

Tariff Authority for Major Ports

G.No.81

New Delhi, 30 March 2001

NOTIFICATION

In exercise of the powers conferred by Sections 48, 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal of the Jawaharlal Nehru Port Trust for revision of container handling charges, as in the Order appended hereto.

(S. Sathyam)
Chairman

Tariff Authority for Major Ports
Case No.TAMP/20/2000-JNPT

The Jawaharlal Nehru Port Trust (JNPT)
Applicant

ORDER

(Passed on this 28th day of March 2001)

This case relates to a proposal received from the Jawaharlal Nehru Port Trust (JNPT) for revision of Container Handling Charges.

2. The JNPT has proposed an increase of container handling rates by 30%; and, has given the following grounds for its proposal:

- (i). The tariff for all the services rendered by the Port was last revised with effect from 19 March 1997 with the approval of the Ministry of Surface Transport. About three years have passed since the last revision and it is now time to review the tariff.
- (ii). Since the last revision, the cost of handling containers has considerably gone up. In order to cover the increase in the cost of handling containers and obtain an adequate return on capital employed, the container handling charges have been reviewed and proposed to be increased.
- (iii). Although to meet the deficit, the cost-increase warrants about a 37% increase in the tariff, it has been proposed to limit the increase to only 30% considering the difficulties likely to be faced by the trade.
- (iv). The proposal is for an increase in rates for normal and reefer containers, hazardous containers and over dimensional containers. It is not proposed to increase the tariff for transshipment containers so as to attract shipping lines to use the JN Port as a hub-port instead of other ports in neighbouring countries.
- (v). Tariff for electricity consumption and monitoring of reefer containers is also not proposed for revision.
- (vi). The Port's existing tariff provides lower handling charges for empty containers. Considering the fact that the efforts required for handling loaded and empty containers are practically the same, however, it is proposed to prescribe the same rate for both loaded and empty containers.

2.2. The Board of Trustees of the JNPT approved the proposal in its meeting held on 28 January 2000.

3.1. The proposal of the JNPT was circulated among various Port users/representative bodies of Port users for comments. The comments received from them are summarised below:

Nhava Sheva International Container Terminals Limited (NSICT)

The tariff proposal of the JNPT is justified.

M/s. Maersk India Limited

- (i). Empty containers shall not be treated on par with loaded containers. Matching the rates for handling empty and full containers will result in a 56% increase in the unit rate for empty containers and not an increase of 30% as envisaged; and, an increase of 56% is unacceptable.
- (ii). The average inflation for the period after last revision works out to 5.50% only and not 7.02% which is based on the average from the period from 1994-95 to 1998-99. In the present proposal an average increase of 33% is proposed. This effectively works out to nearly 11% increase in rates per annum which is higher than the average inflationary increase of 7.02% for the last five years.
- (iii). The increase in employee cost works out to 41.64% which, in our opinion, is excessive.
- (iv). There is no proposal for rate-increase for bulk cargo due to given competition from other ports. It is our fear that the JNPT is cross-subsiding the bulk handling by increasing the rates for container handling which will benefit the NSICT as there will be no loss on handling bulk cargo by them.
- (v). Additional capital expenditure of Rs.3,500 lakhs in 2000-01 and a similar amount in 2001-02 need justification especially when there is no substantial increase in traffic. This will increase the depreciation and interest burden on the port.
- (vi). In spite of the increase in rates, there is no assurance from the JNPT about productivity.
- (vii). There is an increase of 6% between the estimated volumes for 2000 and the actuals. This will result in higher net earnings, change the projections for the next two years also increase the profitability.
- (viii). While arriving at the gross income the JNPT has not considered income through royalties from the NSICT.
- (ix). In our opinion, the rate increase proposed is not based on sound assumption and workings. It will have an adverse impact on the shippers/consignees as the shipping companies will force to pass on the additional burden to the customers.

The Bombay Custom House Agents' Association (BCHAA)

An increase of 30% of the charges by both the NSICT and the JNPT is unjustified for the following reasons:

- (i). There is a tremendous increase in the number of containers handled at the JNPT over the past 3 years with a minimum growth rate of 30%. The number of containers handled by the NSICT over the last 9 months is almost equal to the number of containers handled by the JNPT. So, any increase of tariff is unjustified keeping in mind the cost savings and price benefits that are derived by the operators due to volume leverage.
- (ii). By simple logic, the charge for each and every operation cannot be increased by 30%.
- (iii). Despite a hike in diesel and other operating costs, the small transporters and contractors, who supply container handling equipment and trailers have not increased their tariffs by more than 10% whereas large contractors who have

huge overheads but handle larger volumes have increased their tariff by barely 5% to 7%

- (iv). Terminal Operators have never given their own contractors a one time increase of 30% irrespective of the number of years after which their contracts are renewed.
- (v). 40% of the existing THC is being recovered in excess from the trade by the Shipping companies towards container handling costs. A further hike in container handling cost will only result in escalation of THC.

The Container Shipping Lines Association (CSLA)

- (i). The proposal is for automatic rate increase without apparently any consideration being given to measures that can be taken to reduce internal cost and to improve productivity.
- (ii). CSLA welcomes the decisions that transshipment cargo will not attract increases. But, this alone will not materially affect the attractiveness of the JNPT as a whole as a hub port. This requires procedure simplification, draft availability, comparable port charges, etc.
- (iii). An 18% return on capital employed appears to be too high. The cost of borrowing is 8% below this and the return should be suitably adjusted. Likewise, the interest rate used is much higher.
- (iv). The profitability should be restated using actuals for 1999-2000 as base instead of estimates (JNPT has estimated a traffic of 5,13,246 TEU for 1999-2000; however, actual traffic is 5,44,524 TEU).
- (v). Revenue from lease rentals received by the JNPT from private yards, shut-out charges, restow charges, hatch cover shifting charges, container storage charges and royalty from the NSICT appear not to have been included in the operating income.
- (vi). The increase in employee cost is substantial. The inflation over the period 1997-99 shows that at the most it was 5.5%. The present proposal is above the average annual inflation for the last three years.
- (vii). Despite the fact that volumes are not growing, capital expenditure is envisaged.
- (viii). The JNPT is not giving any assurance about productivity. The shipping lines are being asked to pay the same rate at the JNPT for service levels which are half those at the NSICT. Any rate increase must be tied to productivity guarantees.
- (ix). There is no proposal to increase rates in the bulk sector. This gives rise to the fear that the JNPT is subsidising its bulk operation by increasing container handling rates which will help the NSICT.
- (x). Empty containers can not be treated on par with loaded containers. Matching the rates for handling empty and full containers will result in a 56% increase in the unit rate for empty containers and not an increase of 30% as envisaged.
- (xi). Despite the fact that the JNPT do not stack hazardous containers separately, a premium over general cargo is charged for them which is unjustified. To increase the premium further is wholly unwarranted.

- (xii). The JNPT charges a premium on 40' containers when the work done to handle a 40' is largely the same when lifting as the work done for a 20'. This should be reviewed.
- (xiii). Five empty flat racks in one bundle should be charged for one unit.

Mumbai and Nhava-Sheva Ship-Intermodal Agents' Association (MANSA)

- (i). A 30% increase in tariff is too high when the average rate of inflation for the last three years is only about 5.5% per annum.
- (ii). Ports are high capital intensive projects and have long gestation periods. One must not expect a return of 18% on capital employed. It may be limited to 12%.
- (iii). Capital employed has been taken by the JNPT to be the gross investment the port has made on the fixed assets for container operations and also 50% of investment in Township and Railways. In our opinion, the capital employed on which the return is sought shall be the equity or the investment Government has deployed for the JNP project.
- (iv). The JNPT's own figures show that 30% demand is exorbitant. There are still anomalies in the working cost statement.
- (v). The JNPT's logic for having a common rate for empty and loaded container is incorrect. Transporting containers by trailers, the rates paid by the JNPT itself for empty / loaded to its sub-contractors are different.
- (vi). There is no justification for increase in the rate for hazardous containers when no additional cost is incurred by the Port.
- (vii). Pricing is generally based on an optimum level of business operation. The JNPT has lost business during 1999-2000, which has affected its profitability. If the financial loss is due to loss of business, then it can not be recouped by increase in tariffs on the business left with the JNPT.
- (viii). The JNPT's logic for having a common rate for empty and loaded containers is not correct.
- (ix). It is not clear whether lease rentals, shut-out charges, restow charges, royalty from NSICT, etc., have been considered by the JNPT in its profitability analysis as these form part of the container division's revenue.

The Shipping Corporation of India (SCI)

- (i). The port has not given any consideration to measures that can be taken to reduce internal cost and to improve productivity. In terms of productivity the port is lagging way behind the NSICT terminal which is attracting major carriers away from the JNPT.
- (ii). Any increase in the JNPT tariff will be like handing over increased revenue for the NSICT on a platter and thus increase profits to a foreign terminal operator.
- (iii). Any increase in tariff will have to be automatically passed on to the trade in terms of increased THC which at the present times it can ill afford.

- (iv). The decision not to increase transshipment charges is appreciable. However, a lot more needs to be done to make the port a transshipment hub.
- (v). Return on capital employed must be calculated before interest and not after.
- (vi). The target of a return of 18% on capital employed is high. The cost of borrowing today is 8% and the ROCE is to be adjusted accordingly.
- (vii). The interest rate used is not stated by the port. On analysis it varies from 17% to 13.98% for the period 1999-2000 – 2001-2002 which is on the high side.
- (viii). The profitability of the port is understated by taking into account the estimated volume of traffic for 1999-2000, which is to be corrected.
- (ix). Some of the revenues accruing to the port for container related activities have not been included.
- (x). While capital cost have been included under one heading, the cost categories in this heading have not been specified.
- (xi). The CSLA's comments relating to employees' cost, inflation, cross-subsidy, productivity, increase in rate for empty containers, hazardous cargo and premium on 40' are reiterated.

Karmahom Conference

- (i). Approval of tariff revision will only be prospective with a clearly defined implementation date, allowing sufficient time for Lines to apprise their customers of the revised level of charges.
- (ii). The net surplus has come down during the year 1999 - 2000 mainly due to reduced traffic. Augmenting lower revenue by increasing the handling charges tantamounts to rewarding inefficiency.
- (iii). The implication of a simultaneous proposal by the NSICT to increase its container handling charges will be killing competition thus denying the trade a cheaper alternative nearby port.
- (iv). The entire proposal for upward revision of rates is based on the cost plus formula which has been abolished by the Government of India.
- (v). Karmahom conference has also given similar comments on traffic projection with reference to the actuals, omission of certain income, high employee cost, high interest rate, capital expenditure low productivity without any improvements, cross-subsidisation, empty / laden containers cost, etc., as given by the CSLA and the SCI.

The Western India Shippers' Association (WISA)

The WISA fully endorses the views / comments of the BCHAA.

Indian National Shipowners Association (INSA)

- (i). There is a substantial under statement in the projected and revenue figures which appear not correctly reflecting the entire picture. Royalty received from the

NSICT and berth hire received from container ships and various other charges are not disclosed.

- (ii). An ROCE of 18% is exorbitantly high. It should be reduced to a maximum of 8%.
- (iii). The JNPT should also recognise the advantage gained due to depreciation in value of rupee for items of revenue for which dollar denomination are being used.
- (iv). The JNPT should tighten up on capital expenditure and consolidate its position by high profile marketing and take steps to improve productivity and throughput and reduce handling cost.
- (v). Cross-subsidisation needs to be rationalised. Rates for empties should be lower than those for loaded containers.
- (vi). Container tariff for coastal containers needs to specifically prescribed on the same lines as concessional vessel-related charges.

The Bombay Stevedores' Association Limited

No comments to offer.

3.2. A copy each of the comments received from the users was sent to the JNPT as feedback information. The JNPT has furnished its comments on the objections raised by the various users vide its letter dated 30 May 2000.

3.3. The salient points stressed by the Port are as follows:

- (i). The equipment, space and effects required as also the cost incurred for loading and unloading empty containers are the same as those for loaded containers. There is really no reason why empty containers should enjoy a lower tariff.
- (ii). The cost consideration taken into account for revision of the tariff are based on the actuals upto 1998-99. For 1999-2000 and 2000-01 it is based on the budget estimates approved. Considering the expected increase in the cost, about 37% increase in the tariff would have been necessary.
- (iii). The increase in the manpower cost is based on the wage settlement arrived at by all the ports.
- (iv). There is no subsidisation element in estimating the cost of container handling and hence this presumption is without any base.
- (v). The additional capital expenditure is for augmenting container handling facilities, for providing one additional RMQC as the Port is to gear itself to handle post-panamax size vessels.
- (vi). The interest cost included is not based on any estimated rate of interest. It is the actual interest liability of the Port in the respective years as per the terms and conditions of the loans sanctioned for the Port.
- (vii). In order to improve crane productivity, the JNPT has worked out an incentive scheme for its workmen which is to be introduced.
- (viii). The variation between actual and estimated throughput is only 8%. The very meaning of an estimate is that some marginal variations will be there.
- (ix). The income on account of royalty from the NSICT is not related to throughput handled at the JNPT's terminal and has not been taken into account.

4. A joint hearing in this case was held on 21 July 2000 at the JNPT office in Mumbai. At the joint hearing the following submissions were made:

The Jawaharlal Nehru Port Trust (JNPT)

- (i). We have given all the details and are ready to give more if required.
- (ii). We are not revising tariff for cross-subsidisation.
- (iii). Why should there be distinction in rates between empty and loaded containers, when the handling efforts are same? If different rates are levied, loaded containers will cross subsidise empties.
- (iv). We have not proposed revision for all the items. Only the deficit items are covered.

- (v). (a). Income from other activities are not relevant.
- (v). (b). "Royalties" are not relevant.
- (vi). Similarity of proposals of the JNPT and the NSICT is not by design but just a coincidence.
- (vii). The CSLA wants to have individualised performance based tariff which is not possible. The TAMP has to approve tariffs. This change in legal position has to be recognised.
- (viii). The Government policy of extending concessions to coastal vessels must be extended to cover CRCs also.
- (ix). The distinction between loaded and empties still continues in some other areas also. We will soon cover them also.
- (x). We want to develop the JNPT as a major transshipment hub. Hence no increase proposed on transshipment containers.

The Container Shipping Lines Association (CSLA)

- (i). The similarity of the proposal indicates action in unison between the Port Trust and Terminal Operator. The TAMP must be very alert to protect the users interest.
- (ii). Productivity is not mentioned at all. Only cost increases are mentioned. Ports can not be allowed routinely to pass on cost increases to users.
- (iii). The need of performance based tariffs to become internationally competitive should be recognised.
- (iv). We welcome the decision to exclude the transshipment containers from the increase.
- (v). Cost of capital has become cheap; but, the JNPT has adopted a higher ROCE. Profit before interest shall be adopted for calculation of ROCE.
- (vi). Income from all the activities relating to container operations must be taken into account.
- (vii) (a). Employee costs are high. It has increased by 42%.
- (vii) (b). Employee welfare cost has increased by 252%
- (vii) (c). Cost of repair and maintenance is very low. It must go up.
- (viii). The JNPT must recognise the fact that its productivity is half of the NSICT's and improve its performance norms.
- (ix). Cross-subsidisation is inevitable and even desirable.
- (x). The distinction between loaded and empty containers is recognised internationally.

- (xi). There is no problem if concessions are given in the CRC also for Coastal tariff.
- (xii). There is no justification for increasing the tariff of hazardous cargo as no separate or special treatment is given to them.

(xiii). For enblock movement of empties no particular planning is required.
Mumbai and Nhava-Sheva Ship-Intermodal Agents' Association (MANSA)

- (i). 18% ROCE is very high; the rate of return should be set around 12%.
- (ii). There is a fundamental flaw in the calculations of the JNPT. The interest factor should be removed from capital employed.
- (iii). The port itself pays different rates for loaded and empty containers to the transporters. How can they adopt a different model for themselves?
- (iv). The implications of removal of distinction between loaded and empty must be analysed in detail.
- (v). Performance based tariff must be introduced.

Karmahom Conference

- (i). Cost plus formula cannot continue; if it has to continue for some more time then "normative costs" must be adopted.
- (ii). Manning scale shall be as per internationally accepted norms.
- (iii). Why must MLO's subsidise feeders? This has to be eliminated.
- (iv). While distinguishing between empty / loaded containers, the absence of payload must be recognised.
- (v). Royalties received from the NSICT must also be reckoned with.

The Shipping Corporation of India (SCI)

- (i). Costs of the JNPT are very high in comparison to other international ports in the region. Other international ports guarantee levels of performance. They have productivity – efficiency linkages with tariff.
- (ii). Rebates are given for under performance. Even the NSICT gives rebates.
- (iii). Loaded and empty containers can not be treated at par as the productivity levels are different. Also, internationally the tariff for empties are lower.
- (iv). Internationally, the tariff for 20 TEUs / 40 TEUs, especially for lateral movement, are common.
- (v). The TAMP should find ways to subsidise CRC in coastal traffic.
- (vi). The cost plus formula without norms, parameters, productivity, etc., cannot continue.
- (vii). It is good that the transshipment containers are excluded.
- (viii). Performance standards, should be prescribed.

The Indian National Shipowners Association (INSA)

Concessions in CRCs of coastal cargo / containers should not be looked at as a subsidy allowed to ease congestion in rail / road networks. It shall be seen as an additional revenue earning avenue.

The Western India Shippers' Association (WISA)

- (i). If there has to be cost effectiveness, normative costs are required.
- (ii). The JNPT and the NSICT have not ganged up, they have cartellised.

Indian Merchant Chamber and Bombay Custom House Agents' Association

- (i). Efficiency parameters and cost effectiveness must be emphasized.
- (ii). Flat increases by the JNPT and the NSICT are not acceptable; increases must be linked to performance standards.
- (iii). It is strange that the JNPT and the NSICT have come up with proposals for the same increases in respective tariffs.

5.1 Based on a scrutiny, a number of issues were raised for clarification by the JNPT. The replies furnished by the JNPT give rise to the following issues for consideration:

- (i). (a). Income from the container handling activity is generated through services relating to 'Container Handling', 'Container Dwell Time Charges', 'Movements to / from CFS', and 'Electricity and Monitoring Charges'. Assets put into use for rendering these services are grouped under 'Container Handling'. Since the activity as a whole is to be reviewed to assess the need for tariff increase, the JNPT was advised to prepare a cost statement for the 'container handling and storage' activity taking into account total income and costs. Even if the Port has not proposed revision of all container related tariffs, the overall position of this activity needs to be assessed before deciding on the proposed revision. Hence the requirement of the cost statement for the complete activity.
- (b). The JNPT has been maintaining that 'wherever income is not considered expenditure has also been not considered'. It has mentioned that the expenditure to the extent identifiable has not been included and that Rs.1.0 crore for electricity consumption has been removed from reefer containers. The Port has made a statement that the remaining unidentifiable expenditure is negligible and will not have any material effect on the proposal. It has also mentioned that dwell time charges connote an inefficient system of clearance and shall not be considered. The JNPT did not furnish the cost statements as required by us.
- (ii). (a). The stated policy of the Authority has been against cross-subsidisation. Till the Authority is in a position to completely eliminate the cross-subsidisation between different activities, the approach adopted in the interim is not to allow the cross-subsidisation to grow further. In this context, the JNPT was requested to furnish an overall financial / cost statement for the Port as a whole and also separate cost statements for Vessel Related Activity, Liquid / Dry Bulk handling activity and Estate activity.
- (b). The JNPT did not furnish the required cost statements. It maintained that consolidated cost statements were required only in case of across the board revision and its proposal is not for such revision. The Port has only made a categorical statement that there is no cross-subsidisation without substantiating it with figures. In view of its statement on cross-

subsidisation, the JNPT questioned the necessity for cost statements for separate activities.

- (c). In the absence of the activity-wise cost statements, we could not assess the incidence / extent of cross-subsidisation.
- (iii). (a). The JNPT is receiving royalty from the NSICT, on the basis of containers handled by the latter, in terms of the BOT license Agreement. The JNPT is not treating this item of income as a part of its operating income. The JNPT has argued that the royalty received from the NSICT has not been taken into consideration as it is not due to any efforts on the part of the port, but is an income received in accordance with the licence Agreement. It has to be recognised here that concluding the Concession Agreement involving assets of the port and transferring to the NSICT activities pertaining to the JNPT are the relevant efforts on the part of the port.
- (b). On commissioning of the NSICT, there is a drop in the traffic at the JNPT Container Terminal. Even though the JNPT Container Terminal has a capacity to handle containers upto 7.0 lakh TEUs, the actual traffic is less than the capacity available. The income from the royalty on containers handled by the NSICT must, therefore, be considered as income of container activity of JNPT at least to the extent of the capacity available. It can, however, be argued that the new terminal may as well have been created for handling other commodities. Hence, the income from royalty can be spread over all the cargo related activities. It is also relevant to recognise that the royalty payment gets factored into tariff computations at the NSICT. That being so, royalty has to be seen to have definite tariff implications.

In this backdrop, the JNPT was advised to include the royalty income received from the NSICT in the Finance and Miscellaneous income and apportion to all cargo handling activities of the port. Without formulating the cost statement accordingly, the JNPT only repeated the same arguments as given above in sub para (iii) (a) above.

- (iv). The information asked for from the JNPT is relevant for the scrutiny of the proposal. Information requisitioned by the Authority cannot be termed as confidential which the JNPT cannot part with. Even if it is, it can not be held back from a tariff regulatory authority. However, for reasons best known to it, the JNPT has been reluctant to furnish the details requested by us.

5.2. In this backdrop, the matter was considered by this Authority in its meeting held on 26 September 2000. Since it was not possible for this Authority to decide the case in the absence of requisite information which were to be furnished by the Port, it was decided that the JNPT might once again be requested to furnish the requisite details; and, if no information was received from the Port by that time, the case could be closed; it could be reopened if and when the information was received.

6.1. Pursuant to the above decision taken by this Authority, the JNPT was requested to furnish the requisite details by 4 Nov. 2000 vide our letter dated 5 Oct. 2000.

6.2. The JNPT sent a reply containing the following observations / comments:

- (i). The cost statements in respect of items of service for which the port has not proposed revision of tariff like vessel related activities, liquid / dry bulk activities, estate activities are neither having any direct relevance nor bearing on costs.

The cost statements in respect of container handling charges have already been furnished to the TAMP. Hence, the overall cost statement shall not be insisted upon. Relevant details are, however, available in the statement of accounts for the last 3 years already submitted to the Authority.

- (ii). The income on account of royalty on container handled by the NSICT has no relation to the cost of container handling at the JNPT container terminal. Hence, the same shall not be considered for arriving at the cost of handling of containers.
- (iii). In any cost statement, the elements of income and expenditure shall be same. In case the income of certain account is not considered, the corresponding expenditure shall also not be considered and vice versa. The income on account of royalty from the NSICT shall not be considered in any manner. The details regarding royalty payment by NSICT have, however, been furnished to the Authority.

6.3. The JNPT did not submit any information as requested by us. The points made by it are a mere repetition of what it has been maintaining earlier. The following issues are relevant in this context:

- (i). The need for examination of cost statements of the port as a whole as well as activity-wise has been communicated to the JNPT on more than one occasion. The observation of the JNPT that the details are available in the statement of accounts for the last 3 years already submitted to the Authority is irrelevant. Tariff fixation is based on the projected revenue and cost for the next 2 years. The statement of accounts gives historical data only. In the absence of requisite information, we cannot reasonably analyse the overall financial position of the JNPT for the next 2 years, which will be the basis for determining the tariff increases.
- (ii). As regards consideration of income from royalty, the comments of JNPT are a mere repetition of what it has been maintaining all along. There is no logic in the JNPT's argument. It is a fact that the details of royalty payment are available with us as given by the JNPT and confirmed by the NSICT in the context of its proposal for tariff increase. This piece of information, however, cannot be meaningfully utilised in the absence of the cost statement. Since income from royalty is one of the elements of income for the JNPT, our advice was to incorporate it in the cost statements to be prepared by the JNPT.
- (iii). The JNPT argument that if the income on certain account is not considered, the corresponding expenditure also shall not be considered and vice versa deserves to be accepted as it is based on an accepted accounting principle. The advice

given by this Authority is that all income relevant to the activity shall be considered to determine the cost-deficit even if some of the income may not have related expenditure that is directly identifiable. Many of the items of income not considered by the JNPT arise in the context of operation of the container terminal. When the total expenditure, operating as well as capital, on the container terminal is considered, it can not be irrelevant to consider all incomes arising in the context of container handling.

- (iv). Earlier, the JNPT had observed that the consolidated cost statement and statement for each service was to be sent for across the board revisions as mentioned in this Authority's guidelines for submission of cost statements for tariff revision. The JNPT has argued that the instant proposal is not for across the board revision, but only for revision of the container handling charges. The guidelines given by this Authority for submission of tariff revision proposals are general in nature. This Authority cannot be expected to confine its scrutiny with reference to the information furnished by the Port Trust as per the prescribed pro-forma for submission of tariff proposals. In the instant case, the reasons warranting scrutiny of activity-wise cost statements have already been explained to the port on numerous occasions. Citing a general guideline given by this Authority in support of its unwillingness to furnish the specific information asked for appears to be out of context and unreasonable.

7.1. The case was again considered by the Authority in its meeting held on 27 November 2000. In the light of the position emerging as explained in paragraph 6.3. above, this Authority found that it would not be possible to appraise the proposal properly. Eventhough, the case was fit to be closed for want of information, it was decided to allow one more opportunity to the JNPT to furnish requisite details within one month's time.

7.2. Accordingly, the JNPT was requested to furnish requisite cost statements by 15 January 2001 to enable further consideration. In order to facilitate speedy response, proforma of cost statements indicating the information required were also forwarded to the JNPT.

7.3. The JNPT vide its letter dated 6 January 2001 finally forwarded the details of costs of various activities of the Port and requested approval of this Authority to its proposal in reference.

8. With reference to the totality of information collected during the processing of the case and based on the revised cost statements ultimately submitted by the JNPT, the following position emerges:

- (i). The JNPT approached this Authority in February 2000 for approval of its proposal for revision of container handling charges. The NSICT had also approached this Authority in March 2000 with a proposal for revision of similar tariffs by an identical increase. The NSICT proposal had already been decided by this Authority in November 2000, as it could furnish all required information / clarifications in time which enabled a proper scrutiny of its proposal. The case of the JNPT has been delayed for want of information / clarifications from the JNPT and its reluctance to furnish such details even after repeated requests made by us alongwith the reasons for scrutiny of the additional information sought for.

Even as the events were heading towards an unfortunate and unpleasant end of closing the case for want of information, this Authority decided to adopt a liberal approach to accommodate the JNPT by allowing the port sufficient time to furnish the requisite details. At last, after a lapse of more than 7 months, the Port has now furnished all the requisite details to enable us to process the case for final consideration.

- (ii). Many of the users have termed the simultaneous and similar action of both the JNPT and the NSICT for an identical increase of tariffs as an extraordinary coincidence defeating the objective of privatisation to promote competition. Even if it is not an intentional coincidence, this incident highlights the monopolistic situations that can arise even in a privatised, competitive environment; and, strengthens the need for regulation of tariffs by a neutral third party.

Be that as it may, this Authority's approach towards tariff setting is transparent and follows a stated procedure and principles. The NSICT proposal has already been decided with reference to the cost position obtaining in the NSICT and other relevant issues. The JNPT proposal was held back for reasons given in sub paragraph (i) above. As far as the decision of this Authority on tariff increase is concerned, the tariff proposals of the NSICT and the JNPT have no interlinking between them; they are linked only to the respective costs of providing services at the two Terminals.

- (iii). The JNPT has proposed to prescribe handling charges of empty containers on par with those of loaded containers. In support of this proposition, it has argued that the efforts involved in handling loaded and empty containers are same and hence the rates must be the same. It has also added that if the differential in rates is not removed the loaded containers will cross-subsidise empty containers.

It is relevant here to note that the consolidated charges for handling containers at the JNPT include wharfage on cargo also. Further, when containers are loaded with cargo, the Port as a bailee has to provide security and watch-and-ward facilities. Though the containerised cargo is not handled directly, it alongwith the container is handled at the hook point and yard warranting more efforts. If the cargo inside the container is ignored, then consolidated handling charges can be demanded to be dollar denominated. The stated policy of this Authority has been against dollar denomination of cargo related charges. That being so, the proposal of the JNPT to equate the charges for empty and loaded containers is not found to be acceptable.

Incidentally, the NSICT had also proposed a similar arrangement in its proposal for revision of container handling charges. In that case also, this Authority rejected the proposal to equate empty and loaded containers for fixing tariffs, for the same reasons stated above.

- (iv). The JNPT had initially considered the return on capital employed as 18%. Considering the current interest rate of 13.5% on Govt. of India loan available to the Port Trusts and a 3% contribution to each of the two mandatory reserves, the ROCE works out 19.5%. In fact, ROCE of 19.5% has been allowed by this Authority in case of all tariff revision proposals of Major Port Trusts approved by it during the F.Y. 2000-01. In the revised cost statement submitted now by the JNPT, it has considered a ROCE of 19.5%. In this backdrop, the objection raised by some of the users about the ROCE adopted being high is baseless and deserves to be rejected.

- (v). The Karmahom Conference has expressed its reservation towards the 'cost plus' approach adopted for tariff setting. This Authority is aware of the difficulties encountered by Public Ports in adopting a performance based approach. Surprisingly, even many of the Private Terminal Operators, weighed down by the burden of royalties, restricted by the requirement of having to contend with leasehold rights, and tied down by a regulatory mechanism do not appear to be enthused about performance based tariffs. In any case, in the transitional phase, the cost plus method best suits the requirement of the *quid pro quo* principle in tariff setting. It is noteworthy that normative costs for different operations are not yet evolved due to complexities and varying methods of handling adopted by the Ports. Besides, in case of major Port Trusts, all costs, particularly employee costs, are not within their control. Nevertheless, this Authority thoroughly scrutinizes the cost estimates and, wherever necessary, scales down the expenditure to a reasonable level for the purpose of determining tariff increases.
- (vi). The INSA and SCI have again raised the issue of allowing concessions to coastal cargo. The JNPT has also supported this concession. This issue has already been dealt with by this Authority in detail in many of its earlier tariff orders. The Ports, which have suggested this concession, have been advised to discuss the issue in the forum of Indian Ports Association (IPA) for a coordinated view of all ports.

Recently, the IPA has conveyed its consensus decision that extension of concessions to cargo related charges is not desirable. Considering the matter in its last meeting, this Authority also felt that the unanimous opinion emerging from the IPA should not be ignored. Since no exceptional considerations are seen to govern this case, and bearing in mind the fact that this Authority itself has not been in favour of cross-subsidisation, it has already been decided not to allow concessions in cargo related charges for coastal cargo passing through major Ports. That being so, there is no need to resurrect this issue for any further consideration. In any case, this issue is not confined only to the JNPT and containers but will have implications for all major ports and all commodities involved in coastal movement.

- (vii). Many of the users have pointed out the incidence of additional capital expenditure when the traffic is actually falling. The investments made by the Major Ports come before this Authority as *fait accompli* at the time of tariff fixation. This Authority had an opportunity to comment upon this issue when some infructuous capital expenditure made by a Port Trust was sought to be recovered through tariff. Unless this Authority is empowered to scrutinise the investment proposals of Ports or atleast is consulted by the Government before according approval, this anomalous position cannot be set right.
- (viii). The MANSAs and Karmahom Conference in particular have alleged that the JNPT proposal to hike rate is to make good the losses that are due to traffic diversion. Precisely in recognition of this fact and also the fact of under utilization of designed capacity of container handling at the JNPT terminal after the advent of the NSICT, this Authority advised the JNPT to count the royalty received from NSICT in the cost statement to arrive at the final surplus /deficit position. Inclusion of royalty income, to a large extent, takes care of the loss due to diversion of traffic and consequently, eases the burden on remaining traffic left with the JNPT.
- (ix). The reasons for seeking additional information / modifications of the cost statements prepared by the JNPT have already been elaborately discussed in paragraphs 5 and 6 above. The JNPT has now submitted revised cost

statements for (i) port as a whole; (ii) container handling facilities; (iii) bulk handling facilities; and, (iv) estate.

In the revised cost statement for 'container handling activity', the JNPT has included four major items of income viz. (i) royalty payable by the NSICT; (ii) dwell time charges; (iii) Payments made by the agency removing containers to CFS; and, (iv) electricity and monitoring charges, which were earlier left out by it.

(x). Scrutiny of the revised cost statements submitted now by the JNPT reveals the following position:

(a). There are some discrepancies in the figures of income and expenditure for 1999-2000. The following major items of F & M Income viz. (i) penalty for shortfall in throughput (Rs.1773.50 lakhs) and (ii) sundries (Rs.781.20 lakhs) have not been considered. It is necessary to take these items into account, as the amounts involved are sizeable. In the case of the former, if there is no penalty due to fulfilment of throughput guarantee, then there must be commensurate wharfage income.

(b). Traffic estimates for 2000-01 and 2001-02, on which the cost statements have been prepared have not been indicated.

(c). The operating costs estimated for 2001-02 are higher than those for 2000-01 by about 16%. In the last exercise, the Port had assumed about 7% increase based on the last five years inflation rates. Reasons for the higher increase now assumed are not clarified.

(d). Interest payable on the loans considered appears to be higher than the figures indicated in the repayment schedule furnished by the Port earlier.

(e). Depreciation for 2001-02 is higher than that for 2000-01 by over 16% with the major hike being in the depreciation allocable to container handling activity. The Port has stated that some container handling equipment are proposed to be added during that year. This apart, hire charges of equipment are also shown to be going up substantially in 2000-01 and 2001-02. The reasons for adding equipment when traffic has, for the time being, gone down need to be explained. If traffic is estimated to go up, then it must reflect in the estimates of income.

(f). Dwell-time income for 2000-01 and 2001-02 anticipated in container handling activity is much lower than that in 1999-2000.

(g). Interest on loans has been considered twice-once as a separate item of cost and again as a part of return on capital employed. It is necessary to eliminate the effect of such double counting.

(h). Under F&M expenditure, depreciation for previous period (Rs.1149 lakhs) is considered for 1999-2000, 2000-01 and 2001-02. This is the portion of depreciation liability for past period on account of revision of estimated life of assets as directed by Government. This one-time liability is spread over 5 years by the Port instead of accounting for in one year. This has to be left out while considering the extent of revision of charges necessary. So also the liability on account of arrears of wages arising out of pay revision also needs to be excluded. The provision for the wage arrears included in the projection is not known.

(xi). By mere elimination of the effect of double counting of interest on loans as mentioned under sub para (x) (g) above, the consolidated cost statement for the Port as a whole shows a deficit of Rs.3873.98 lakhs or 11.24% for 2000-01 and a

marginal surplus of Rs.796.81 lakhs or 1.91% for 2001-02. The surplus / deficit disclosed by the four activities is as follows:

		2000-01		2001-02	
		(Rs. In Lakhs)	(In percentage)	(Rs. In Lakhs)	(In percentage)
(i).	Container Handling	(+) 100.66	(+) 0.65%	(+) 1976.20	(+) 10.39%
(ii).	Bulk Cargo Handling	(-) 10145.75	(-) 353.66%	(-) 9196.93	(-) 274.10%
(iii).	Marine	(+) 4661.45	(+) 39.07%	(+) 6244.92	(+) 41.87%
(iv).	Estate	(+) 1069.67	(+) 23.61%	(+) 1272.64	(+) 28.25%

(xii). If Prior Period Depreciation is excluded and income on account of (a) penalty for shortfall in throughput and (b) sundries is considered as stated in sub paragraphs (x) (a) & (h) above, the Port as a whole will show a deficit of 7.90% for 2000-01 and a surplus of 4.66%. Modified cost statements prepared on this basis are attached as **Annex – I and II**.

(xiii). The container handling activity is a revenue surplus activity. Further, the overall port position shows only a marginal deficit. This deficit also arises due to the huge deficit borne under bulk cargo handling activities. In view of this position emerging, this Authority finds no justification to increase container handling charges as proposed by the JNPT.

In fact, there may be grounds to reduce the charges for container handling activity, if cross subsidisation is to be totally eliminated. This Authority is, however, yet to take a final view on complete elimination of cross-subsidisation. This notwithstanding, this Authority has already decided to contain the extent of cross-subsidisation at the current level by not allowing any further tariff increase in the surplus activities. This approach has been adopted in case of all other major ports, whose tariff revisions have been ordered in the recent past. In line with this approach, the existing tariffs for container handling at the JNPT are allowed to continue without any increase.

(xiv). As has been mentioned earlier, the JNPT is loosing heavily on its bulk cargo handling activity. It will be appropriate and advisable for the Port to review the position in its totality and come up with a comprehensive proposal for refixation of bulk cargo handling charges and rationalisation of tariffs for other activities.

9. In the result, and for the reasons given above, and based on a collective application of mind, this Authority rejects the proposal of the JNPT for an increase in its container handling charges.

(**S. Sathyam**)
Chairman

JNPT REVISED CONSOLIDATED COST STATEMENT

Rs in lacs

Item	1999-00	2000-01	2001-02
Traffic (Million tonnes)	10.804	11.408	12
OPERATING INCOME			
Bulk Handling & Storage Charges	5,069.61	2,868.75	3,355.25
Container Handling & Storage Charges	18,341.51	15,398.63	19,017.91
Port & Dock Charges	9,224.83	11,928.85	14,911.48
Estate Rentals	4,115.00	4,275.56	4,505.68
Railway Earnings	0.00	0.00	0.00
Total Operating Income	36,750.95	34,471.79	41,790.32
OPERATING EXPENDITURE			
Bulk Handling & Storage	2,207.76	1,922.42	2,054.75
Container Handling & Storage	7,490.07	8,076.62	9,154.90
Port & Dock Facilities	5,045.77	3,842.17	5,010.14
Rentable Land & Bldgs.	974.43	1,050.12	1,075.11
Railway Working	124.51	125.00	125.00
Depreciation	3,910.73	4,029.11	4,478.11
Sub total	19,753.27	19,045.44	21,898.01
Management & Gen. Admn.	2,979.52	3,260.19	3,332.25
Total Operating Expenditure	22,732.79	22,305.63	25,230.26
Operating Surplus	14,018.16	12,166.16	16,560.06
Fin. & Misc Income(excl. Int)	3,507.15	1,133.00	1,920.75
Royalty	657.04	358.00	1,145.75
Auction Sale	250.58	100.00	100.00
Launch Passes	44.83	50.00	50.00
Penalty for shortfall in throughput	1,773.50	500.00	500.00
Sundries	781.20	125.00	125.00
Fin. & Misc Expenses(excl. Int.)	1,367.83	1,451.48	1,451.85
Prior Period Depreciation Ex	1,149.00	1,149.00	1,149.00
Bonus/PLB	68.37	71.50	71.47
Gratuity	84.12	154.69	151.38
Launch Expenses	66.34	76.29	80.00
Net Surplus/(Deficit) before Interest	16,157.48	11,847.68	17,028.96
Interest on Loans	13,161.10	13,839.35	13,456.68
Capital Employed	83,456.00	80,623.89	83,241.78
Return on Capital Employed	3,112.82	1,882.31	2,775.47
Net Surplus/(Deficit) after Interest & Return	-116.44	-3,873.98	796.81
Net Surplus/(Deficit) as % of Op. Inc.	-0.32	-11.24	1.91
Net Sur./ (Def.) after Int. & Ret. without PPD	1,032.56	-2,724.98	1,945.81
Net Surplus/(Deficit) as % of Op. Inc.	2.81	-7.90	4.66
Average surplus/deficit as % of op. income		-1.62	

FORM III - JNPT REVISED COST STATEMENT FOR CONTAINER HANDLING FACILITY (RS/LAKHS)					
	1997-98	1998-99	1999-00	2000-01	2001-02
TRAFFIC IN LAKH TEU'S EXCL. RESTOW	4.91	6.62	5.36	4.9	6.17
OPERATING INCOME - Handling Income					
Handling charges	12,868.62	16,855.01	14,124.06	13,308.56	16,473.22
Restow & Shutout containers	494.86	573.87	300.00	319.86	351.80
Net handling income	13,163.48	17,228.88	14,424.06	13,628.42	16,825.02
Container Dwell time charges	5,001.95	4,467.77	2,896.86	994.35	1,267.94
Refer Electricity & monitoring	483.08	780.31	404.27	270.11	337.64
Amount paid by agency removing cont. to CFS	154.71	188.93	169.31	188.26	235.33
Income from Non-Standard cargo	414.66	434.32	443.88	312.49	346.98
Miscellaneous charges	33.09	12.59	3.18	5.00	5.00
Total Operating Income	19,230.97	23,112.80	18,341.62	16,386.63	19,017.91
OPERATING COST					
POWER/FUEL & WATER SUPPLY	497.61	640.23	760.82	747.90	897.40
CONSUMPTION OF MATERIAL	209.71	206.96	226.11	183.50	168.50
REPAIRS AND MAINTENANCE	169.36	10.66	8.20	31.80	36.50
MINOR WORKS	21.48	11.34	18.16	14.00	17.00
HIRE OF EQUIPMENT***	0.00	814.28	680.90	841.94	1,311.55
HIRE OF WHARF/YARD CRANES	4,724.69	4,456.18	4,690.80	5,007.00	5,307.42
EMPLOYEES REMUNERATION**	506.46	638.55	786.81	845.79	895.65
EMPLOYEES WELFARE & OTHERS*	34.02	30.53	42.35	141.59	246.20
ADMIN. & GENERAL EXPENDITURE	0.12	0.21	0.00	0.00	0.00
PRINTING & STATIONARY	2.86	6.24	12.44	2.35	2.35
POSTAGE TELEGRAM TELEPHONE & TELEX	0.12	0.14	4.51	5.05	5.05
INSURANCE	7.03	5.31	6.01	0.00	0.00
LEGAL & PROFESSIONAL CHGS	2.95	9.45	3.90	23.42	35.00
TRAINING EXPENDITURE	0.75	1.96	1.31	0.00	0.00
OTHER GENERAL EXPENDITURE	59.38	59.11	62.10	62.26	62.28
SUB-TOTAL	6,236.62	6,991.16	7,304.42	7,906.62	9,964.90
DEPRECIATION	982.89	922.05	954.08	1,052.08	1,465.08
ENGG. SERVICES	186.96	106.30	186.09	150.00	150.00
STORES	35.00	34.03	14.60	15.00	15.00
MIS	9.32	5.52	4.96	5.00	5.00
TOTAL OPERATING EXPENSES	7,460.89	7,961.06	8,444.16	9,128.70	10,819.98
less Income from Royalty	720.00	0.00	167.04	368.00	1,040.00
less Income from Auction sales	241.74	196.30	260.66	100.00	100.00
Prior period Depreciation	2.00	71.00	63.00	63.00	63.00
PRODUCTIVITY LINKED BONUS	32.32	32.62	31.75	34.73	34.72
PENSION/GRATUITY/PPF	32.55	40.41	39.06	75.15	73.54
Mgmt & Admn. Expenses allocated	912.25	1,108.11	1,238.57	1,572.97	1,625.33
TOTAL EXPENSES excl. of INTEREST	7,468.07	9,016.89	9,408.91	10,416.55	11,276.57
NET SURPLUS BEFORE INTEREST	11,762.90	14,096.71	8,932.61	4,982.08	7,741.34
INTEREST	2,244.00	2,430.00	4,049.00	4,287.00	4,141.00
NET SURPLUS/DEFICIT AFTER INTEREST	9,518.90	11,666.71	4,883.61	725.08	3,600.34
CAPITAL EMPLOYED	24,898.00	24,977.00	24,564.00	26,032.92	28,564.84
Return on Capital Employed @ 19.5 % - Interest	2,828.96	2,440.82	739.03	624.42	1,824.14
NET SURPLUS/DEFICIT AFTER INTEREST & RETUF	6,890.24	9,225.20	4,144.58	100.66	1,976.20
NET SURPLUS/DEFICIT) AS % OF Op. Income	35.83	39.91	22.60	0.65	10.39
Average percentage for 2000-01 & 01-02				5.62	
NET SUR.(DEF.) AFTER INT. & RETURN without PPD	6,892.24	9,296.20	4,207.58	163.66	2,039.20
NET SURPLUS/DEFICIT) AS % OF Op. Income	35.84	40.22	22.94	1.06	10.72
Average percentage for 2000-01 & 01-02				5.89	