reference to totality of the information collected during the processing of this case, the following position emerges for consideration:

- (i). (a). The review of PSA SICAL tariff is in the context of the Order of the Hon'ble High Court of Madras on 22 August 2007, by which the Order passed by this Authority on 23 August 2006 was quashed with a direction to this Authority to pass an Order after giving a personal hearing to the PSA SICAL as per the Memorandum of Compromise of 17 August 2005.

- (b). Clause 9 of the MOC drawn between the concerned parties on 17 August 2005 stipulates that the first Respondent i.e. this Authority would afford an opportunity to the Petitioner to be personally heard before determining advantage / gain for adjustment / set off in the further tariff. The Hon'ble High Court held that the personal hearing given to PSA SICAL by the Chairman of this Authority alone on 20 July 2006 was not adequate. The Hon'ble High Court has, therefore, quashed the tariff Order of this Authority passed on 23 August 2006 "on that ground". The wordings "on that ground" finding place in the sentence conveying the decision clearly show that the decision of the Court to quash the Order is only on account of the Petitioner not being afforded an opportunity of hearing as agreed in the MOC.
- (c). In compliance with the Order of the Hon'ble High Court dated 22 August 2007 and in terms of clause 9 of the MOC, a personal hearing was given to PSA SICAL on 21 September 2007 by this Authority constituting the required quorum before determining the advantage / gain accrued to PSA SICAL in the past.

Subsequently, consequent upon change in the composition of this Authority, another personal hearing was given to the PSA SICAL by this Authority constituting the required quorum before determining the advantage / gain approved to PSA SICAL on 30 September 2008.

Though the PSA SICAL had confirmed earlier that it does not propose to make any further submissions, it has subsequently in October 2008 furnished revised calculation of gain accrued in the past period updating it with actual upto September 2008. It has also furnished revised computation of efficiency gain. The PSA SICAL has, however, not updated estimates for the future period with reference to the 2008 actual.

The proposal filed by the PSA SICAL in August 2005 and subsequent submissions made by the PSA SICAL along with the revised computation of past period gain, efficiency gain and other submissions made by the PSA SICAL in its letter dated 3 October 2008 are considered in this analysis.

- (ii). It may be relevant here to recall that Order of this Authority passed in September 2002 effecting an across-the-board reduction of 15% over the Scale of Rates of 1999 and deleting the tariff item for lashing / unlashings, stowage planning and supervision charges was not implemented by the PSA SICAL in view of the interim stay Order obtained from the Hon'ble High Court at Madras on petitions filed by PSA SICAL challenging the impugned Order.

The litigation culminated in a Memorandum of Compromise entered between the concerned parties on 17 August 2005 which was taken on record by the Hon'ble High Court of Madras while dismissing the writ petition filed by PSA SICAL.

Some of the user associations have stated that the MOC was finalised without consulting the users and, therefore, it will be null and void. It is relevant to mention the MOC was drawn between the concerned parties involved in the Writ Petition and the same was accepted by the Hon'ble High Court while passing the Order.

- (iii). The PSA SICAL has stated that the Memorandum of Compromise of 2005 has lost its relevance with the passing of the tariff Order of 2006. PSA SICAL in their Writ Petition while praying the Hon'ble High Court of Madras to quash the Order passed by this Authority in August 2006 has referred clause 9 of the Memorandum of Compromise and submitted that they were not afforded an opportunity of hearing as per the said clause of the MOC. The High Court of Madras in its Order of 22 August 2007 has on 'that ground' struck down the Order passed by this Authority and directed to pass fresh Order after giving an opportunity of hearing as to the PSA SICAL.

Thus, the Memorandum of Compromise signed between PSA SICAL, TAMP and the Government on 17 August 2005 survives till the revised tariff of the PSA SICAL is fixed in compliance with the Order of the High Court.

- (iv). The PSA SICAL has also stated that without prejudice to its position, the 2002 tariff Order is not valid.

The Hon'ble High Court of Madras in its Order of 17 August 2005 has not quashed the Order passed by this Authority in September 2002. The Court has dismissed the Writ Petition based MOC signed between the concerned parties before the Hon'ble High Court. As per the MOC, PSA SICAL is allowed to levy the 1999 tariff, till the revised tariff is gazetted.

As per the MOC, advantage / gain accrued to the operator by virtue of not implementing the tariff Order of 2002 in view of the stay, is to be quantified and set off in the new tariff.

Thus the tariff Order of 2002 forms the basis for quantifying the gain accrued to the operator as per the MOC. Hence the contention of the PSA SICAL that the 2002 tariff is not valid is not correct.

- (v). One of the important issues which has been agitated vehemently by PSA SICAL for consideration in this case is about the treatment of the royalty as an item of cost for tariff fixation.

- (a). The PSA SICAL has argued that this Authority in its Order of November 2000, has permitted full royalty as pass through for the Nhava Sheva International Container Terminal Limited (NSICT) at JNPT, which was continued to be available to NSICT upto 2005. It has hence requested that full pass through of royalty may be allowed in its case also upto 2005.

Royalty payment was allowed as full pass through in the initial tariff fixation of the Nhava Sheva International Container Terminal Limited (NSICT) in the year 2000 and this position was maintained till 31 March 2005.

The treatment of royalty came under focused scrutiny while processing the initial tariff of the Chennai Container Terminal Limited (CCTL) in March 2002 and it was decided not to admit royalty as pass through for reasons elaborately explained in that Order. Flowing from this decision in the CCTL case, royalty was not admitted as pass through in the PSA SICAL also while fixing the initial tariff based on its cost position.

In any case, treatment of royalty for the period prior to 31 March 2005 in the PSA SICAL is governed by a specific policy direction issued by the MSRTH under Section 111 of the Major Port Trusts Act which is binding on this Authority.

- (b). For the period after March 2005 also, the PSA SICAL has requested pass through of fully royalty while fixing its tariff. It has argued that the guidelines of 2005 on royalty pass through do not take cognizance of the provisions of individual the License Agreements. The PSA SICAL has also requested that the full royalty must be allowed as pass through on the differential throughput beyond the MGT in order to give a fair return to the Terminal operator.

For the period subsequent to 31 March 2005, Clause 4 of the MOC requires pass through of royalty to be allowed as per the manner and mode prescribed in the 2005 tariff guidelines. It is noteworthy that the tariff guidelines of 2005 were issued as a policy direction of the Government and are binding on this Authority. The request of the PSA SICAL to admit full royalty is not in line with the tariff guidelines.

- (c). It is thus clear that the treatment of royalty has to be done as follows:

- (i). Treatment of royalty for the period prior to 31 March 2005 is governed by the policy direction issued by the MSRTH in compliance with the Order of the High court of Madras dated 22 August 2007.
 - (ii). For the period subsequent to the tariff guidelines:
As per clause 4 of the MOC for the period for the period after 31 March 2005, the treatment of royalty has to as per manner and mode prescribed in the 2005 tariff guidelines.
- (vi). (a). In respect of (v). (c). (i). above, the Ministry of Shipping Road Transport and Highways in compliance with the Order of the Hon'ble High Court dated 22 August 2007, and after giving an opportunity of hearing to the PSA SICAL has passed fresh directions to this Authority on 20 February 2008 under 111 of the Major Port Trusts Act, 1963 directing this Authority to follow the same method of computation and treatment of royalty, as in case of CCTL, for the period prior to 31 March 2005. As regards import of the word "loss", the same interpretation made in the case of Chennai Container Terminal Limited should be applied in the present case of PSA SICAL.

The direction issued by the MSRTH also states that while computing the tariff in the case of PSA SICAL vide order dated September 2002, TAMP had allowed some additional surplus to be retained by PSA SICAL, over and above the prescribed return on the capital employed. However retention of extra benefit has not been allowed by TAMP to CCTL for the period when pass through of revenue share was allowed in that case. Therefore, TAMP should take this also into account, so as to ensure uniformity of approach vis-à-vis that in respect of CCTL.

The MSRTH has also advised this Authority to take a decision on the issue of interest on the surplus retained by the Terminal Operators in the previous periods and whether this interest accrued is to be factored in and offset while computing tariff for the future period which is discussed in the subsequent paragraphs.

- (b). This Authority while implementing the policy direction issued by the Ministry of Shipping vide its letter No.PR-14019/6/2002 PG(1) dated 7 November 2003 in the CCTL case, had adopted the following approach for allowing pass through of revenue share:
- (i). Revenue share to the extent of second highest bidder (i.e. 27% of the gross revenue) was considered as an item of cost.
 - (ii). The term 'loss' in this context was taken to be the revenue deficit after considering admissible cost elements and permissible return.
 - (iii). The additional surplus allowed to be retained with the CCTL in its earlier Order of March 2002 was not allowed in the November 2003 Order when the revenue share was admitted as pass through to the extent of the second quote i.e. 27% in compliance with the policy directions of the MSRTH.
 - (iv). The cost position after admitting the royalty to the extent of second quote and adjustment of additional surplus allowed earlier, reflected a deficit position of 17% and therefore tariff increase of 17% was allowed to the CCTL.
- (c). Admissibility of royalty for the period prior to 31 March 2005 in the case of the PSA SICAL by adopting the approach followed in the CCTL will, therefore, be as follows:
- (i). In the case of the PSA SICAL, as per the terms of the MOC, the surplus for the past period due to non-implementation of the 2002

Order is to be fully adjusted in future tariff. Hence, if the royalty to the maximum of second quote is not admitted, it will lead to reduction in the return on capital employed and hence there will be loss to the operator.

In the case of PSA SICAL, the financial bid is, however, based on royalty model unlike the revenue share model followed in the CCTL case. In the royalty model, the successful bidder was selected based on the NPV assessment for the whole concession period. It is, therefore, not correct to consider only the yearwise royalty values in isolation and admit it to the extent quoted by the second lowest bidder. The royalty model should, therefore, recognise only the portion of royalty equivalent to the proportion of NPV relevant to the second lowest bid.

PSA SICAL has requested to adopt year-to-year position royalty quoted by the next highest bidder while admitting royalty as pass through. It has stated that as per its computation, the royalty amount quoted by the 2nd highest bidder by comparing the NPV of the financial parameters quoted by the PSA SICAL for the years 1999 to 2007 with reference to the royalty per TEU quoted by the second highest bidder for the actual traffic handled by the PSA SICAL works out 61% which has been subsequently revised to 57% after updating it with 2008 actual traffic upto September 2008. There does not appear to be any logic to truncate the assessment only for part of the concession period, when the bid evaluation was made for the whole of the concession period.

The TPT, at our request, has furnished the NPV of the revenue stream quoted by the next lowest bidder at Rs.65.21 crores as against Rs.139.15 crores quoted by the PSA SICAL. This is found to be 46.86% of the relevant assessment for the PSA SICAL's bid. This means, only 46.86% of the royalty amount estimated by the PSA SICAL can be admitted for tariff computation purpose, based on the principles set in the revised tariff guidelines. This approach was followed in cases of Visakha Container Terminal Private Limited and Nhava Sheva Container Terminal Limited, where the bids were decided based on the revenue stream of royalty assessed on NPV method. Accordingly, for the period prior to 31 March 2005, maximum permissible pass through of royalty is pegged at 46.86% (i.e. to the extent quoted by the next lowest bidder) of the royalty payable by the PSA SICAL.

- (ii). The revised tariff after allowing partial pass through of revenue share in the case of CCTL was implemented prospectively from 28 November 2003. Accordingly, in the case of PSA SICAL also, royalty to the extent of second quote is admitted from the date of implementation of the CCTL Order i.e. 28 November 2003.
- (iii). Some additional surplus over and above the permissible return was allowed to be retained by PSA SICAL for the reasons recorded in para 15(xvii) of the tariff Order of 2002.

Retention of additional benefit allowed earlier was withdrawn in the case of CCTL when partial pass through of revenue share was permitted.

Following the CCTL model and as per the policy direction issued by the Government, additional surplus over and above the permissible return which was allowed to be retained by PSA SICAL in the earlier tariff Order is to be withdrawn the period from 28 November 2003 onwards.

For the period prior to 28 November 2003, the PSA SICAL is allowed to retain the additional surplus earned beyond the permissible cost and return with reference to the actual position as the pass through of royalty payment is not admissible for this period.

- (vii). (a). In respect of (v). (c). (ii). above, for the period subsequent 31 March 2005, the Clause 2.8.1. of tariff guidelines of 2005 provides the manner and mode in which the royalty is to be factored in the tariff computation. Clause 4 of the MOC of 17 August 2005 also require the tariff guidelines of 2005 to be followed insofar as the treatment of royalty for the period after 31 March 2005.

- (b). As per the tariff guidelines of 2005, in case of bids finalised before 29 July 2003, the tariff computation must take into account royalty / revenue share payable by the private operators to the landlord port as cost for tariff fixation so as to avoid the likely loss on account of this item not being taken into account, subject to a maximum of the amount quoted by the next lowest bidder. The L.A. was signed by the PSA SICAL on 15 July 1998.

As already mentioned above, as per the terms of the MOC, entire past surplus is to be adjusted in future tariff, hence if the royalty to the maximum of second quote is not admitted, it will lead to reduction in the return on capital employed which the PSA SICAL is otherwise entitled and hence there will be a loss to the operator. Hence, royalty to the extent of the next lowest bidder i.e. 46.86% of the royalty payable by PSA SICAL is admissible for the period subsequent to 31 March 2005 as well.

- (c). A table showing the royalty amount claimed by the PSA SICAL and the royalty admissible as pass through is given below:

(Rs. in lakhs)			
Year	Full Royalty	Royalty claimed by PSA SICAL	Royalty admissible as pass through (46.86%)
2002 (proportionately for two months)	90.04	90.00	0
2003	775.76	776	30.29
2004	1095.07	1095	513.15
2005	1535.35	1535	719.47
2006	2351.87	2352	1102.09
2007	3643.24	3643	1707.22
2008 (8 months actual prorated for full year)	5106.67	5107	2393.00
2009 (royalty estimated by PSA SICAL for 3 lakh TEUs is prorated for 4.75 lakh TEUs of 2008)	6989.63	6989.63	3275.34
2010 (estimated by us based on per TEU royalty quoted by PSA SICAL for traffic of 4.75 lakh TEUs)	8527.16	8527.16	3995.83
2011	10013.13	10013.13	4692.25
Total	40128	40128	18428.64

- (viii). (a). Another important claim made by the PSA SICAL tariff is about recognising efficiency gains in its tariff computation.

In its August 2005 proposal, the PSA SICAL claimed efficiency gain amounting to Rs.245.89 crores for the period 2005 to 2008. This computation was partly based on the benchmark indicated in the report of

National Working Group for normative cost and some benchmarks were borrowed from certain international publications of what the cost / investment should be for a reasonably efficient terminal and compared it with its actual.

As per the clause 2.4.1. of the tariff guidelines, benchmark to measure efficiency improvement is the average performance of the same terminal achieved in the preceding cycle.

In the initial proposal, the PSA SICAL has thus not quantified the cost reduction, if any, achieved during the past period and established that such cost reduction is due to efficiency improvement of its terminal with reference to its own performance in the past cycle, as per the relevant clause of the tariff guidelines.

- (b). In the revised calculations furnished in September / October 2008, PSA SICAL has quantified efficiency gain based on employee cost, equipment running and repairs cost, depreciation and overheads with reference to its own cost parameters with reference to the previous cycle. The cost parameters over a tariff cycle is considered and savings is determined applying the Wholesale Price Index (WPI) published by the Reserve Bank of India account for inflation. The total efficiency gain claimed to be retained by the PSA SICAL in the latest revised calculation is Rs.22.72 crores for the years 2003 to September 2008.
- (c). The revised approach followed for computing efficiency gain is found to be generally in line with the provisions of the tariff guidelines. The PSA SICAL has, however, not segregated the cost elements into variable and fixed components while computing the efficiency gain. The computation of efficiency gain furnished by the PSA SICAL is modified as explained hereinunder:
 - (i). The PSA SICAL while assessing the efficiency gain has grouped the years 2000 to 2002 as first block, 2003 to 2005 as the second block and 2006 to 2008 as the third and claimed efficiency gain for the years 2003 to 2008.

Clause 2.4.1. of the guideline requires a comparison to be made of the cost reduction achieved in the immediately preceding tariff cycle with that of the tariff cycle, which preceded it.

Since factoring efficiency gain in the tariff computation flows from the 2005 tariff guidelines, there can be an argument that claiming efficiency gain for the period 2003 and 2004 which is prior to the 2005 guidelines may not arise. In the case of the PSA SICAL, the first tariff Order based on its cost and investment was passed by this Authority in September 2002. Accordingly, the first block of actual to be considered for comparison with the next cycle is from November 2002 to November 2004. For ease of comparison, actual cost position for the years 2003 and 2004 (covered by tariff Order dated 20 September 2002) is analysed.

Following the two year tariff cycle as then was applicable prior to the tariff guidelines which came into effect from 31 March 2005, the years 2005 and 2006 would be the second block. Hence the average actual cost for the years 2005 and 2006 is compared with corresponding relevant items of actual cost incurred during the period 2003 and 2004 to assess the variation.

Subsequent to 2005 tariff guidelines, actual / estimates for the three years 2007 to 2009 is compared with corresponding items of actuals of 2005 and 2006 for assessing the efficiency gain.

- (ii). The cost has been de-escalated at the escalation rate applicable for tariff determination in the individual years i.e. 6.44% in 2005, 4.5% in 2006, 5.4% in 2007 and 4.6% in 2008 and 2009 to remove the impact of inflation while computing the efficiency gain.
- (ix). The PSA SICAL has claimed efficiency gain under the heading of operating labour cost, equipment repairs and running cost, depreciation and overhead. On an analysis of each of these items subject to the modifications discussed above, the following position emerges:
 - (i). Operating and direct Labour cost:
 - (a). Before considering efficiency gain for this item, it has been assessed whether the cost incurred for this item is within certain norms for which the benchmark available in upfront tariff guidelines of 2008 has been considered. The upfront tariff guidelines do not stipulate any specific norm for operating and direct labour cost. It comes under the other expenses for which the norm prescribed is 10% of the gross block of the asset.

It is found that the actual "other expenses" of the PSA SICAL corresponding with the cost elements covered in the guidelines are well within the prescribed norm of 10% of the actual gross block of assets reported for the years 2003 to 2008.
 - (b). Based on the actual figures reported in the Annual Accounts for the years 2003 to 2007, the labour cost per TEU is arrived at to measure cost reduction. The average per TEU cost during the years 2005 and 2006 works out to 130.16 as compared to Rs.146.70 for the years 2003 and 2004. Hence 50% of the reduction amounting to Rs.8.27 per TEU can be allowed as efficiency gain. For the year 2007 to 2009, the unit labour cost reduces further to Rs.87.16 per TEU and accordingly 50% of the reduction i.e. Rs.21.50 per TEU is taken as efficiency gain for the block of 2007 to 2009.
 - (ii). (a). The PSA SICAL has not furnished a computation of efficiency gain for each of the elements under the head "Equipment Repairs and Running cost". Further, the total cost is not segregated into fixed and variable elements to demonstrate that the cost reduction has arisen on account of efficiency gains. On our request, it has subsequently furnished the year-wise break up of the power and fuel consumption and their unit cost. The sum of power and fuel cost indicated by the PSA SICAL for the years 2003 and 2004 do not match with the figures reported in their Annual Accounts. We have, therefore, relied on power and fuel cost reported in the Annual Accounts.
 - (b). The average consumption of power for the years from 2003 to 2008 is found to be well within the norm of 8 units per TEU prescribed in the upfront tariff guidelines. The average power consumption for the years 2003 and 2004 based on the total power cost and the unit rate of power reported by the PSA SICAL works out to 7.91 units per TEU. For the years 2005 and 2006, the PSA SICAL has reported unit electricity consumption at 7.06 units and 6.62 units respectively. The average works out to 6.84 units which means a reduction of 1.07 units per TEU with reference to the average consumption of power in the preceding tariff cycle. For the years 2007 to 2009, the average electricity consumption per TEU works out to 6.71 unit, which means a reduction of 0.13 units with reference to the average consumption of power in 2005 and 2006. As per 2005 guidelines, 50% of the savings achieved in power consumption is allowed as efficiency gain.

- (iii). The guidelines for upfront tariff fixation prescribed the consumption norm of 4 litres fuel per TEU. The consumption level reported by the PSA SICAL for the years 2003 to 2008 is within the prescribed norm.

With reference to the average fuel consumption for the years 2003 and 2004 at 3.06 units per TEU, the PSA SICAL has reported an average fuel consumption of 3.64 litres per TEU for the years 2005 and 2006. The PSA SICAL has not explained the reasons for the increase in the fuel consumption. Since no reduction in the consumption of fuel is noted during this period, no allowance for efficiency gain is considered for this item for the years 2005 and 2006.

For the years 2007 to 2009, the average fuel consumption works out to 3.52 litres per TEU which means a reduction of 0.12 litre with reference to the average consumption of fuel in 2005 and 2006. As per 2005 guidelines, 50% of the savings achieved per TEU is allowed as efficiency gain.

- (iv). The repairs and maintenance cost is incurred with reference to the assets deployed. It may, therefore, be appropriate to measure efficiency in this cost element by comparing the repairs and maintenance cost as a percentage of the gross block of assets. The upfront tariff guidelines of 2008 also require estimation of this cost item as percentage of gross block of assets.

The repairs and maintenance cost reported in the Annual Accounts including stores and spares consumed and the gross block of assets reported in the Annual Accounts are considered. The average repairs and maintenance cost for the years 2005 and 2006 works out to be 1.94% of the relevant gross block of assets as against 1.38% for the previous cycle. For the years 2007 to 2009, the average repairs and maintenance cost works out to 2.3% of the gross block of assets.

Incidentally, the actual repairs and maintenance cost for the years 2005 to 2008 is also found to higher than the repairs and maintenance cost computed applying the norms prescribed in the 2008 upfront tariff guidelines. Since no reduction is found in this cost element with reference to the respective previous cycles, no allowance for efficiency gain is admissible.

- (v). The PSA SICAL has not segregated the overhead cost into variable component, if any, to show the efficiency in this item. The overhead cost will mostly be fixed in nature and may not vary directly with the throughput. Reduction in unit cost claimed by the PSA SICAL for this item is on account of the volume gain and the operator has not proved that the reduction is attributed to his efficiency. Hence this item is not considered for the efficiency gain.
- (vi). Depreciation is only an accounting entry and hence not considered for efficiency gain computation.
- (vii). It may be relevant to mention that the PSA SICAL has not claimed efficiency gain for the year 2009. In our calculation, efficiency gain computed for the year 2008 is extended to 2009 as well subject to applying the relevant annual escalation factor recognising that the input factors for the year 2009 flow from 2008 actuals while the estimating the cost position. On the same analogy, efficiency gain is also considered for the years 2010 and 2011.
- (viii). The total efficiency gain claimed by the PSA SICAL vis-à-vis efficiency gain as per our computation is tabulated below:

(Rs. in lakhs)

Years	Efficiency gain claimed by PSA SICAL	Efficiency gain as per our computation
A. For the past period		
2003	310	0
2004	389	0
2005	423	36.75
2006	358	42.24
2007	434	118.94
2008	358	136.92
Subtotal (A)	2272	334.85
B. For the future period		
2009	-	142.72
2010	-	149.28
2011	-	156.15
Subtotal (B)	-	448.14
Total (A+B)	2272	782.99

Computation of efficiency gain is attached as **Annex-I**.

- (x). The MOC allows the PSA SICAL to continue to levy at the pre-revised tariff of 1999 subject to other provision of the MOC till a revised Scale of Rates is notified. The PSA SICAL in the earlier proceedings had reported a net loss of Rs.602.70 lakhs for the years 2002 to 2005 due to non-implementation of the Order passed in the year 2002 in the statement furnished on 15 July 2006. In the revised calculation furnished on 3 October 2008, the PSA SICAL has assessed net gain accrued for the period from November 2002 to September 2008 at Rs.58.19 crores. After considering the claim of efficiency gain of Rs.22.72 crores, the gain accrued for the past period upto September 2008 works out to Rs.35.47 crores.

Since the PSA SICAL continues to operate at the 1999 tariff level, it is necessary to analyse the gain accrued to the PSA SICAL due to non-implementation of 2002 tariff Order for the period from November 2002 till the implementation of this tariff Order, say December 2008.

The individual items of actual cost and also the revenue in the statement prepared by the PSA SICAL marginally vary from the figures reported in the Annual Accounts, as, in its own admission, the classification of expenditure furnished in the cost statement is different from the classification considered by the Statutory Auditors for preparing the Annual Accounts. For this analysis, the figures reported in the Annual Accounts of the PSA SICAL for the years 2002 to 2007 are relied upon. For the year 2008, the actual reported by the PSA SICAL upto September 2008 is relied upon and prorated for the full year.

The gain / loss statement prepared by the PSA SICAL is not found to be as per the terms of the MOC and also do not conform to the directions issued by the Government as regards the treatment of royalty. The main deviations in the computation furnished by PSA SICAL are analysed hereunder:

- (a). *The PSA SICAL has prepared the gain / loss statement for the full year of 2002 on the grounds that the Order passed by this Authority in 2002 specified the costs for the whole year while arriving at the tariff. For the year 2008, the PSA SICAL has assessed surplus upto September 2008 based on the actual.*

Analysis:

The quantification of gain / loss arises in the context of non-implementation of the Order passed in 2002 and, therefore, it has to be assessed from the date on which the Order would have become effective till the revised tariff approved by this Authority is implemented as per the terms of the MOC. Accordingly, the period from 3 November 2002 to 31 December 2002 is only relevant for the year 2002. Since the actual figures for this period is

not made available, the net surplus position as estimated in the 2002 tariff Order and the actuals for the year 2002 is considered on prorata basis for two months to arrive at the gain accrued during this year.

For the year 2008, gain is assessed for the full year calendar since the year 2008 will be over by the time the revised tariff is implemented.

- (b). *The PSA SICAL has included the Annual License fee for Computer Integrated Terminal Operating System (CITOS) for quantification of gain / loss due to non-implementation of the Order passed in 2002 for the period prior to 31 March 2005. Since the relationship prior to 2005 between the companies was not different from the period subsequent to 31 March 2005, it has requested to reconsider admitting the license fee.*

Analysis:

This Authority in the Tariff Order of 2002 had observed that the annual license fee for Computer Integrated Terminal Operating System (CITOS) payable by the PSA SICAL to its promoter company is akin to technical service fee payable by other private operators to parent / promoter company and hence this item was disallowed as cost as per the principle followed prior to the issue of the revised tariff guidelines. The capital cost was allowed based on the argument that some expense would have been incurred if it had to be procured from elsewhere.

Since this item was not allowed as cost in the tariff Order of 2002, it is not possible to admit this element as an expenditure item for the purpose of quantifying gain / loss accrued due to non-implementation of the last Order. As has been mentioned earlier, the MOC requires the estimates considered during the last tariff revision to be updated to the extent the actuals vary from the estimates and does not envisage inclusion of a new element, barring royalty, which was not allowed in the last tariff revision. That being so, annual license fee for CITOS is not included as cost for the years 2002 to 31 March 2005 in line with the position maintained in the Tariff Order of 2002.

For the period subsequent to 31 March 2005, clause 2.8.2. of the revised tariff guidelines disallows technical service fee if its reasonableness is not established by applying the yardstick of arms length relationship. PSA SICAL has not furnished any Income Tax (IT) Assessment Order to support the admittance of this expense by the IT department on the ground that assessment of its Income Tax is still pending for the past period. Since Income Tax Assessment Order is not available, the Certificate issued by the Auditors of PSA SICAL certifying the arms length relationship of this transaction is relied upon for admitting this item as cost for the period subsequent to 31 March 2005 as per the revised tariff guidelines subject to the condition that PSA SICAL will produce at the time of next review the IT assessment orders for each of the years to show that the Income Tax Authorities has allowed this expenditure. If such evidence is not produced, expenditure allowed now will be set off in the next tariff review. This Authority has in case of Chennai Container Terminal Limited and Visakha Container Terminal Private Limited also admitted this item of expense for the period after 31 March 2005 relying on the Certificate issued by their Chartered Accountant of arms length relationship of the transaction.

- (c). *The PSA SICAL has considered the entire royalty payment as item of cost even for the period prior to 31 March 2005.*

Analysis:

As explained in paras (v) and (vi) above, the royalty has been admitted as pass through to the extent of second lowest quote i.e. 46.86% for the period prior to 31 March 2005 in compliance with the fresh directions issued by the

Government on 20 February 2008. For the period subsequent to 31 March 2005, the treatment of royalty is done as per clause 2.8.1 of the tariff guidelines and admitted as pass through to the extent of second lowest quote i.e. 46.86%.

- (d). *The PSA SICAL has reported a marginal loss on account of variation in the foreign exchange rate on transactions relating to purchase of spares, installation of software, lease rentals of RTG's during the year 2005, etc. Since it is a genuine cost it has requested to admit this item for quantification of gain / loss.*

Analysis:

During the revision of tariff undertaken in 2002, the approach followed was to allow loss on foreign currency transaction as an item of cost only for the actual repayment of loan / debt. In the absence of PSA SICAL furnishing any details relating to repayment for its foreign currency debt, the loss on account of foreign currency transaction was not allowed as item of cost during the last revision.

The PSA SICAL has subsequently clarified that loss on account of variation in foreign exchange is shown separately in its books only in view of its accounting policy. The entry pertaining to foreign exchange gain / loss relates to the actual transaction and is part of the actual expenditure but is shown under a separate head. Based on the clarification furnished by the PSA SICAL, this item is admitted as cost while quantifying the gain / loss accrued for the past period. The PSA SICAL has confirmed that foreign exchange loss indicated by it excludes the CITOS license fee.

- (e). *The PSA SICAL has amortised the upfront fee over 10 years period and other deferred revenue expenditure over 5 years period. It has requested to allow treatment of this expense as per the Indian Accounting Practice instead of amortizing it over the entire project period*

Analysis:

This Authority has already held in various Orders relating to Private Terminal Operators that the preliminary expense and upfront fee are relevant for the entire project and hence it is reasonable to spread such expenditure over the entire period so that the burden will be uniformly discharged by all the users of the terminal.

The deferred revenue expenditure and upfront fee reported at Rs.686.98 lakhs reported as on 31 December 2001 is spread over the remaining licence period of 28 years in line with the approach adopted in the 2002 tariff revision Order. The PSA SICAL has referred that in case of one of the terminal (NSICT), this expense was allowed to be amortised over five years. In the NSICT case also, the upfront payment was spread over the entire project life but preliminary expenses was not given similar treatment at that point of time as the principle of spreading over this expenditure over the entire project period was not evolved. Subsequently on adoption of this principle, it has been applied uniformly at all the other private terminals.

The PSA SICAL has not calculated return on the unammortised portion of the deferred revenue expense, which is otherwise permissible. The impact of the treatment given by us vis-à-vis the treatment given by the PSA SICAL is tabulated below:

				(Rs. in lakhs)
Years	Treatment given by PSA SICAL (Deferred revenue	Treatment by TAMP		Total considered by TAMP
		Ammoritsed over project period from	Return allowed on the unammortised	

	expense spread over 5 years / upfront fee over 10 years)	2002 onwards	expenses	
2000	79.71	79.71	0.00	79.71
2001	242.90	242.90	0.00	242.90
2002	242.90	24.54	132.49	157.03
2003	110.40	24.54	127.58	152.12
2004	110.40	24.54	122.67	147.21
2005	45.00	24.54	95.68	120.22
2006	45.00	24.54	84.64	109.18
2007	45.00	24.54	86.36	110.90
2008	45.00	24.54	82.43	106.97
2009	45.00	24.54	78.51	103.05
Total	1011.31	518.93	810.36	1329.29

It can thus be seen, that the method followed by this Authority is beneficial to the operator.

- (f). *EPCG penalty payment was moderated during the last tariff revision for reasons elaborately explained in the Order of 2002. This was considered as deferred revenue expenditure and spread over the remaining life of the asset.*

Analysis:

The Annual Accounts of PSA SICAL, perhaps in view of waiver of EPCG penalty, does not report any expenditure under this head. Accordingly, the expenditure is taken as nil as against estimate of Rs.94.54 lakhs for each of the years 2002, 2003 and 2004 during 2002 tariff revision.

- (g). *PSA SICAL had in the 2005 proposal considered the interest payment as cost while quantifying the gain / loss for the past period which has been excluded in the revised calculation furnished in October 2008..*

Analysis:

Prior to implementation of the tariff guidelines of 2005, return on equity was allowed in case of private terminal operators alongwith interest cost on debt. In line with the approach followed in the tariff Order of 2002, the PSA SICAL is entitled to claim interest on the cost of debt for the said period. Interest cost on debt reported in the Annual Accounts is, therefore, allowed for the period prior to 31 March 2005.

For the period subsequent to 31 March 2005, return is allowed on the capital employed as per the tariff guidelines. Since the capital employed includes the value of assets financed by both equity and debt component, interest cost is not considered separately as an item of expenditure.

- (h). *The capacity of the terminal was considered at 3 lakh TEUs per annum as assessed by the PSA SICAL during the 2002 tariff revision. The PSA SICAL has clarified that the additional investment proposed to augment its capacity in the year 2003 got delayed and was in place only in March 2005. It has considered the capacity based on the norms indicated in the draft report submitted by the National Working Group constituted by the TAMP for normative costing.*

Analysis:

With reference to the capacity assessment of the terminal, even the TPT has clarified that though the area allotted to the PSA SICAL is sufficient to handle 4 lakhs TEUs per annum, the operator had not deployed sufficient equipment till March 2005. The submissions made by the PSA SICAL on

the capacity of the terminal at 226000 TEUS per annum for the years 2002 to 2004 and 339300 TEUS per annum from 2005 to 2008 is relied upon for the purpose of allowing return on equity / capital employed for the past period.

- (i). *The cost of leased equipment is capitalized and depreciation and return thereon is claimed from the year 2005 onwards.*

Analysis:

It is understood from the submissions made by the PSA SICAL that it has changed the method of lease from operating lease to finance lease from the year 2005 onwards. PSA SICAL has not claimed finance lease charge as an expense. It has considered the capitalised cost of leased equipment and claimed depreciation and return thereon from the year 2005. The approach followed by the PSA SICAL is accepted without any modification.

- (j). Capital Employed and Return thereon

- (i). For the period prior to 2005 tariff guidelines:

For the period prior to 31 March 2005, 20% return on equity and cost of debt was allowed. The same approach is followed while assessing the gain for the past period. The actual net block plus working capital as reported by PSA SICAL in its Annual accounts is considered for the period from 2002 to 31 March 2005. The shareholder's fund is arrived at after excluding the debt portion reported in the Annual Accounts. Return on equity share holders fund is allowed @ 20% and is linked to the capacity utilisation.

As already mentioned earlier, the actual cost of debt (i.e. interest cost) is treated as expenditure for the period prior to the 2005 tariff guidelines.

- (ii). Return on Capital Employed for the period subsequent to 2005 tariff guidelines.

Net fixed assets reported in the Annual Accounts of PSA SICAL and Working capital as per the norms prescribed in the revised tariff guidelines constitute the capital employed. As already mentioned earlier, the upfront fee and the deferred revenue expenditure to the extent not written off at the end of each of the year are also added to the net block for the entire period while arriving at the capital employed.

As per the tariff guidelines of 2005, the port / private terminal operator is entitled for full return if the capacity utilisation is beyond 60% and above. Since, the capacity utilisation with reference to the traffic handled and the capacity assessed by the PSA SICAL is more than 60%, as per the 2005 tariff guidelines, full return on capital employed applicable for each of the years i.e. @ 15% for the years 2005 and 2006 and @ 16% for the years 2007 and 2008 are allowed.

- (xi). Though the cost statement relied upon in the last tariff revision of 2002 reflected an average net surplus of 37.64% for the two years 2003 and 2004, this Authority had effected 15% reduction in its then prevailing tariff and deleted the charges towards lashing / unlashings at US\$8.04 per container. The net effect of this decision was a reduction of about 26.58% in the estimated revenue for the corresponding years. The balance of surplus to the extent of 5.038% of the estimated revenue of 2002 and about 11.2% of the average estimated revenue for the years 2003 and 2004 covered by that order, was allowed to be retained by the PSA SICAL for reasons recorded in para 15(xvii) of the Tariff Order of 2002.

The additional surplus allowed to PSA SICAL in the last Order for the period from November 2002 to November 2003 is, therefore, recognised in this analysis and for a like-to-like comparison this amount is excluded from the surplus for the relevant period.

Since royalty to the extent of the second quote is admitted as pass through for the period from 28 November 2003 in line with the fresh direction from the Government dated 20 February 2008, additional surplus is to be adjusted from December 2003 onwards in line with the approach followed in the CCTL in its 2003 tariff Order, as advised by the Government.

A summary statement indicating, the additional surplus allowed to be retained by the PSA SICAL in the 2002 tariff Order, updation with reference to actual and retention of additional surplus allowed in this Order while assessing the gain for the past period is tabulated below:

(Rs. in lakhs)				
Particulars	2002 (from Nov)	2003	2004	Total
<u>As per 2002 Tariff Order</u>				
1. Additional Surplus to the extent of 5.038% in 2002 and 11.2% of the average revenue of 2003 and 2004 allowed to be retained in 2002 tariff Order after effecting 15% reduction and deleting lashing / unlashng charges.	36.62	547.77	620.71	1205.10
2. Updation with reference to the Actual				
(i). Actual Revenue	805.31	5196.61	6307.54	12309.46
(ii). Additional Surplus assessed to the extent of 5.038% in 2002 and 11.2% of 2003 and 2004 with reference to actual revenue	40.57	582.02	706.44	1329.03
(iii). Additional Surplus allowed to be retained by PSA SICAL taking into consideration the fresh direction of the MSRTH of allowing royalty for the period prior to 31 March 2005 in line with the CCTL approach.	40.57	533.52	0	574.09

It may be noted that the PSA SICAL has not made this adjustment while assessing the gain accrued during the past.

- (xii). The Government in its direction of 20 February 2008 has suggested this Authority to consider whether interest accrued on the surplus retained by the operator is to be factored while computing the future tariff. The point made by the Government is not a direction but only a suggestion to examine this aspect. The past surplus in this case would not have arisen if the earlier tariff Order of 2002 had been implemented. That being so, the operator had enjoyed the benefit of interest on the additional surplus which is also a gain accrued to him due to non-implementation of the tariff Order of 2002. This Authority in principle finds merit in the suggestion to quantify the past surplus alongwith interest and also to set off such accumulation with interest in future tariff.

It has to be, however, recognised that the MOC specifically states that to the extent the 2002 tariff has been arrived based on the estimates, appropriate adjustment has to be made by updating it with actual while quantifying the gain. The MOC does not specify about considering interest accrued while quantifying the advantage / gain

accrued by the operator. Further, no provision exists in the tariff guidelines of 2005 to charge interest on the past period surplus which is to be set off in future tariff. Even while dealing with the tariff revision case of the Nhava Sheva International Container Terminal Limited, interest on the surplus accrued to the operator for the past period was not considered. That being so, in the absence of any such precedence in the earlier cases so far dealt by this Authority and also in the absence of relevant provisions in the guidelines of 2005 and the MOC entered with the PSA SICAL and the Government, this Authority decides not to charge interest on past surplus in the case of PSA SICAL.

This Authority will, however, separately examine the issue of levying interest on the past surplus and make suitable provision in the tariff guidelines, if necessary, which will be implemented prospectively.

- (xiii). Subject to the above analysis, the gain / loss accrued due to non-implementation of the Order passed in 2002 is quantified as per the statement attached as **Annex-II**. The summary of the gain / loss so quantified is tabulated below:

(Rs. in lakhs)		
Year	Assessed by the PSA SICAL	Assessed by TAMP
2002 (From November i.e. two months on prorated basis)	280.83	241.40
2003	1262.00	1510.53
2004	1269.00	1984.79
2005	709.00	1798.94
2006	365.00	1988.56
2007	304.00	2908.37
2008	(-642)	2793.42
	(-856) *	
Total gain accrued to PSA SICAL due to non implementation of 2002 tariff Order	3333.83	13226.01

* Rs.(-642) lakhs deficit considered by PSA SICAL upto September 2008 (after efficiency gain claimed) is prorated for full year of 2008 for a like to like comparison.

- (xiv). (a). Clause 2.13. of the revised tariff guidelines states that if the variation between the actual physical and financial performance with reference to the projections relied upon at time of fixing the prevailing tariff is more than + or - 20%, tariff will be adjusted prospectively by setting of 50% of such benefit / loss accrued while revising the tariff. The PSA SICAL has claimed that since the variation in the volumes is less than 20%, the additional income generated may be allowed to be retained as surplus. The claim made by the PSA SICAL is not found to be in line with the MOC governing the fixation of tariff in its case. As per the MOC, the gain accrued due to non implementation of the tariff Order approved in the year 2002 has to be quantified and set off in the three year tariff validity period. The gain accrued to PSA SICAL is not a result of only variation in the estimates relied upon in the last tariff review of 2002. Accordingly, the gain for the past period is to be fully adjusted in future tariff.
- (b). The MOC stipulates that the gain accrued due to non-implementation of 1999 tariff Order is to be set off in the next tariff cycle over three years period. PSA SICAL has in the revised submission in October 2008 requested that the gain, if any, to be adjusted in future tariff may be spread over 3 tariff cycles i.e. nine years. It has also made a representation to the Department of Shipping to issue a suitable direction to TAMP in this regard. This Authority is not in receipt of any direction from the Government about

spreading over the past surplus in future tariff with reference to the representation made by the PSA SICAL.

It may be relevant to mention that in the NSICT case, this Authority in its Order of 2005 has held that adjusting all the surplus at one go may artificially bring down the tariff in one cycle and cause an escalation in the following period. This Authority prefers to smoothen such 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. Hence, the decision to spread over of past surplus over a longer period of 5 years was taken in the Tariff Order of 2005 relating to NSICT. On the same analogy, this Authority is inclined to adjust the past period surplus in the case of PSA SICAL also over five years period i.e. from January 2009 to December 2013.

Of this, in the current tariff cycle, three installments of Rs.2645.20 lakhs each is to be adjusted in the years 2009 to 2011 and the balance Rs.5290 lakhs will be adjusted in the first two years i.e. 2012 and 2013 during the next tariff cycle.

- (xv). (a). In a recently decided case of a private container terminal (Nhava Sheva International Container Terminal Limited - NSICT), this Authority observed that an operator can handle volumes beyond the standard capacity by improving efficiency and/or by infusing more capital. As the existing cost plus method does not provide leverage to the efforts of an operator who achieve volume beyond its standard capacity, it was decided to fix tariff with reference to standard capacity level. The formula prescribed to determine optimum capacity in the 2008 guidelines was adopted as an interim measure to determine the standard capacity. Consequently, the income, expenses, and the capital investment were also considered with reference to the standard capacity. Tariff was fixed for an interim period of one year period and it was decided to review the existing cost plus approach prescribed in the 2005 tariff guidelines in consultation with the relevant stakeholders
- (b). In the case of the PSA SICAL also, an attempt was made to see whether the approach followed in the NSICT case can be adopted. The PSA SICAL was also advised to furnish tariff computation based on the standard capacity following 2008 upfront tariff guidelines announced for the Public Private Participation (PPP) project. PSA SICAL has stated that the upfront tariff guidelines stipulate 720 ground slots per hectare. Whereas as per its calculation, the total stacking area for 1 hectare of land using the Rubber Tyred Crane works out to 360 TEUs. It has accordingly, the modified factor of ground slot and arrived at the standard yard capacity of its terminal at 326394 TEUs. The formula prescribed in the 2008 tariff guidelines for computation of the optimum capacity of the terminal is applied without any modification in the case of NSICT and also in the case of determining upfront tariff for the proposed second container terminal at the Tuticorin Port. This Authority does not find it reasonable to alter the predetermined norms to suit the requirements of an individual operator.
- (c). The standard capacity is, therefore, computed strictly following the 2008 upfront tariff guidelines. The optimal Quay capacity for berth length of 370 meters (as stipulated in the License Agreement) and applying the norms prescribed in the guidelines works out to 597870 TEUs per annum.

The PSA SICAL has submitted that out of 10 hectares of land provided by the TPT, 6.5 hectares of land is available for actual storage of container. The optimal yard capacity for 6.5 hectares of paved stacking area and applying the norms prescribed in the upfront tariff guidelines of 2008 works out 766500 TEUs per annum.

The standard capacity of the terminal as per the norms is 597870 TEUs per annum, being lower of the two capacities

As against the standard capacity of 597870 TEUs, the actual traffic handled by PSA SICAL is 432089 TEUs in 2007. Traffic handled in 2008 (upto September) is reported at 356533 TEUS which if prorated for full year works out to 475377 TEUs.

- (d). It has to be recognised that in the case of the NSICT, the actual volumes handled was higher than the standard capacity. Though tariff determination was made with reference to standard capacity, the revenue contribution from additional volume was recognised as the surplus available to reduce the quantum of pass through of royalty, which otherwise would have been admitted. Thus, it was a win-win situation for both operator and user as the approach recognised the volume efficiency of an operator and at the same time reduced the burden of royalty pass through to be borne by users.

This Authority is inclined to adopt the approach followed in the NSICT case of fixing tariff based on the standard capacity in the case of PSA SICAL also. But in, PSA SICAL case, the actual traffic handled/estimates for 2009 is about 20% below the standard capacity level. Thus, there is no volumes efficiency achieved by the operator with reference to the standard capacity of the terminal. It may be relevant to note that the cost efficiency achieved by the PSA SICAL is duly factored in the computation. Given the present capacity utilisation at PSA SICAL, the standard capacity based approach at this juncture will not fulfill the objective with which such approach was evolved. When the volumes handled by PSA SICAL reaches the standard capacity level, tariff can be fixed based on the standard capacity method to recognize the volume efficiency achieved by the operator.

From the details made available by the PSA SICAL, it is found that the number of tractor trailers, rubber tyred gantry crane, etc., deployed by the PSA SICAL are less than the normative level of equipment prescribed in the 2008 tariff guidelines. This also poses a problem in fixing tariff with respect to the standard capacity.

In the tariff Order passed by this Authority in September 2008 in the NSICT case, return on gross block of assets was considered to determine the revenue requirement for the standard capacity. This was done to reduce the quantum of pass through of royalty with reference to the actual cost position and return on net block of assets. In the case of PSA SICAL since the volume handled is less than the standard capacity, adopting the model of NSICT would only give an unintended benefit of return to the operator on the replacement value of assets without providing any relief to users by way of reduction in the maximum permissible quantum of royalty pass through.

Further, adjustment of past surplus i.e. Rs.2645.20 lakhs per year over the standard capacity of Rs.5.97 lakh TEUs will only be a theoretical exercise as the actual volumes handled will be less than such level. Consequently, the users will not get the intended benefit of adjustment of past surplus fully. The past surplus adjustment on differential volumes between the actual and the standard capacity will only remain notional.

- (e). For the reasons elaborated above, the approach of fixing tariff based on standard capacity is not applied in the case of PSA SICAL at this juncture. Therefore, tariff determination for the future period is done with reference to the usual cost plus approach prescribed in the Tariff Guidelines of 2005. As stated earlier, standard capacity based method will be adopted in the case of PSA SICAL also, when volumes handled cross the standard capacity level.
- (xvi). Clause 3.1.8. of the tariff guidelines of 2005 prescribes tariff validity period of three years. PSA SICAL has furnished actuals upto September for the year 2008. It has,

however, not updated estimates furnished earlier for the year 2009 with reference to the 2008 actual. Estimates for the next two years i.e. 2010 and 2011 are also not furnished by the operator.

Since the actual for the year 2008 upto September are made available by the PSA SICAL, it is found realistic to consider the traffic, revenue, income and capital employed estimation for the year 2009 with reference to the 2008 actuals subject to factoring annual inflation in the cost items.

In the absence of availability of estimates for the next two years 2010 and 2011, the estimates are drawn up based on the estimates of 2009 and actuals of 2008.

- (xvii). The throughput handled by PSA SICAL in 2007 is 432089 TEUs. Actual throughput handled upto September 2008 reported by the PSA SICAL is 356533 TEUs which if prorated for the full year works out to 475377 TEUs. The PSA SICAL had earlier estimated a reduction in the traffic during the year 2009 i.e. at 3 lakh TEUs in view of commissioning of a new container terminal in the Tuticorin Port. As regards the apprehension of the PSA SICAL about reduction in the traffic during the year 2009 in view commissioning of a new container terminal, the TPT has clarified that the LA entered with the PSA SICAL specifically provides a clause for future expansion of container berths by the TPT. Further, the commissioning of the new container terminal at the port is still in an infant stage.

Hence, there is no justification for apprehending a fall in traffic projections. The traffic for the year 2009, 2010 and 2011 is, therefore, presumed to continue at the level of 2008.

The PSA SICAL is, however, allowed an option to propose ahead-of-schedule review of tariff as per the revised tariff guidelines in case of any significant reduction in the traffic during the current tariff validity cycle which will adversely affect the finance / cost model considered in this analysis.

- (xviii). The actual income reported for the year 2008 upto September is based on the 1999 tariff level collected by the PSA SICAL which is relied upon and prorated for the full year in this analysis. The income for the subsequent two years 2010 and 2011 are maintained at the level of 2008 as the traffic is presumed to be at the level of 2008.

- (xix). (a). In the estimates of operating cost furnished by the PSA SICAL for the year 2009, some of the cost elements are scaled down mainly perhaps on account of 30% reduction in the traffic estimated in view of new container terminal expected to be commissioned. Further, the estimates for 2009 furnished by the PSA SICAL in the year 2006 would be based on the then available actual.

The operating costs for the year 2009 is considered based on the actual operating costs reported for the year 2008 with escalation for inflation at the admissible rate.

- (b). In terms of clause 2.5.1. of the guidelines for tariff fixation, expenditure is to be projected in line with traffic adjusted for price fluctuation with reference to the current movement of Wholesale Price Index (WPI) for all commodities announced by the Government of India. The PSA SICAL has requested to consider the annual escalation factor of 8% while estimating power and fuel cost citing that it is well below the 10.6% actuals that prevailed in 2007 (based on WPI). The WPI for all the commodities as ascertained from Government of India for the financial year 2007-08 is 4.6% which is adopted for dealing with the tariff revision proposals considered during the year 2008-09. It is not that all groups in the basket of WPI had suffered the same quantum of escalation. It is, therefore, not found necessary to allow escalation in the unit rate of power and fuel beyond the stated WPI of 4.6% per annum as per the tariff guidelines. It is noteworthy that the unit base rates considered for this purpose are the actual reported by PSA SICAL for 2008.

- (c). The relevant operating cost items for the years 2009 are estimated considering 4.6% annual escalation over the actual reported for the year 2008. The operating cost for the year 2010 and 2011 are estimated applying the stated annual escalation factor over the estimates of the respective previous years. The management and general overheads and all other relevant cost elements are also allowed the annual escalation at the stated level as admissible in terms with the revised tariff guidelines.
 - (d). The PSA SICAL has not reported any addition to the gross block during the year 2009. Hence depreciation for the year 2009 is maintained at the level reported for the year 2008. In the absence of any details made available by the PSA SICAL for the subsequent two years 2010 and 2011, the depreciation is maintained at the level estimated for the year 2009.
 - (e). The deferred revenue expenditure and the upfront fee are spread over the remaining period of the project in line with the treatment given for the past period and based on the approach followed in case of the other private terminals. Return on the unamortised portion of the expense is allowed. As already mentioned earlier, the approach followed would be beneficial to the operator over the project period.
- (xx). The PSA SICAL has considered full royalty payable to TPT for 3 lakh TEUs in its estimation for the year 2009. As already mentioned earlier, the treatment of royalty for the period subsequent to 31 March 2005 has been done in terms with the revised tariff guidelines. Royalty is considered as pass through to the extent of second lowest bidder i.e. 46.86% as per the tariff guidelines of 2005 after suitable adjustment for the throughput level of 475377 TEUs as against 3 lakh TEUs considered by the PSA SICAL. In the absence of PSA SICAL furnishing details of royalty payable to TPT for the subsequent two years 2010 and 2011, the total royalty is arrived based on the unit rate of royalty quoted by the PSA SICAL as furnished by the TPT for the relevant years for the estimated traffic level of 4.75 lakh TEUs and pass through to the extent of second lowest bidder i.e. 46.86% is admitted for the years 2010 and 2011.
- (xxi). (a). The PSA SICAL has estimated capital employed for the year 2008 at Rs.7755 lakhs constituting Rs.3988 lakhs as net fixed assets and Rs.3767 lakhs as working capital.
- (b). Since no addition to the gross block of assets is estimated by the PSA SICAL for the year 2009, the actual net block of fixed assets reported by the PSA SICAL for the year 2008 is considered for the year 2009 after suitable reduction for depreciation and amortisation of deferred revenue expense and upfront fee.
- The net fixed assets for the year 2008 considered by the PSA SICAL at Rs.3988 lakhs is adjusted by adding the unamortised portion of the deferred revenue expenses and upfront fee. Subject to this modification, the net fixed assets for the year 2008 works out to Rs.4167.48. The net fixed assets for the year 2009 after suitable reduction for depreciation and amortisation of deferred revenue expense works out to Rs.2830.94 lakhs.
- (c). Clause 2.9.9. of the tariff guidelines prescribe the norms for admissibility of working capital.
- The norm for Sundry Debtors is stipulated as two months revenue from Estate Income and Railway Terminal Charges. The PSA SICAL does not operate the railway facility and, therefore, no amount is payable to it by Railways towards Terminal charges. The claim made by the PSA SICAL to consider storage rent as estate income for estimating working capital is not correct. It is, however, examined, whether there is any other debtor arising due to inevitable and mandatory transactions.

As per Article 7.3.5.2 of the LA entered between PSA SICAL and TPT, the royalty is payable by PSA SICAL to TPT on monthly basis on 7th day of the subsequent month for a minimum guaranteed throughput of 3 lakhs TEUs per annum; and, at the end of every quarter, the royalty is to be computed for the actual TEU handled and the differential is to be paid by the PSA SICAL to the TPT. It is thus clear that as per LA, the PSA SICAL is not required to make any advance payment of royalty, hence there is no case to consider it as a part of the working capital.

As regards inventory, the guidelines stipulate norm of six months average consumption for estimating working capital. For this purpose, six months actual consumption of stores and spares reported for the year 2007 is taken as the base and adjusted for the traffic growth achieved in 2008 and annual escalation in the cost while estimating the working capital for the year 2008. The estimate for the year 2009 is arrived applying applicable escalation factor.

The cash balance is estimated as one month cash operating expense as per the norms prescribed in the tariff guidelines.

The current liability for the years 2008 and 2009 is considered at the actual current liability reported in 2007.

The working capital applying the norms prescribed in the guidelines as explained above is negative and hence considered as nil for the year 2009.

- (d). Subject to the above analysis, the capital employed for the year 2009 works out Rs.2830.94 lakhs.

The capital employed for the years 2010 and 2011 is derived taking the capital employed estimated for the year 2009 as the base. The annual depreciation and the amortisation of upfront fee / deferred revenue expense is reduced therefrom. The capital employed thus arrived at for the years 2010 and 2011 are Rs.1494.40 lakhs and Rs.157.86 lakhs respectively.

- (e). In the instant case since there is no under utilisation of the capacity based on the assessment of the capacity by PSA SICAL, full return @ 16% is allowed on the capital employed.

- (xxii). Detailed computation of efficiency gain is already explained in the preceding paragraph. The PSA SICAL has not claimed efficiency gain for the year 2009.

The estimation of operating cost for the years 2009, 2010 and 2011 are based on the actual reported for the year 2008. It is, therefore, reasonable to extend the efficiency gain assessed for the year 2008 to the subsequent years 2009, 2010 and 2011. The efficiency gain arrived at for the year 2008 is suitably escalated applying the annual escalation for each of the years.

The efficiency gain thus considered in this analysis is Rs.142.72 lakhs for the year 2009, Rs.149.28 lakhs for the year 2010 and Rs.156.15 lakhs for the year 2011.

- (xxiii). Subject to the discussion above, the cost statements furnished by PSA SICAL are modified. The modified cost statement is attached as **Annex-III**. The result disclosed by this statement is summarised in the table given here under:

Container handling Operating Income (at 1999 tariff level) (Rs. in lakhs)			Net Surplus(+)/ Deficit(-) (Rs. in lakhs)			Net Surplus(+)/ Deficit(-) as a % of operating Income			Average Surplus/ Deficit %
2009	2010	2011	2009	2010	2011	2009	2010	2011	
9430.67	9430.67	9430.67	4683.53	4044.25	3423.53	49.6%	42.8%	36.3%	42.9%

- (xxiv). During the 2002 tariff revision, the PSA SICAL had furnished the break up of the tariff item for lashing / unlashings, stowage planning, etc., which indicated that about 80% of this charge accounted for expenditure on capital and maintenance cost relating to computer hardware and software. Since no justification emerged for specifying a tariff item primarily to meet expenditure relating to computer hardware and software, this Authority in its Order of 2002 had deleted the tariff item relating to lashing / unlashings, stowage planning and supervision and the cost of Rs.36/- per box relevant for lashing / unlashings was taken to have been included in the charges for stevedoring. Since the Order passed in the year 2002 is not implemented, the PSA SICAL continues to levy lashing / unlashings charges and has also included in the income estimation.

In the proposed Scale of Rates, the PSA SICAL has merged the lashing / unlashings charge with stevedoring charge for normal containers, transshipment containers / restow containers, and then proposed a 30% tariff increase which effectively means around 90% increase on the tariff approved in 2002. Most of the users like the Tuticorin Steamer Agents Association, Tuticorin Custom House Agents Association and Tuticorin Port Handling Agents Association have requested that this tariff item should be rejected. As correctly pointed out by the user organisations, this matter was already dealt with in the last tariff Order and hence there is no justification either for levy of this tariff by way of merging it with the stevedoring charges or even separately. That being so, the income and net surplus position is analysed excluding the lashing / unlashings income and the results are shown below.

Tuticorin Ship Agents' Association has pointed out that the concessional tariff applicable for coastal container is not extended by the PSA SICAL in view of it levying 1999 tariff. As per the policy directions of the Ministry of Shipping, Road Transport and Highways, coastal containers are entitled for concessional tariff at 60% of the tariff for normal containers in respect of ship-shore transfer, transfer from / to yard and wharfage. The tariff of 1999 do not prescribe concessional rate for coastal containers. The impact of reduction in container handling revenue due to concessional tariff prescribed for coastal container in this Order is computed based on 2008 actual reported by PSA SICAL. From the actual traffic reported to have been handled in 2007 and 2008, coastal container form around 6% of total TEUs handled. Accordingly, the impact of concession to coastal container works out to Rs.146 lakhs per year which is considered in the table shown hereunder:

(Rs. in lakhs)				
Particulars	2009	2010	2011	Total
(i). Net Surplus as per the cost statement	4683.53	4044.25	3423.53	12151.31
(ii). Less:				
(a). Income from lashing / unlashings based on actual furnished by PSA SICAL for 2008 (upto September prorated for full year)	1143	1143	1143	3429
(b). Impact of reduction in the average revenue due to concession for coastal containers as per policy directions of the MSRTH	146	146	146	438
Total [(ii) (a) + (b)]	1289	1289	1289	3867
(iii). Net surplus after excluding income from lashing / unlashings, stowage planning and supervision charges and concession to coastal containers (i-ii)	3394.53	2755.25	2134.53	8284.31
(iv). Income as considered in the cost statement at 1999 tariff	9430.67	9430.67	9430.67	28292.01
(v). Income after excluding the income receivable from lashing / unlashings charges and concession to coastal containers {(iv)-(ii)}	8141.67	8141.67	8141.67	24425.01

Average Net Surplus as a percentage of operating income (Rs.8284.31 lakhs / Rs.24425.01 lakhs)				34% (Avg.)
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It is significant here to note that the only income pertaining to lashing/ unlashings, etc., is excluded from the computation since this tariff item is to be fully deleted. The corresponding expenditure is not, however, excluded which means the relevant cost of providing this service is met by other tariff items like stevedoring charges.

- (a). Based on the cost position, the tariff levied based on the Order passed in 1999 needs to be reduced by 34% and lashing/unlashing charges will have to be deleted. In view of this position, there is no merit in the proposal of PSA SICAL seeking an upward revision of 30% over the 1999 tariff. The PSA SICAL has repeatedly made a mention about 'competitive tariff' at its terminal. Higher tariff levied at some other terminals alone will not justify similar tariff elsewhere or make such tariff as the market driven tariff. This Authority is bound by the revised tariff guidelines, and the MOC in this case, to determine the admissible tariff.
- (b). If one looks at the revised tariff decided now without going into the history of the case and the substantive issues involved in it, it may appear to be too drastic a reduction effected. It has to be borne in mind that the analysis made by this Authority is totally based on the revised tariff guidelines of 2005, the policy direction issued by the Government and the Memorandum of Compromise dated 17 August 2005 to which not only this Authority and the Government but also the PSA SICAL is the signatory.

The reduction ordered now is over the tariff of 1999 which was the prevailing CHPT tariff allowed to be adopted by PSA SICAL. Tariff for PSA SICAL based on its cost and investment was for the first time determined vide the tariff Order of 2002. The revenue position with reference to the 2002 tariff Order, which was not implemented by the PSA SICAL, is also given below:

(in Rs. per TEU)			
(i).	Average Annual Revenue for the year 2009 to 2011 at 1999 tariff level		1983.83
	Less: (a). Average revenue from Lashing / unlashing charges deleted	240.44	
	(b). 15% reduction in tariff ordered in 2002 (Rs.1983.83 - 240.44)*15%	261.51	
		501.95	
(ii).	Average Annual Revenue at 2002 tariff level (Rs.1983.83 - 501.95)		1481.88
(iii).	Average Annual Revenue after deleting lashing / unlashing charge and the proposed 34% reduction of 1999 tariff		1150.64
	(a). Lashing / unlashing deleted = Rs. 240.44		
	(b). 35% reduction (1983.83 - 240.44) * 34% = Rs. 592.75		
	(c). Average revenue {Rs.1983.83 - 240.44 - 592.75} = Rs.1150.64		
(iv).	Average Annual Revenue collected in advance as represented by three instalment of past surplus (Rs.2645.20 lakhs * 3 years / 475377 TEUs * 3 years)		556.44
(v).	Actual Average Revenue after the review		1707.08
(vi).	% increase over 2002 average revenue (1707.08 - 1481.88) 1481.88		15.20%

This means, the present exercise would have granted an increase of 15% over an average revenue of 2002 tariff level, if that Order had been implemented. In reality, it turns to be a reduction since PSA SICAL has to account Rs.556.40 per TEU which is an advance collection made in the past by not implementing 2002 tariff as represented by the past surplus.

- (xxv). In view of the cost position explained in paras (xxiii) and (xxiv) above, this Authority decides to reduce the tariff prescribed vide the Order dated 8 December 1999 by 34% besides deleting the tariff item for lashing/unlashing, stowage charges, etc.,

and fix the revised Scale of Rates of PSA SICAL accordingly, subject to the further discussions made in the succeeding paragraphs.

- (xxvi). The definitions of some of the terms like containers, hazardous containers, over dimensional containers, etc., included in the Scale of Rates 2002 are proposed to be modified slightly in line with the definitions approved for other private terminals like the Chennai Container Terminal Limited, Visakha Container Terminal Private Limited. These modified definitions are accepted and included in the revised Scale of Rates.

- (xxvii). (a). The PSA SICAL at our request has incorporated the provisions for determining the status of the vessel as 'foreign-going' or 'coastal', and the provisions relating to concessional tariff for coastal containers prescribed by this Authority for common adoption by all major ports / private terminals.

The PSA SICAL has not prescribed the concessional tariff applicable for coastal container separately in its revised proposed Scale of Rates. Instead, it has incorporated a general conditionality in the relevant schedules. It is found appropriate to prescribe the separate rate for coastal container in line with the prescription made at other ports / private terminals.

- (b). Concessional tariff for coastal containers are prescribed at 60% of the tariff prescribed for the foreign-going container for eligible tariff items i.e. involving movement of container between ship-shore transfer, transfer from/ to quay to/ from storage yard, wharfage on cargo and containers in line with the policy directions issued by the Ministry of Shipping, Road Transport and Highways. As already mentioned earlier, the revenue impact of granting concession to the coastal traffic is considered in the financial model while revising its rates.

- (xxviii). The PSA SICAL has stated that since the vessel turn around time is around 14 to 18 hours, it is not necessary to incorporate the provision relating to regular review of exchange rate. Since this provision is a part of the revised tariff guidelines and is uniformly prescribed at other ports / private terminals, the same is included in the SOR of PSA SICAL also.

- (xxix). The PSA SICAL has proposed to reckon the date of Actual Time of Berthing (ATB) of the vessel into the terminal for the purpose of conversion of dollar denominated tariff into rupee terms so that uniform exchange rate will be applicable for all the export boxes going into a particular vessel, thus making the billing process simpler.

In case of storage charge on export containers, since both TPT and PSA SICAL are involved in storing and collecting storage charges, the date of arrival of containers in the port premises is proposed for conversion of dollar denominated rate into rupee terms and for storage charge on import containers, the ATB of vessel into the terminal is proposed to be reckoned as the day for such conversion.

The proposed conditionality is not found to be in line with clause 2.19.1. and 2.19.2. of the revised tariff guidelines which clearly specifies that in case of containers, the day of entry of the vessel in the case of import containers and the day of arrival of containers into the port in the case of export containers shall be reckoned as the day for such conversion.

Since there is a specific guidelines in this regard and also recognising that it is being uniformly implemented by all other major ports / private terminals, no extraordinary circumstance is found to emerge in the instant case to deviate from the generally accepted principle only in the case of PSA SICAL.

The proposed provision is, therefore, modified in line with the terms in the revised tariff guidelines.

- (xxx). Some of the provisions proposed, relating to the change of agency, etc., are more of procedural issues and not directly relating to the tariff. Such conditionalities are deleted from the revised SOR.
- (xxxi). Most of its transactions are reported to be through Electronic Data Transfer system except in some exceptional cases. PSA SICAL had earlier proposed a condition requiring the users to deposit 3% of their annual turnover and such customers are required to remit the amount within 10 days without any penal interest. Beyond this period, penal interest at 2% above the Prime Lending Rate of the State Bank of India and maximum of 18% is proposed to be levied.

Subsequently, it has modified this provision to state that all transactions with the customers are only through Electronic Data Interface (EDI) with proper tripartite agreement. It has not proposed any provision relating to the penal interest for delayed payments by users / delayed refunds in the revised proposed SOR.

It is relevant to mention that the revised tariff guidelines, specifically mentions the provision relating to penal interest for delayed payments / refunds. This has been uniformly prescribed in the Scale of Rates of all the private terminals and major ports. That being so, the provision relating to penal interest is incorporated in the revised Scale of Rates approved by this Authority. The prevailing Prime Lending Rate of the State Bank of India is reported at 13%. The penal interest rate is prescribed at 15% being 2% above the current Prime Lending Rate of State Bank of India.

- (xxxii). Import laden container are proposed to be shifted to Off-dock CFS for disposal under Section 48 of Customs Act if such cargo is not cleared within 30 days from the date of landing based on the notification issued by the Customs in August 2005.

The Customs notification forwarded by PSA SICAL mentions that the unclaimed import laden containers may be shifted to the ICD / CFS after completion of 30 days provided in Section 48 of the Customs Act.

The Major Port Trusts Act (MPT) 1963 stipulates under Sections 61 and 62 the conditions for disposal of goods not removed from the premises within the stipulated time limit or in case rates or rent are not paid.

The proposed provision is not found to have been prescribed in the SOR of any other major ports / private terminals. Article 6.1.9. of the License Agreement also stipulate that licensee shall take steps for disposal of goods and / or consignment in accordance with the provisions of the Major Port Trusts Act, 1963. That being so, it is not necessary to include the provision proposed by the PSA SICAL in the Scale of Rates.

- (xxxiii). A premium of 25% is proposed on hazardous cargo containers over all the applicable charges. The revised tariff guidelines provides for levy of premium at the stated level only on the handling charge and storage charge of hazardous containers and not over all the applicable charges.

In case of the CCTL, the premium on hazardous containers is prescribed at 25% on the handling charge and in case of VCTPL it is prescribed on both handling charge and storage charge only. Based on the position obtained at these terminals and also in compliance with the revised tariff guidelines, the premium on hazardous container is prescribed at 25% on handling charge and storage charge.

It has also proposed 25% premium on all the applicable charges in case of over dimensional containers. It is relevant to mention here that this Authority has prescribed the premium at the stated level on handling charge of over dimensional containers in case of Chennai Container Limited and India Gateway Terminal Private Limited. In case of the Visakha Container Terminal Private Limited this premium was also extended for storage charge based on the submissions by the operator about loss of stacking plots due to over dimensional size of containers. Based on the earlier decisions, in this regard, the premium of 25% is prescribed in

the handling charge and storage charge in case of over dimensional containers also.

- (xxxiv). Even though the PSA SICAL was requested to furnish activity-wise costing to assess the reasonableness of each tariff item, it could not furnish such details since it does not have the system to split the cost under each equipment and services. Therefore, the tariff has to be fixed based on overall cost position. It has to be recognised that the overall cost position considered for the terminal as a whole takes into account all admissible operating expenditure estimated by the PSA SICAL. This means, cost deficit, if any, under one of the components of services, is made good by surplus available in some other components since the tariff are not exactly with reference to the cost of rendering individual services.
- (xxxv). The PSA SICAL has proposed to continue with the itemised tariff structure instead of composite box rate. It is relevant to mention that at many other private terminals, a composite box rate is prescribed. In fact the revised tariff guidelines also encourages prescribing composite box rate for various operations including wharfage and to offer rebate if any of the services included in the composite box rate are not provided. The PSA SICAL is, therefore, advised to consider proposing composite box rate at the time of the next tariff review.
- (xxxvi). The PSA SICAL at our request has incorporated a suitable conditionality in its SOR to state that in respect of container from foreign port landing at the terminal for subsequent transshipment to an Indian Port for coastal voyages or vice-versa, 50% of the transshipment rate prescribed for foreign-going vessels and 50% of that prescribed for coastal category shall be levied. The proposed modification is in line with the relevant policy decision of the Government and hence is accepted.
- (xxxvii). The tariff guidelines states that the users will not pay for delays beyond the reasonable level attributable to port. In view of this, it was suggested to incorporate a provision stating that storage charge shall not accrue for the period during which the PSA SICAL is not in a position to deliver / shift the empty container when requested by the users. The PSA SICAL has argued that there should be national consensus and all terminals should follow this. It is relevant to mention that this Authority has already prescribed this conditionality in the Scale of Rates of those private terminals and Port Trusts such as India Gateway Terminal Private Limited (IGTPL), Visakha Container Terminal Private Limited (VCTPL), New Mangalore Port Trust (NMPT), Chennai Port Trust (CHPT), Visakhapatnam Port Trust (VPT) and Gateway Terminal India Private Limited (GTIPL) which were decided after notification of the revised tariff guidelines. The relevant provision is, therefore, incorporated in the Scale of Rates of the PSA SICAL.

Since the berth hire charges for vessels handled by PSA SICAL will be collected by the TPT as per the terms of the LA, this Authority advised the PSA SICAL to incorporate a conditionality that in case a vessel idles due to breakdown or non-availability of shore based facility of PSA SICAL or any other reasons attributable to PSA SICAL, a rebate equivalent to berth hire charges payable to the Tuticorin Port Trust will be granted for the period of idling of vessel at its terminal. This also flows from the principle of not requiring user to pay for delays beyond the reasonable level attributable to port / operators. The PSA SICAL has, however, argued that on several occasions its turn around has been faster due to superior productivity for which the vessels / MLOs do not pay anything extra for the reduced berth usage. It has, therefore, requested not to incorporate this conditionality since it will result in disputes.

In this context, it is relevant to mention that this conditionality is already prescribed in the SOR of the India Gateway Terminal Private Limited, Chennai Container Terminal Limited, Gateway Terminal India Private Limited (GTIPL), Visakha Container Terminal Private Limited, etc. Even in case of some of the Major Ports a condition is prescribed to the effect that berth hire charge 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 to apply to PSA SICAL particularly when such provision is based on the principles set out in the tariff policy guidelines issued by the Government. A suitable conditionality requiring PSA SICAL 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 PSA SICAL.

- (xxxviii). The differential tariff between 20' and 40' containers in case of handling charges for transshipment containers, charges for shutout container, storage charges etc., are not found to be as per the revised tariff guidelines. The differential in tariff for these items are modified in terms with the revised tariff guidelines.
- (xxxix). The PSA SICAL has proposed to remove the distinction in Lift on / Lift off charges and extra movements by transfer crane and by other cranes prescribed in Scale of Rates of 1999 and has proposed a rationalised tariff after clubbing these two items. This rationalisation was also proposed during the last tariff revision of 2002 to discourage choice by the users of type of equipment to be used. This was found to be reasonable and accepted during the last tariff revision and hence this modification in the instant proposal is also accepted.
- (xL). The unit of levy of charges for supply of electricity to reefer containers is proposed to be modified from existing 8 hour basis to 4 hour basis in terms with the revised tariff guidelines.
- (xLi). The proposed note prescribing the time limit for levy of storage charge in case of abandoned containers is not found to be complete in line with the clause 5.8.3. of the tariff guidelines. It has prescribed only the last conditionality of this clause and argued that it is as per new Customs notification.

The relevant conditionalities as per the revised tariff guidelines are incorporated in the Scale of Rates of the PSA SICAL.

Other provisions proposed in its Scale of Rates about the time of reckoning free period, are found to be in compliance with the revised tariff guidelines and in line with the prescription at the other private terminals and hence is accepted.

- (xLii). It has proposed charges for miscellaneous services almost at the level approved during the last tariff revision in the year 2002. This pertains to the extra charge for allowing direct loading, charges for reshuffling and trucking of containers, cancellation charges at the request of the user. Some of the users have raised objection to the proposed charges on the grounds that they are new entry and these services are presently provided free of cost. Most of these tariffs were already approved in the last tariff revision. The Scale of Rates of the other private terminals like the CCTL, VCTPL, etc., also prescribe tariff for such miscellaneous services. In view of this, and also recognising these are optional services rendered at the request made by the users, the proposed tariff items at the level approved in the 2002 Order can continue.

In case of change of container status it has proposed a dollar denominated rate. There is no sufficient reason for denominating this item in dollar terms. This Authority, therefore, allows the Rupee denominated tariff already approved for this item in the 2002 Order.

- (xLiii). The charges for other services like visitors entry fees are proposed at the level prescribed in the CCTL. The tariff for photography is proposed to be increased by 30%. Since these are miscellaneous services, the proposed tariff is approved. It may not have any significant impact on its revenue position.

It has also proposed a tariff of Rs.100/- per statement for certain document and Rs.1000/- per statement / report for specialised services offered at the request of the customers. It has defined the terms specialised system services as the charges applicable to generate special reports, information from its system which are not routine in nature and based on the request of the customers. Since these are

optional services of miscellaneous nature provided at the request of the users, the same is accepted.

- (xLiv). As per the revised tariff guidelines, the private operators are required to propose incentive for better performance of the terminal and disincentive for performance below the benchmark level. Despite its claim that it is the most efficient terminal in terms of productivity and tariff, it has not proposed any tariff linked to the efficiency. The PSA SICAL is advised to explore the possibilities of introducing a suitable Efficiency Linked Tariff Scheme (ELT) at its terminal.
- (xLV). Some of proposed provisions which are not in line with the common prescription at other major ports / private terminals and the provisions of the revised tariff guidelines have been modified.
- (xLvi). The revised tariff guidelines prescribe tariff validity cycle of three years. As already mentioned above, the cost position considered in this analysis for three years i.e. 2009, 2010 and 2011. The financial position considered for the purpose of this analysis is till 31 December 2011, hence validity of the revised Scale of Rates will also expire on 31 December 2011.

27.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the revised Scale or Rates of the PSA SICAL which is attached as **Annex-IV**.

27.2. The revised Scale of Rates will come into effect after expiry of 30 days from the date of notification of this Order in the Gazette of India and shall be in force till 31 December 2011. The approval accorded will automatically lapse unless specifically extended by this Authority.

27.3. The tariff of the PSA SICAL has been fixed relying on the information furnished by the port and based on assumptions made as explained in the analysis. If this Authority, at any time, during the prescribed tariff validity period, finds that the actual position varies substantially from the estimations considered or there is deviation from the assumptions accepted herein, this Authority may require the PSA SICAL to file a proposal ahead of the schedule to review its tariff and to setoff fully the advantage accrued on account of such variations in the revised tariff.

27.4. In this regard, the PSA SICAL is requested furnish a report of the actual physical and financial performance within 15 days of completion of each quarter of a year in the same format in which the cost statement for the tariff proposals are filed. The report should also be accompanied with the reasons for variation from the estimates relied upon for fixing the tariff in force. If a variation of (+)/(-)20% is observed between the actual and the estimates for two consecutive quarterly period, TAMP will call upon the concerned operator to submit their proposal for an ahead of scheduled review. If the PSA SICAL fails to file a tariff proposal within the time limit to be stipulated by TAMP, this Authority will proceed *suo motu* to review the tariff.

(Brahm Dutt)
Chairman

PSA SICALTERMINALS LIMITED**SCALE OF RATES****PREFACE**

This Scale of Rates sets out the charges payable to PSA SICAL Terminals Limited from time to time for use of services and facilities provided at the Tuticorin Container Terminal.

1. DEFINITIONS

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

- (i). **“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.
- (ii). **“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.
- (iii). **“Foreign Going Vessel”** shall mean any vessel other than a coastal vessel.
- (iv). **“Hazardous container”** means a container containing hazardous goods as classified under IMO.
- (v). **“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 and container requiring special devices for lifting is also classified as Over Dimensional Container.
- (vi). **“Per Day”** means per calendar day or part thereof.
- (vii). **“Per Shift”** means period of 8 hours or part thereof.
- (viii). **“Port”** means the Tuticorin Port Trust (TPT) whereas **“Terminal”** means Tuticorin Container Terminal (TCT), operated by PSA SICAL Terminals Limited.
- (ix). **“PSA SICAL”** means PSA SICAL Terminals Limited, a company incorporated in India, its successors and assigns.
- (x). **“Reefer”** means any container for the purpose of the carriage of goods, which require power supply to maintain the desired temperature.
- (xi). **“Shut Out Container”** means a container, which has entered the terminal for export for a vessel as indicated by Equipment Interchange Receipt (EIR) and is not loaded to the vessel for whatsoever reason.
- (xii). **“Tonne”** means one metric Tonne of 1,000 kilograms or one cubic metre.
- (xiii). **“Transshipment Container”** means container discharged from a vessel and placed in the custody of the PSA SICAL for the purposes of shipment on another vessel declared on a transshipment manifest with the ultimate port of destination marked on the container lodged with the PSA SICAL prior to or at the time such a container is placed in its custody.

2. GENERAL

- (i). "Status of a vessel as borne out by its certification issued by Director General of Shipping is the relevant factor for deciding whether the vessel is 'foreign-going' or 'coastal'. Foreign going vessels permitted to undertake coastal voyages and the cargo/container carried by them will also qualify for the concession in respect of such permissible voyages."
- (ii).
 - (a). A foreign-going vessel of Indian flag having a General Trading Licence can convert to coastal run on the basis of a Customs Conversion Order.
 - (b). 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.
 - (c). In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.
 - (d). 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 the discharge ports.
 - (e). 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.
- (iii).
 - (a). The container related charges for all coastal containers, should not exceed 60% of the normal container related charges.
 - (b). The concession will be on all the relevant charges for ship shore transfer and transfer from/ to quay to/from storage yard as well as wharfage on containers and cargo.
 - (c). Container from a foreign port which reaches an Indian Port "A" - for subsequent transshipment to Indian Port "B" - will be levied the concession charges relevant for its coastal voyage. In other words, containers from/to Indian Ports carried by vessels permitted to undertake coastal voyage will qualify for the concession.
- (iv). All dollar denominated tariff will be recovered in Indian Rupees after conversion of charges in dollar terms into its equivalent Indian Rupees. For this purpose, the market buying rate notified by the Reserve Bank of India, State Bank of India or its associates or any of the public sector banks as may be specified from time to time prevalent on the day of entry of the vessel into the Terminal (in case of import container) and on the day of arrival of containers in the Terminal premises (in case of export containers) shall be applied for conversion of the dollar-denominated charges into Indian rupees.
- (v). A regular review of exchange rate shall be made once in 30 days from the date of arrival in the cases of vessels staying in the port for longer period. The basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of review.
- (vi). Containers less than and upto 20' in length will be reckoned as one TEU for the purpose of levy of tariff.
- (vii). All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.
- (viii). All invoices are issued as due on presentation. Failure to pay may cause a lien to be placed on the goods handled at the Terminal and the responsible party may be denied further use of the Terminal until all outstanding charges have been paid.

- (ix).
 - (a). The user shall pay penal interest on delayed payments of any charge under this Scale of Rates. Likewise, the PSA SICAL shall pay penal interest on delayed refunds.
 - (b). The rate of penal interest will be 15% p.a. The penal rate will apply to both the PSA SICAL and the port users equally.
 - (c). The delay in refunds by the PSA SICAL will be counted beyond 20 days from the date of completion of services or on production of all the documents required from the users, whichever is later.
 - (d). The delay in payments by the users will be counted beyond 10 days after the date of raising the bills by PSA SICAL. This provision shall, however, not apply to the cases where payment is to be made before availing the services as stipulated in the MPT Act, 1963 prescribed as a condition in the tariff.
- (x). A premium of 25% will be levied in case of Hazardous cargo containers / Over dimensional Cargo Containers over all the applicable handling charges and storage charges prescribed for respective categories of containers.
- (xi). Users shall not be required to pay charges for delays beyond a reasonable level attributable to the PSA SICAL.
- (xii). In case a vessel idles due to non-availability or breakdown of the shore based facilities of PSA SICAL or any other reasons attributable to the PSA SICAL, rebate equivalent to berth hire charges payable to TPT accrued during the period of idling of vessel shall be allowed by PSA SICAL.
- (xiii). The Customer has to declare the hazardous nature of the cargo as per the IMO classification and furnish the relevant hazardous details to the PSA SICAL, prior to discharge from the vessel for Import Containers and prior to processing of EIR in case of Export Containers. The liabilities and cost towards the consequences arising due to non-declaration or mis-declaration shall, however, be on the customer's account.

3. APPLICATION

- (i). Import and Export rates shall apply when:
 - (a). a loaded or empty container is discharged from a vessel, delivered directly out of the Container Terminal or moved and stored in the container yard and eventually delivered out of the Container Terminal; or
 - (b). a loaded or empty container is shipped and the reverse operations to (a) are performed.
- (ii). Transshipment container rates shall apply to a loaded or empty container when it is discharged from the first carrier onto PSA SICAL's premises and remained in the custody of PSA SICAL until it is transhipped in its original status by PSA SICAL to a nominated second carrier.
- (iii). Re-export container rates shall apply to a loaded container when:
 - (a). it is discharged from the first carrier onto PSA SICAL premises and remained in the custody of PSA SICAL until it is re-exported;
 - (b). it is declared for re-export within 72 hours after discharge of the first carrier is completed; and

- (c). PSA SICAL is informed of the re-export at least 24 hours before the second carrier berths.

Re-export containers shall pay the import and export container stevedorage rates but shall enjoy the same free storage period applicable to transshipment containers if they meet the above conditions.

SECTION- I

1. Container operations

1.1. HANDLING CHARGES FOR IMPORT AND EXPORT CONTAINERS

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length (in US\$)	Container exceeding 20 feet in length and upto 40 feet length (in US\$)	Container exceeding 40 feet in length and upto 45 feet length (in US\$)	Container not exceeding 20 feet in length (in Rs.)	Container exceeding 20 feet in length and upto 40 feet length (in Rs.)	Container exceeding 40 feet in length and upto 45 feet length (in Rs.)
(a).	Quay Crane Charges						
	-Loaded and Empty	US\$11.37	US\$17.06	US\$22.74	Rs.297.00	Rs.445.50	Rs.594.00
(b).	Transport from/ to CY and Lift- on /Lift-off						
	- Loaded	Rs.412.50	Rs.618.75	Rs.825.00	Rs.247.50	Rs.371.25	Rs.495.00
	- Empty	Rs.207.90	Rs.311.85	Rs.415.80	Rs.124.75	Rs.187.15	Rs.249.50

Notes:

- (1). Export Containers have to be delivered to PSA SICAL at least 2 hours before berthing of the vessel to be accepted for loading.
- (2). Charges in 1.1. (a) above include handling by quay crane and lashing/unlashing, stowage planning and supervision.
- (3). Charges in 1.1. (b) above include transport from the quayside to container yard and a lift at CY for landing an import container and transport to the quayside from the CY and a lift at CY for loading an export container.

1.2. HANDLING CHARGES FOR TRANSHIPMENT CONTAINERS

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length (in US\$)	Container exceeding 20 feet in length and upto 40 feet length (in US\$)	Container exceeding 40 feet in length and upto 45 feet length (in US\$)	Container not exceeding 20 feet in length (in Rs.)	Container exceeding 20 feet in length and upto 40 feet length (in Rs.)	Container exceeding 40 feet in length and upto 45 feet length (in Rs.)
(a).	Container Operator who has	12.35	18.53	24.70	322.75	484.15	645.50

	transhipped more than 400 TEUs of loaded or empty Transhipment Containers per calendar month						
(b).	If transhipped less than 400 TEUs per calendar month	17.05	25.58	34.10	445.50	668.25	891.00

Notes:

- (1). The above charge applies to the complete cycle of transhipment from discharge from the first carrier to the loading onto the second carrier and include charges towards handling by quay crane (discharge and loading), lashing/unlashing, stowage, planning and supervision, transport between CY and quayside, lift on and off at CY.
- (2). A shut out charge as per item 1.8 shall apply:
 - (i). if the carrier is changed after berthing of the originally nominated carrier; or
 - (ii). if the nomination is changed from a later carrier to an earlier carrier after the earlier carrier is berthed.
- (3). A container from foreign port landing at PSA SICAL for subsequent transhipment to an Indian Port on a coastal voyage or vice versa would be charged at 50% of the transhipment charge prescribed for foreign-going vessel and 50% of that prescribed for the coastal category.
- (4). Any Transhipment container delivered out of the Container Terminal by road or rail shall be charged the import export container rate.

1.3. LIFT ON OR LIFT OFF

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length (in Rs.)	Container exceeding 20 feet in length and upto 40 feet length (in Rs.)	Container exceeding 40 feet in length and upto 45 feet length (in Rs.)	Container not exceeding 20 feet in length (in Rs.)	Container exceeding 20 feet in length and upto 40 feet length (in Rs.)	Container exceeding 40 feet in length and upto 45 feet length (in Rs.)
(a).	Loaded	207.90	311.85	415.80	207.90	311.85	415.80
(b).	Empty	105.60	158.40	211.20	105.60	158.40	211.20

Note:

- (1). Services include lifts at CY for storage and for landing or loading the container from or to customer's vehicle.

1.4. HATCH COVER HANDLING CHARGES FOR ONE OPERATION (both opening and Closing)

Sl. No.	Particulars	Foreign-going Vessels (in US\$)	Coastal Vessels (in Rs.)
(a).	Without landing Hatch Cover on the quay	9.47	247.50
(b).	With landing Hatch Cover on the quay	23.72	619.75

1.5. SHIFTING OF CONTAINERS WITHIN VESSEL (restows)

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length (in US\$)	Container exceeding 20 feet in length and upto 40 feet length (in US\$)	Container exceeding 40 feet in length and upto 45 feet length (in US\$)	Container not exceeding 20 feet in length (in Rs.)	Container exceeding 20 feet in length and upto 40 feet length (in Rs.)	Container exceeding 40 feet in length and upto 45 feet length (in Rs.)
(a).	Loaded or empty container shifted by landing and reshipping	17.05	25.58	34.10	445.50	668.25	891.00
(b).	Loaded or empty container shifted without landing and reshipping	5.68	8.52	11.36	148.50	222.75	297.00

Note:

- (1). No wharfage will be levied on the restow containers and containerised cargo.

1.6. EXTRA MOVEMENT

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length (in Rs.)	Container exceeding 20 feet in length and upto 40 feet length (in Rs.)	Container exceeding 40 feet in length and upto 45 feet length (in Rs.)	Container not exceeding 20 feet in length (in Rs.)	Container exceeding 20 feet in length and upto 40 feet length (in Rs.)	Container exceeding 40 feet in length and upto 45 feet length (in Rs.)
(a).	Loaded and Empty	330.00	495.00	660.00	330.00	495.00	660.00

Note:

- (1). Extra movement charges applies when a container is required to be moved by a trailer within the Container Terminal upon customer's request.

1.7. REEFER RELATED AND OTHER GENERAL SERVICES

Sl. No.	Particulars	Foreign-going (in US\$)	Coastal (in Rs.)
(a).	Pre-trip inspection (including the supply of Electricity) per container	21.22	924.00
(b).	Connection or disconnection Services Onboard a Vessel. Per Container	1.52	66.00
(c).	Supply of electricity (including connecting and disconnecting, monitoring of temperature at Reefer yard) per 4 hours or part thereof-		
	(i). not exceeding 20 feet in length	1.71	74.25
	(ii). exceeding 20 feet in length	2.27	99.00
(d).	Cleaning of a Container		
	(i). not exceeding 20 feet in length	0.99	42.90
	(ii). exceeding 20 feet in length	1.97	85.80

Notes:

- (1). Pre-trip Inspection of the reefer containers and cleaning of containers are optional services and shall be rendered when requested.
- (2). Above tariff does not include parameter setting or repair & maintenance of malfunctioning reefers. Above charges are also applicable to restow reefer containers.

1.8. SHUT OUT

- (i). Where an Export container or a Transshipment container or a Re-export container is shut out and subsequently delivered out of the Container Terminal, the following rates shall apply;

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length (in US\$)	Container exceeding 20 feet in length and upto 40 feet length (in US\$)	Container exceeding 40 feet in length and upto 45 feet length (in US\$)	Container not exceeding 20 feet in length (in Rs)	Container exceeding 20 feet in length and upto 40 feet length (in Rs.)	Container exceeding 40 feet in length and upto 45 feet length (in Rs.)
(a).	Loaded and Empty	15.16	22.74	30.32	660.00	990.00	1320.00

- (ii). Where a container is shut out by one vessel and subsequently shipped via another vessel, in addition to the stevedorage charge:
 - (a). the charge as per item (a) above shall also apply.
 - (b). the free storage shall be given to the Container in accordance with item 1.10 from the time the container is first received. If the free storage period is exceeded, store rent shall be calculated after the expiry of the free period up to the time of lift on.

1.9. WHARFAGE

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length	Container exceeding 20 feet in length and upto 40 feet length	Container exceeding 40 feet in length and upto 45 feet length	Container not exceeding 20 feet in length (in Rs.)	Container exceeding 20 feet in length and upto 40 feet length (in Rs.)	Container exceeding 40 feet in length and upto 45 feet length (in Rs.)
(a).	Per Container	US\$0.61	US\$0.92	US\$1.22	15.85	23.80	31.70
(b).	Per containerised Cargo	Rs.330.00	Rs.495.00	Rs.660.00	198.00	297.00	396.00

1.10. STORAGE OF CONTAINERS

(a). Import and Export - Laden and Empty Containers

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length (in US\$)	Container exceeding 20 feet in length and upto 40 feet length (in US\$)	Container exceeding 40 feet in length and upto 45 feet length (in US\$)	Container not exceeding 20 feet in length (in Rs.)	Container exceeding 20 feet in length and upto 40 feet length (in Rs.)	Container exceeding 40 feet in length and upto 45 feet length (in Rs.)
(i).	First 5 days	Free	Free	Free	Free	Free	Free
(ii).	From 6 to 15 days	0.50	1.00	1.50	21.55	43.10	64.65
(iii).	From 16 to 22 days	1.98	3.96	5.94	86.25	172.50	258.75
(iv).	More than 22 days	3.83	7.66	11.49	166.70	333.40	500.10

(b). Transshipment/Re-export - Laden and Empty Containers

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length (in US\$)	Container exceeding 20 feet in length and upto 40 feet length (in US\$)	Container exceeding 40 feet in length and upto 45 feet length (in US\$)	Container not exceeding 20 feet in length (in Rs.)	Container exceeding 20 feet in length and upto 40 feet length (in Rs.)	Container exceeding 40 feet in length and upto 45 feet length (in Rs.)
(i).	First 15 days	Free	Free	Free	Free	Free	Free
(ii).	From 16 to 30 days	2.64	5.28	7.92	115.00	230.00	345.00
(iii).	More than 30 days	3.96	7.92	11.88	172.50	345.00	517.50

Notes:

- (1). (a). Free storage period for import loaded and empty containers commences from the day after the day of landing of the container. If the free storage period is exceeded, store rent is charged on 24-hour basis up to the time of delivery.

- (b). Free storage period for export loaded and empty containers commences from the time the container arrives in the terminal. If the free storage period is exceeded, store rent is charged on 24-hour basis up to the time the vessel berths.
- (2). Free storage period for transshipment and re-export containers commences from the time of completion of discharge of the first carrier. If the free storage period is exceeded, store rent is charged on 24-hour basis up to the time the second carrier berths.
- (3). For the purpose of calculation of free time, Sundays, Customs notified holidays and the Terminal's non-operating days shall be excluded
- (4). The storage charges shall not accrue for the period during which the PSA SICAL is not in a position to deliver / ship containers when requested by the user.
- (5). 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 day of landing of the 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,
 - (a). the line shall resume custody of container along with cargo and either take back it or remove it from the port premises; and
 - (b). the line shall pay all port charges accrued on the cargo and container before resuming custody of the container.
 - (iii). 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.
 - (iv). 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 day the Custom 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 line/ consignee from the port premises to the Customs bonded area and in that case the storage charge shall cease to apply from the day of such removal.

1.11. Charges for Miscellaneous Services

Sl. No.	Particulars	Container not exceeding 20 feet in length	Container exceeding 20 feet in length
1.	Direct Loading (Loaded and Empty) - Foreign going - Coastal	US\$10 Rs.486.00	US\$15 Rs.728.00
2.	Reshuffling - Loaded and Empty	Rs.600.00	Rs.900.00
3.	Trucking - Loaded and empty	Rs.500.00	Rs.750.00
4.	Change of shipment status - Loaded and empty	Rs.728.00	Rs.1093.00

5.	Change of Container Status - Per Container	Rs.97.00
6.	Cancellation of Document - Per EIR	Rs.75.00
7.	Late Processing of EIR	Rs.500.00

Notes:

- (1). **Direct loading** charge applies when, at the request of customers, PSA SICAL accepts an export container delivered to the terminal after the prescribed closing time. This charge is in addition to all applicable charges in a normal export cycle.
- (2). **Reshuffling** charge applies when, at the request of customers, PSA SICAL reshuffles containers in the yard.
- (3). **Trucking** charge applies when, at the request of customers, PSA SICAL transports containers between the port's railway siding at the Additional berth and PSA SICAL.
- (4). **Change of shipment status** charge applies when:
 - (i). a transshipment container in PSA SICAL premise is changed to an import container;
 - (ii). an import container in PSA SICAL premise is re-exported;
 - (iii). an export container is delivered out of PSA SICAL premise; or
 - (iv). a transshipment container is re-nominated to another second carrier more than 8 hours before the berthing of the originally nominated carrier or the re-nominated carrier, which is earlier.
- (5). **Change of container status** charge applies each time the detail of an import or export container is changed after processing by PSA SICAL.
- (6). **Cancellation charge** applies when EIR is cancelled at the request of customer.
- (7). **Late Processing fee** applies when EIR is processed after the EIR cut off time (i.e. 4 hours before Estimated time of Berthing)

SECTION – II

2. OTHER SERVICES

2.1 VISITOR ENTRY PASS

Sl. No.	Particulars	Yearly	Monthly	Daily
(a).	Per Application	Rs.200.00	Rs.50.00	Rs.20.00
(b).	Per Replacement	Rs.50.00	Rs.20.00	Rs.20.00

2.2 PHOTOGRAPHY

Sl. No.	Particulars	Rate in Rs.
(a).	Film Shooting and Photography	Rs.13000.00 Per day
(b).	Taking Photographs of Goods Imported / Exported	Rs.650.00 Per day
(c).	Taking Photographs of Crews and Others	Rs.325.00 Per day
(d).	Videography (related to operational activities)	Rs.3900.00 Per day

2.3 DOCUMENT

Sl. No.	Particulars	Rate in Rs.
(a).	Per Landing Certificate	Rs.100.00
(b).	Per Shipping Statement	Rs.100.00
(c).	Duplicate reprint / photocopy of shipping document	Rs.100.00
(d).	Specialized system service (per transaction / report)	Rs.1000.00

Note:

1. **Specialized system services** charge applies to generation of any special reports/ information from the PSA SICAL system which is not routine in nature, based on customers request.

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/52/2005 – PSA SICAL - Proposal received from the PSA SICAL Terminals Limited (PSA SICAL) for revision of its tariff.

1. The comments received from the Tuticorin Port Trust (TPT) and port users / representative bodies of port users and the response furnished by the PSA SICAL are summarised below:

Para No.	Comments by users / user organisations	PSA SICAL's Reply
1. The Tuticorin Steamer Agent's Association, Tuticorin Custom House Agents' Association and Tuticorin Port Handling Agents Association.		
(i).	The decision taken by this Authority in its September 2002 Order for reduction in tariff was quite fair, just and tenable, since it was issued taking various factors into consideration. PSA SICAL instead of implementing the order of TAMP, preferred to obtain an injunction from the Hon'ble High Court of Madras. Because of this stay, the shipping community is being squeezed by the unlawful, illegitimate and unapproved collection of charges.	All clauses of MOC are strictly followed.
(ii).	As per the revised guidelines for tariff fixation issued by TAMP, the financial position of the container terminal operator, as a whole, will have to be considered by TAMP, while determining the tariff revision. It also envisages a review of the actual physical and financial performance, and after such a review the tariff has to be so revised prospectively, considering the benefits or gains enjoyed by the operator.	The revised guidelines for tariff fixing notified by TAMP takes care of the long term interests of both the customers and the operators. The healthy financial performance so far has been based on one of the most competitive tariff in the world and not based on high tariff. Even then its financial performance will have to be seen in the context of efficiency gains made by the terminal operator through its own efforts, the higher costs of business in future and the savings enjoyed by the customers due to highly efficient and reliable service provided by it.
(iii).	The financial performance of PSA SICAL was exceedingly well in the last years and hence as a matter of fact, there is no necessity on the part of PSA SICAL to go for a revision in tariff. The TAMP is required to safeguard the interests of shippers / consignees and other port users while prescribing the tariff duly rationalising the tariff structure and streamlining the tariff setting system. At the proposed tariff level, users will be facing a losing game which will drain all their resources for making payments to PSA SICAL.	The statement "the users will be facing a losing game which would drain all their resources for making various payments to PSA SICAL" is not based on fact. Its proposal explains in great detail how it has relentlessly worked to protect the interests of its valued customers, shippers and consignees. The EXIM trade spends only 2% to 4% of the total logistics cost in the container terminal. The customers, shippers and consignees are subjected to more severe hike in the several components of the remaining logistics cost at frequent intervals and yet have not faced a "losing game" and have not "drained all their resources". In fact the EXIM trade has tremendously benefited by its

		reliability, ocean- linkages and efficient operation resulting in beneficial impact on freight rates and transit times.
(iv).	PSA SICAL has proposed a hike of 30% over and above the rates approved in December 1999. As a matter of principle, revision of tariff should have been based on the rates last approved by TAMP in September 2002. If a scientific study is made in depth, the percentage of increase contemplated would work out to 58.5% and not 30%. No trade will be able to bear such an increase in the present day of competition. There is no sanctity in taking the rates approved in the year 1999 as the basis for revising the tariff.	The Memorandum of Compromise provides for setting off the advantages / gains, if any, enjoyed by not implementing the 2002 tariff Order. The proposal envisages 30% increase over the actual tariff charged at present and the figure of 58.5% increase indicated by the Association is hypothetical.
(v).	No additional investment was made by the PSA SICAL for procurement of new equipment when compared to the increase in the number of vessels called and containers handled. As per the revised guidelines, the TAMP have to ensure only a just and fair return. But, the proposed tariff hike is abnormally high and not based on principles, nor on any standard. The upward revision of rates proposed by PSA SICAL, therefore, does not deserve any consideration.	The revised tariff guidelines may be applied in letter and spirit along with appropriate factoring in of efficiency gains. The observation that no additional investment is proposed is not based on facts. It has increased the capacity by more than 50%. 1 Quay Crane is added to the earlier fleet of 2 QCs, 4RTGs have been added to the earlier fleet of 4RTGs, 4 Prime Movers (PMs) and Trailers have been added to the earlier fleet of 8 PMs and Trailers and the yard capacity is doubled to 10 yard blocks from the earlier figure of 5 yard blocks alongwith other associated civil and electrical works.
(vi).	Under the EPCG licence scheme, service providers are permitted to realise their obligations by paying in Indian currency according to the recent orders to the CBEC. Hence, the practice of payment by dollars should be dispensed with.	It is true that port handling charges collected in rupees qualify as "Export Obligation" under the EPCG scheme, however, the operators still need to hedge against foreign currency payouts. It has, however, no objection to TAMP considering the request of the Association for dispensing with its obligation on EPCG in dollar terms as a separate issue on a national level.
(vii).	Recognising the huge profits reported as per the financial records of PSA SICAL, the instant proposal may be rejected. PSA SICAL may be advised to adopt the tariff fixed by this Authority vide Order dated 20 September 2002 with retrospective effect.	It is clear that the Associations have not raised any concrete objection to its proposal. The demand of the Associations for rejection of its proposal and adopting 2002 tariff with retrospective effect are not based on facts. Commercial organisation will survive only on profits. Customers should worry about the quality of service they receive and the competitive tariff they pay for the service.
(viii).	The Memorandum of Compromise drawn without the consent of users like us is quite incorrect and, therefore, the same should be treated as null and void and suitable orders issued	No specific comments furnished.

	upholding the 2002 rates.	
(ix).	The MOC says that advantage or gains enjoyed by PSA SICAL by virtue of not implementing the 2002 tariff would be adjusted / set off in the proposed new tariff and such tariff will be spread over a period of three years. This would mean that the benefit on account of the said non-implementation will be passed on to the prospective users only. It is quite incorrect, illogical and ironical that benefits on accounts of excess payment made by those who already availed services are to be passed on to the prospective users. It will be fair if the entire excess amount collected by PSA SICAL is refunded to the respective parties without any delay together with interest as applicable according to rules.	No specific comments furnished.
(x).	With reference to clause 2.8.1. of the guidelines about the treatment of royalty in cases where bidding process was finalised before 29 July 2003, it has stated that if such an arrangement is allowed, the BOT operator can submit any number of tenders in different names and quote the highest bid to the port in their tenders with slight difference. This will definitely defeat the very purpose of the tender concept as a whole. The trade will be exploited by the BOT operator and the landlord Port directly. The terminal operator should alone pay the Royalty from out of their operational performance and its efficiency and they should not look upon the trade and enhance the rates for the purpose of payment of royalty.	No specific comments furnished.
(xi).	Table 2A and Table 3 shows that the royalty paid and payable based on the volume of TEUs handled is gradually increasing on a per TEU basis from Rs.157/- per TEU in 2004 to Rs.630/- per TEU in 2006. The volume of containers handled during this period increases gradually, but the royalty per container increases tremendously. After attaining a saturation point of 4,50,000 per annum also, the royalty per TEU keeps on increasing. The terminal operator has quoted very high royalty in the tender in the interest of obtaining the tender and now trying to include such royalty as a part of the cost of operation. Such an action on the part of the terminal operator would tantamount to exploitation of the trade. The Government itself is advising for cost cutting and at such circumstances this sort of exploitation is not advisable and must not be encouraged.	No specific comments furnished.
(xii).	The lashing / unlashng charges was removed by TAMP in its September 2002 Order based on the representation from the Trade in 1999. PSA SICAL has tried to club the lashing / unlashng charges together with the quay crane charge	No specific comments furnished.

	and applied 30% increase on the whole. This is not at all acceptable to us and should be rejected. The lashing / unlashng charges have to be excluded as it was not accepted by TAMP in the previous tariff approval. The QC charges alone are payable by the trade.	
2. Tuticorin Chamber of Commerce and Industry (TCCI)		
(i).	The Balance Sheet of the Company has not been attached. There is no cost analysis in the report but only accounting analysis. It is not clear where bulging occurs and only after cost analysis it can be known whether reasonable increase can be allowed or not.	The Audited Annual Reports for financial year 2002, 2003 and 2004 have been submitted to TAMP. There is no diversion and interlocking of accounts. All relevant information in the required format regarding cost / expenditure and revenue justifying reasonable tariff increase has been furnished. Hence, the statement made by the Chamber that "there is no cost analysis in the report but only accounting analysis" is not correct. Submission made by it is a genuine expression of the 'value-addition' brought in through its operations in Tuticorin Port.
(ii).	After the commissioning of the Sethu Samudram Project, the cost of handling of even bigger vessels will come down. Any increase in the tariff rate at this stage will divert the traffic to other ports. Even the PSA SICAL admits that Tuticorin enjoys only diverted traffic and further diversion away from Tuticorin may not be in operators interest.	Reduction in the cost of handling of bigger vessels due to commissioning of Sethu-samudram project will have no impact on cost of container handling. The draft limitation of 7th berth will continue even after implementation of Sethu-samudram project and inner harbour development. The container handling charges in the port forms only 2% to 4% of the total logistics cost. It is the remaining 96% to 98% component (which is regulated and market determined) that has impact on the 'shared traffic'. It will continue to help its customers to reduce the total logistics cost by providing unmatched turnaround time for vessels, fixed window and on-time berthing, catch-up service for out-of-window vessels, reliable and hassle-free terminal operation at the wharf and at the gate, etc.
3. Tuticorin Port Trust		
(i).	With reference to the PSA SICAL's claim that it will not be able to discharge its legitimate Licence Agreement (LA) obligation from 2007 if moderate increase in tariff within the competitive range is not approved, it has clarified that tariff revision and discharging the legitimate Licence Agreement obligations are two different issues. First is to be in conformance with the guidelines issued by this Authority and in line with the MOC filed by the Counsels of the BOT operator and this Authority before the Hon'ble High Court of Madras on 17 August 2005. The legitimate License Agreement obligations are based on the bilateral BOT agreement between the Port and	The legitimate license agreement obligation referred in its proposal relates to royalty. The royalty is a legitimate business expenditure and will have to be met out of revenue which is the only source of cash inflow available to meet this expenditure. Tariff increase proposal is within the ambit of the revised guidelines and is not inconsistent with the license agreement. The spirit of the revised guidelines, provide the manner in which royalty is to be treated for tariff fixation and accounting for efficiency gains is

	the BOT operator and is clearly distinct and in no way related to fixation of tariff. It has clarified that it was not a party to the MOC and is not willing to communicate with TAMP in this regard nor accept any role assumed by TAMP in this regard.	acknowledged. Hence, it is requested to increase tariff within the competitive range and within the frame-work of the revised guidelines. Understanding the linkage and fixing a fair tariff is left to TAMP.
(ii).	Unless the PSA SICAL files a petition to the Government of India and obtains the decision about treatment of royalty for regulation of tariff prior to 31 March 2005 and incorporates the said decision in the current proposal, the proposal will not be complete. This Authority may therefore, direct PSA SICAL to comply with this requirement prior to considering its proposal for revision in tariff.	It has already made a proposal to MOS for quantum of royalty to be allowed as "pass-through" cost for the period prior to 31 March 2005. The decision of the Government can be incorporated in the working.
(iii).	The berth occupancy for 2003-04 was 38% and 41% for 2004-05 as per TPT's figures and hence the 30% berth occupancy claimed by the PSA SICAL is not correct. This computation may be incorrect, as the quay length available in the terminal should be treated as one berth and not two as assumed at present. In any case the lower berth occupancy is not a relevant factor in the instant case for revision of PSA SICAL's tariff.	It does not intend to go into details of calculation of berth occupancy and accepts TPT's figures for the purpose of this exercise. The fact that it provides the best service with the lowest berth occupancy is not disputed. This is a factor relevant in tariff fixation since TAMP's overall approach is to "use tariff as leverage to improve operational efficiency of the Ports". Demonstration of efficient performance through such parameters is also important to justify efficiency gains.
(iv).	PSA SICAL's argument that its revenue is comparatively lower than the other container terminal operators and tariff in terms of per TEU is also the lowest in the country is not found to be relevant for tariff fixation.	Competitive nature of its tariff (revenue less than Rs.2100/- per TEU) is very relevant in tariff fixing exercise especially since TAMP's / Government's stated policy objective is to move to competitive pricing.
(v).	Para: 27 of PSA SICAL's proposal - Loss making period will surface in later years in case of fixed royalty but the same will surface in initial years in case of revenue sharing. With reference to this point it has stated that loss / profit depends on the efficiency of the operator on an economic scale which should have been factored into while quoting the figures of royalty. In the current case, PSA SICAL obtained the award of operation of the 7th berth as container terminal because of higher structure of royalty quoted by them which obtained a higher Net Present Value over the competitor. Otherwise, the concession would not have been bagged by the present BOT operator. The contention is, therefore, not at all relevant to the tariff fixation exercise.	It has explained about the impact of "loss making period in the case of fixed and increasing royalty" in its proposal to explain the difference between this form of royalty and the revenue-share arrangement. This is relevant factor in tariff fixing exercise in view of revised guidelines prescribing a clause about treatment of royalty.
(vi).	The point made by the PSA SICAL in para 32 about a strong relationship between efficiency gains, competitive tariff and statutory obligations and suggestion to factor this in during tariff fixing exercise may be considered in the light of the revised guidelines issued by this Authority.	TAMP should consider the strong relationship between efficiency gains, competitive tariff and statutory obligations in the light of the revised guidelines.

(vii).	As regards the PSA SICAL's claim of achieving efficiency gains in terms of optimum investment it has pointed out that the amount of investment per TEU is not an isolated factor for comparison. It is to be read in conformance with comparable facilities and service levels. Besides, procurement of new equipment in the market versus installing partially utilised assets in the same services elsewhere affects the value of investment per TEU directly. Timing up of the investment also has to be taken into account for comparison.	Sufficient information has been furnished on "comparable facilities", "service levels", "used equipment vs. new equipment", normative performance levels", "timing of investment", etc. to justify efficiency gains due to optimum investment.
(viii).	It has made the following observation with reference to PSA SICAL's request in Para 41 about allowing to make necessary adjustment in its proposal as and when the RFP document for 2nd Container terminal is released which will have adverse impact on the volume projections of the VII berth operator and consequent revenue projections: (a). The advantage of being eight years in the field by the year 2008 and having the lowest tariff will actually lead to better consolidation for the VII berth operator and, hence, the revenue may actually go up. (b). Clause 6.2.3. (Additional facilities) of the BOT agreement between TPT and PSA SICAL contains a condition for future expansion of container berths by the licensor and allows the BOT operator to participate in the competitive bidding without any discrimination, therefore, the fear that there will be adverse impact on the VII berth operator is not based on facts. (c). In view of the above observation, the request of the PSA SICAL to allow adjustment of the said impact on the tariff revision exercise does not arise at all.	The development of 8 th berth is a reality. It is true that the clause 6.2.3 allows the existing operator to participate in the competitive bidding but this does not prevent traffic sharing. Moreover, there is a "minimum guarantee traffic" clause in the 8 th berth bid document. The traffic projection in its proposal does not consider this sharing of traffic since the timing of the operation of 8 th berth will be known only after RFP document is released. Hence, it is again requested to TAMP to allow making adjustment in its proposal once the timing is known. It is not understood how the revenue of the 7 th berth operator will go up when the 8 th berth becomes operational as pointed out by TPT.
(ix).	While comparing the PSA SICAL rates with the rates at other container terminals in (Table 1) to show that its tariff is the lowest among the other container terminals in the country, the comparability of services across the major ports is not highlighted so as to obtain the comprehensive picture of the subsidisation involved in PSA SICAL rates.	Table 1 shows the rates for specific activity in comparison with other container terminals. Moreover, its revenue per TEU is perhaps the lowest in the country as acknowledged even by the TPT.
(x).	The details of calculation of income projections are not available. In the operating cost, the operating expenses have been increased by nearly 209% in 2005, 6% in 2006, 16% in 2007 and 8% in 2008. The employee cost has been increased by 6% in 2006 after effecting 25% increase in 2005. Inflation rate @ 5% per year is confirmed and hence, the basis of adopting different percentage increase in Tables need to be justified.	It agrees to give detailed clarifications on TPT's observations on Income and Expenditure projections at an appropriate time. The increase in employee cost by 25% is because of expansion of its capacity expansion by more than 50%. In fact efficient utilisation of human resource has resulted in less than proportional increase in employee cost.
(xi).	The basis of working out the factor for calculating the royalty gap between the first and second quote is $1 - \frac{\text{P\&O Rate}}{\text{PSA Rate}}$	No specific comments furnished.

(xii).	Table 7.3.1. Operating Expenses without factoring efficiency: The Running, Repairs and Maintenance (RRM) cost per TEU which is adopted on the volume shows an increase of 13% for 2005, 51% for 2006, 12% for 2007 and 5% for 2008. There is no justification enclosed for adopting the differential rate of increase. There are fixed and variable elements involved in RRM cost and hence calculation with the assumption of 100% variability may not be correct.	The increase in RRM cost in 2005 is because of the specific financing / lease arrangement for the additional equipment, namely 1QC and 4RTGs. This will have to be considered in conjunction with the insignificant increase in capital employed after the capacity addition.
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Container Shipping Lines Association (India) (CSLA)

- (i). PSA SICAL have mentioned that if a moderate increase in tariff within competitive range is not approved, then it will not be able to discharge its legitimate license agreement obligation from year 2007. Whilst this statement may be given it's due weightage, it does not warrant proposed hike as steep as 30% on the prevailing tariff.
- (ii). With a 30% hike proposed in tariff and after considering actual royalty amount pending decision by TAMP on the reasonable level that could be admitted in the tariff, the ROCE will work out to 56.19% for 2006, 47.9% for 2007 and 40.3% for 2008. These levels of ROCE are far too high by any standards and thus there is no case for allowing the proposed hike of 30%. Even at the prevailing tariff level and considering the full royalty amount, the ROCE works out to 26% for the year 2005, 23.6% for 2006 and 11.1% for 2007. These by itself is very fair return on capital employed. When only a reasonable amount of royalty is admitted as cost, the financial results would look even better and thus any major revision in tariff is unwarranted.
- (iii). It is not clear from the cost statement that how the royalty for the year 2008 is as high as 54% of revenue. This point needs to be explained. Such levels of royalty / revenue sharing cannot be passed as an element of cost to customers. Even if the recommendation of admitting the second highest royalty quote is considered, it will surely not be at a level too different from PSA SICAL's quote. Admitting such levels of royalty would beat the justification on which royalty was not admitted as an item of cost in the CCTL's case.
- (iv). PSA SICAL is seeking 15% return per annum on capital employed. The stated level of return is understood to be the maximum permissible level of return allowed in tariff fixation exercise. Nothing stops a port / terminal operator to seek a level lower than 15%. There are very few business especially in shipping and infrastructure sector that can guarantee this kind of returns.
- (v). PSA SICAL admits achieving largest growth rate in container traffic during the year 2004-05. The projected growth rate and the terminal's efficiency in handling should itself act as an incentive for PSA SICAL to make good profits. Thus any major change in tariff is unnecessary.
- (vi). The efficiency offered by PSA SICAL is very good. It supports the views of the PSA SICAL that the efficiency gain must be allowed to be retained by the Operator. TAMP while reviewing the actual physical and financial performance at the end of the current tariff period may accordingly give due consideration to this point which will certainly reward PSA SICAL for its efficiency.

- (vii). It is not very clear from the financial statement if income from container storage inside the Terminal has been considered. If not, the same must be taken into account and the income and the financials may be reviewed accordingly.
- (viii). Since PSA SICAL has not given a detailed financial statement; it is difficult to evaluate each items in their operating cost. More clarity is required on the depreciation. It is not very clear why in 2007 the depreciation amount has gone up drastically.
- (ix). PSA SICAL has not shown any expenditure towards investments in infrastructure etc. Are they not planning for any investments to further improve the efficiency in the existing facility?
- (x). Undertaking furnished along with the proposal shows that the proposed tariff will be valid with retrospective effect from 1 April 2005. Retrospective application of tariff cannot be allowed and any changes will be applicable after expiry of 30 days from the date of notification.

2. A joint hearing in this case was held on 09 December 2005. At the joint hearing, the PSA SICAL and the concerned users made the following submissions:

PSA SICAL Terminals Limited

- (i). Our performance in terms of equipment productivity, employee productivity, cost per TEU, etc., can be benchmarked against any of the best managed terminals in the world.
- (ii). We never attempt to pass on any unreasonable and uneconomical costs to users. At the same time, our tariff should also be viable and in the competitive range.
- (iii). We have filed our petition to the Government on royalty issue. We will take up with the Government for its direction on this issue.
- (iv). We have given profit and loss Accounts to the Port Trust. We have reservation in sharing such details with all users. We will consider circulation of a summary statement.
- (v). We have achieved the financial results with one of the lowest tariff in the world.
- (vi). Royalty is an expenditure and is paid to the Government agency. We cannot ignore this element while fixing tariff.
- (vii). The user service charges proposed are not new. Such charges are approved by TAMP elsewhere.
- (viii). Our liability towards EPCG for second set of equipment is still outstanding. We also have other foreign currency obligations. We leave it to TAMP to take a uniform view on dollar denomination of tariff.
- (ix). The MOC is very fair. Adjustment of gains of the past in future tariff is the most practical solution.
- (x). We have added 4 RTGs and doubled our yard capacity. We increased our capacity by 50% in 2005. The argument of users that we had not improved facilities is wrong.
- (xi). Operation costs are going up because all equipment added are on hire. Please note that there is no substantial change in capital employed inspite of additional capacity of 50% created in the last two years.

Tuticorin Steamer Agents Association

- (i). We do not agree with the MOC since it envisages that the benefit of non-implementation of tariff of 2002 should be passed on to future users. It should be refunded to the actual users who had paid in excess of the notified tariff of 2002.
- (ii). The attempt of PSA SICAL to bring back lashing / unlash charge of US\$ 8.04 per TEU by merging it with some other item should not be allowed.
- (iii). Royalty is the commercial risk taken by PSA SICAL. It cannot be borne by the Trade.
- (iv). The increase sought by PSA SICAL is not 30%. If you compare with 2002 tariff, the increase is 58.5% which is extremely high.
- (v). The 3rd QC bought by PSA SICAL is second hand. The productivity is not at the desired level, and is much lower when compared with its own other two QCs.
- (vi). PSA SICAL has not incurred any loss so far. Why should they want royalty as 'pass through'?
- (vii). Let the 2002 tariff continue for another 3 years.

Tuticorin Chamber of Commerce and Industry

- (i). We endorse the views of TSAA.

Indian Chamber of Commerce and Industry

- (i). We would like to reiterate our written submission made earlier.
- (ii). The excess tariff collected since October 2002 should be refunded.

Tuticorin Custom House Agents Association

- (i). We endorse the views of TSAA.
- (ii). We request for reconsideration of the TAMP guidelines allowing part of royalty / revenue share as cost item. Users cannot be responsible for the commercial decisions of the bidders.
- (iii). PSA SICAL by signing the MOC agreed to the validity of 2002 tariff. They should, therefore, immediately revert to 2002 tariff pending notification of new tariff.
- (iv). PSA SICAL proposes to charge for various allied services now. Many of these services are provided free of cost now. The proposal in this regard is not acceptable to users.

The Container Shipping Lines Association (India)

- (i). The proposed increase of 30% is steep. We, however, acknowledge the efficient performance of PSA SICAL. This can be rewarded as per TAMP guidelines. But the proposed increase should also be moderated.
- (ii). PSA SICAL has asked for revised tariff from 1 April 2005. Please notify revised tariff only prospectively.

The Shipping Corporation of India Limited

- (i). We agree that PSA SICAL is competitive and efficient.

- (ii). A 30% increase in tariff will strip PSA SICAL of the advantages it enjoyed in the market so far.
- (iii). Lashing / unlashng should not be charged separately.
- (iv). Please review the method of denominating tariff in US\$ and Rupee. Please maintain only one currency base.

Tuticorin Port Handling Agents Association

- (i). The amount collected in excess since September 2002 should be refunded.
- (ii). Please review the policy of dollar denomination of tariff.

Tuticorin Port Trust

- (i). Competitive tariff to PSA SICAL can be allowed so that they can meet their BOT liability towards the Port Trust.
- (ii). The increase estimated in some of the cost items is very high and remains unexplained.
- (iii). We have dual role to play. While we have a duty to Trade, we are also a party to the BOT arrangement. Our interest in the BOT should be protected.
- (iv). We request that the guidelines for tariff fixation should be strictly adhered to.
- (v). TAMP should, as per the guidelines, fix tariff protecting the interest of users. Then comes allowing reasonable return to the investor.
- (vi). Please reckon and reward cost reduction due to efficiency improvements as per guidelines; but, cost reduction due to volume increase should be treated differently. Efficiency should be rewarded.
- (vii). We do not have any reservation against the MOC. We feel it is just and reasonable. But, we are not a party to the MOC. The users should not have any reservation to follow the MOC.
- (viii). The dollar denomination of tariff should be reviewed. PSA SICAL has already discharged its EPCG liability.
- (ix). We endorse the provisions in the tariff guidelines regarding admissibility of royalty. It is just and a balanced view.
- (x). Charges not allowed elsewhere should be disallowed here also.
- (xi). Annual Accounts of PSA SICAL should be circulated for allowing meaningful discussion and understanding of the proposal.

3. At the joint hearing, Indian Chamber of Commerce and Industry (ICCI), Tuticorin Custom House Agents' Association (TCHAA), Tuticorin Steamer Agents' Association (TSAA) and Tuticorin Port Handling Agents Association have filed further written submissions reiterating the points made by them earlier. Subsequently, the TCHAA have made further submission and the same has been reiterated verbatim by the TSAA. Some of the main points made by them are as follows:

Indian Chamber Of Commerce and Industry

- (i). As the container traffic in the port has been increasing, the earlier rates as approved by TAMP in 2002 can be maintained to ward off competition from the neighbouring ports and to sustain the same level of growth in container traffic at the port.

- (ii). Since 2002 rates were accepted by M/s. PSA SICAL in the memorandum of compromise, the excess amount collected by them should be refunded to all concerned with interest.

Tuticorin Custom House Agents' Association

- (i). The memorandum of compromise drawn without the consent of users is quite incorrect and, therefore, the same should be treated as null and void and suitable orders issued upholding the 2002 rates.
- (ii). The concept of spreading over of the gains enjoyed by M/s PSA SICAL to the prospective users for a period of 3 years is not acceptable to us.
- (iii). Since the 2002 rates were accepted in the memorandum of compromise, the excess amount collected by PSA SICAL should be refunded to the respective parties together with interest.
- (iv). If for any reasons the refund is not possible, the 2002 rates should be continued to compensate the users, the gain hitherto wrongfully enjoyed by them, by way of collection of charges at the 1999 approved tariff, instead of 2002 rates.
- (v). The subsequent revision after compensating to the users, should be based only on the 2002 approved rates.
- (vi). Since service providers are permitted to realise their export obligations paying in Indian currency according to the recent orders of CBEC, the practice of fixing in US dollars should be dispensed with.
- (vii). The lashing and unlashng charges should be excluded as it was not accepted by TAMP in the tariff approved in the year 2002. The effort of PSA SICAL to increase the QC charges to cover up the lashing and unlashng charges should not be encouraged and their proposal should be rejected.
- (viii). PSA SICAL should alone pay the royalty from out of their operational performance and its efficiency. They should not look upon the trade to enhance the rates for the purpose of payment of royalty.
- (ix). The financial performance of PSA SICAL in the past years was exceeding well whereas it has declared dividend to the tune of 70% in 2003 and 2004. There is, therefore, no necessity to revise its tariff.
- (x). No additional investment was made by PSA SICAL for procurement of additional new equipment when compared to the increase in the number of vessels called and containers handled.
- (xi). Non-availability of high tech equipment, non-availability of stand-by generator for RMGC, very low cost on repairs and maintenance of machineries, low cost of labour, lower nature of salary and wage structure to the staff, etc. are the main components which count on the expenditure factor of Tuticorin Container Terminal. Naturally, the cost would automatically come down in Tuticorin.
- (xii). The case of other terminals operated in major city ports are rather different. Expenditure on such areas in those city port terminals are higher than those prevailing in Tuticorin. It is perhaps incongruous on their part to claim those rates at Tuticorin also. Such an attitude would be unlawful besides far from ethics to go for a claim for which they are not entitled to. Therefore, PSA SICAL's claim needs to be rejected.

- (xiii). The PSA SICAL has introduced the new tariff items such as charges for change of container status, cancellation of document, late processing of EIR etc. Since these charges are already included in the main tariff, they do not reserve any consideration. The claim of PSA SICAL tantamounts to extortion and should be discouraged and rejected.

Tuticorin Steamer Agents' Association and Tuticorin Port Handling Agents Association

They have reiterated most of the points made by the Tuticorin Custom House Agents' Association.

4. The further submissions received from the above user organisations were forwarded to PSA SICAL for their information / comments. In response, the PSA SICAL has furnished the following main comments on the submissions made by the users at the joint hearing.

- (i). It has reiterated that it is a world class terminal at most competitive tariff as established by reliable data.

Revenue per TEU in Rupees

PSA SICAL as per 1999 order	PSA SICAL 2002 order *	IGTPL	VCTPL	NSICT	CCTL	JNPT
2145	1653	2590	2650	2685 (was prescribed at Rs.2600 vide our suo motu review Order of August 2005. Subsequently another 12% reduction vide our Order of March 06)	2800	3100 (Rs.2600 is prescribed in its SOR)

* Not implemented in view of stay.

- (ii). The crane movement per hour at its terminal is 28 as against 24 moves at NSICT, 22 moves at CCTL and 19 at JNPT.
- (iii). All the equipment at its terminal are state-of-the art hitech equipment enabling it to deliver the productivity level far in excess of any ports in India and around the region.
- (iv). Its RRM costs are very low because of efficiency in operations and maintenance management.
- (v). The low employee cost is not because of the nature of salary and wage structure but because of high labour productivity far in excess of other terminals in India.
- (vi). The associations have made only subjective statements of comparing its expenditure with the other cities. In fact, operating at Tuticorin could be costlier due to non-availability of spare parts, maintenance difficulties due to poor connectivity and higher administrative cost due to locational disadvantages.
- (vii). The proposed miscellaneous charges are similar to other charges approved by TAMP as additional charges in other container terminals like VCTPL.

- (viii). Regarding comments on MOC, refund of gains, if any, due to non implementation of 2002 order, retaining 2002 order, etc, it has clarified that MOC and the revised guidelines adequately address the concerns of both the investor and the customers. Hence these comments are not relevant. Since MOC also allows PSA SICAL to collect charges based on 1999 TAMP Tariff till a new tariff is notified, it is only fair that PSA SICAL's tariff proposal is compared with 1999 tariff.
- (ix). It has already emphasised its cost leadership on various parameters and hence it does not intend to pass on any inefficiency to the customer by way of this tariff revision. On the contrary it is only seeking an increase in tariff within the competitive range to achieve sustainability of operating standards and to be able to discharge its legally binding and legitimate obligations.
- (x). Royalty will have to be paid out of "top-line" irrespective of whether royalty is considered as pass-through or not. Its tariff is only Rs.2100/- per TEU as against approximately Rs.3000/- per TEU in Indian / World terminals. Hence disallowing competitive tariff based on royalty considerations will prevent it from discharging its legally binding obligation and is not fair. In fact it agrees with the views of the TSAA that royalty has to be paid out of operational performance and this is the essence of the efficient investor seeking competitive tariff.
- (xi). With reference to the comment of the users on its profits and dividend declared it has clarified that its profits are not out of high tariff but out of the lowest tariff in the country. The financial performance has to be viewed against its need to develop a sustainable competitive advantage in view of our legally binding obligations. Hence this cannot be used as a reason for denying the legitimate request for tariff increase in the competitive range. Also, 70% dividend of PSA SICAL has to be viewed in the light of its very low capital base. 70% dividend in the case of PSA SICAL translates into only Rs.350/- per TEU whereas even 20% dividend in some terminals will be equivalent to nearly Rs.500/- per TEU.
- (xii). It is not seeking anything which is not in synchronisation with either BOT agreement or the revised guidelines. Its proposal needs to be considered in totality of all the provisions/ clauses of the revised guidelines and various stated government policies relating to port tariff.
- (xiii). The comments made by TSAA on capacity addition and productivity: The comments are not supported by facts. It is true that equipment added in 2004 and 2005 were used ones; but major refurbishing / life extension activities have been done. During the first quarter 2006, the complete drive units of QC 3 will be changed along with major mechanical refurbishment. This will make QC 3 even perform better than the earlier quay cranes.

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