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Tariff Authority for Major Ports

G. No. : 115

New Delhi, 4 August 2005

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 *suo motu* amends the Scale of Rates of Nhava-Sheva International Container Terminal Limited, as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/15/2005 - NSICT

ORDER

(Passed on this 22nd day of July 2005)

This case relates to *suo motu* review of tariff of Nhava-Sheva International Container Terminal Limited (NSICT).

2.1 At the time of commencement of its operations, the NSICT had proposed to adopt the (then) existing tariff levied by the Jawaharlal Nehru Port Trust (JNPT). The proposal was approved and a separate Scale of Rates for the NSICT was notified vide this Authority's Order dated 5 December 1998.

2.2. Subsequently, after about 1½ years of operations, the NSICT submitted a proposal for tariff revision formulated based on its own estimated costing and volume of traffic. This tariff application was disposed of by this Authority through its Order passed on 7 November 2000 by granting an increase of 16% over the pre-revised rates. The decision to allow the tariff increase was based on analysis of the estimated cost and financial position furnished by NSICT for the years 2000-01 and 2001-02.

2.3. The tariff so fixed at the NSICT in November 2000 had fallen due for a review in November 2002 following the two year tariff validity cycle then adopted. A communication was, therefore, sent to the NSICT on 3 October 2002, and again on 10 December 2002, with a request to expedite submission of its proposal for a review to this Authority. NSICT did not respond to either of the letters.

2.4. The existing Scale of Rates of the NSICT was fixed by this Authority vide Order dated 7 November 2000. The decision of this Authority to fix the tariff then relied on an analysis of the estimated cost and financial positions of the NSICT for the years 2000-01 and 2001-02 as presented by NSICT. It is noteworthy that the NSICT furnished a traffic projection of 4,93,450 TEUs for 2000-01 and 5,79,803 TEUs for the year 2001-02 which were relied upon in the November 2000 tariff revision exercise.

2.5. As per the then prevalent guidelines adopted by tariff regulation in February 1998 by TAMP, this Authority generally allowed a tariff validity cycle of 2 years. The relevant portion read as under:

“35. It is advisable to revise the tariff once in 2 years to provide for stability to ports and to the trade. For good reasons, the ports, private operators, or even port users must be able to propose revision ahead of schedule”.

While issuing the tariff Order on 7 November 2000, analysis of the financial projection for only 2 years was made as given by NSICT so that the tariff to be fixed would also remain valid only for 2 years, as per the guidelines.

2.6. Information on the actual volume of containers handled by the NSICT was collected from the Annual Administration Report of the JNPT for 2001-02. The actual traffic position for 2002-03 was obtained from the JNPT. It is found that the actual traffic handled by the NSICT during the year 2000-01 and 2001-02 and 2002-03 varied widely with reference to the projections given by them at the time of tariff revision in 2000. A comparative position of traffic estimation furnished at the time of the last tariff revision and the actuals achieved for the corresponding period is given below:

Particulars	Traffic in TEUs		
	2000-01	2001-02	2002-03
Traffic projection furnished by the NSICT at the time of the tariff revision in November 2000	4,93,450	5,79,803	6,50,000
Actual containers handled by the NSICT (as obtained from the JNPT)	6,94,899	9,43,928	12,01,119
Variation (in %).	41%	63%	85%

2.7. It may be relevant here to refer to para 9(v) of the said tariff Order of this Authority which is reproduced below:

“9 (v). The traffic and income projections furnished by the NSICT have been relied upon for this analysis without any modification. This has become necessary in view of the limited period of the NSICT operation and the non-availability of data from any other reliable sources to test and validate the estimation. If this approach seems to have given undue advantage to the terminal operator, at the time of review during the next revision of tariffs, any undue benefit accrued to the Terminal Operator may be set off against the future revision in tariffs”.

2.8. The then existing rates were fixed considering a traffic volume of around 5.79 lakh TEUs. The actual traffic achieved by NSICT in 2002-03 is around 12 lakh TEUs. Even if no further traffic growth is presumed, there is no valid reason to believe that the present traffic level will drastically come down in future. There was, therefore, a strong case for reviewing the existing tariff and the consequential issues. It is noteworthy that in the existing tariff, the fixed cost and return are spread over only on a volume of about 5.79 lakh TEUs whereas they should have been allocated over the traffic based on 12 Lakh TEUs which was the level of performance since 2002-03.

2.9. In this backdrop, this Authority decided in September 2003 to advise the NSICT to file its proposal for review of the existing Scale of Rates within 60 days. If no proposal was submitted within the stipulated time limit, it was decided to declare the approval given to existing tariff as withdrawn after giving a further notice of 45 days. In such an event, it was decided to initiate *suo motu* proceedings to re-fix the rates based on the information available.

2.10. The decisions of this Authority mentioned above were conveyed to the NSICT by Authority's letter dated 3 June 2004 and the NSICT was allowed time up to 1 August 2004 to file its proposal for review of the existing tariff.

2.11. The NSICT responded to this Authority's letter dated 3 June 2004 vide its letters dated 30 August 2004 and 1 October 2004. Instead of filing a proposal for review of its tariff, it made a request to continue the existing rates and objected to *suo motu* review of its tariff by this Authority. It has also indicated that the proposed action is incongruent with the spirit of TAMP's own current guidelines. The submissions made by the NSICT, inter alia, include the following main points:

- (i). Tinkering with its existing tariff may lead to destabilization of efficiency achieved by it by possible reduction in volume handled and loss of quality of service, etc.,
- (ii). Since there is no instability in NSICT, there is no cause for TAMP to review tariff merely because two years or more have elapsed.
- (iii). The additional cost incurred by it to achieve the efficiencies, both on the capex as well as opex sides, NSICT is well within its right to request TAMP to revise its tariff upward. However, looking to the interest of the nation at large and exporters, importers and other customers, NSICT has chosen not to request any increase of tariff.
- (iv). The 1998 tariff guidelines adopted by the Authority do not have any statutory sanction and the Authority cannot review or revise the approved tariff on *suo motu* basis in the absence of statutory guidelines.
- (v). The Authority possibly can claim to be in a position to review the tariff as per Law upon passage of appropriate legislation on the tariff guidelines now under consideration by the Government.
- (vi). The existing guidelines for tariff fixation are under review by TAMP and Government and this exercise will have fundamental impact on their matter.
- (vii). Indian Private Ports and Terminals Association (IPPTA) has commissioned Ernest & Young to carryout an in-depth review of the draft guidelines.

- (viii). Review of the existing NSICT tariff may be undertaken only after the guidelines are finalized and approved and the results of the review by Ernest & Young are known.

3. The NSICT vide its letter dated 30 August 2004 raised issues regarding old guidelines and legality of *suo motu* review by this Authority. The Ministry of Shipping, Road Transport & Highways (MSRTH) has confirmed that in view of the explicit provision under Section 48 of Major Port Trusts Act, 1963, authorising this Authority to frame Scale of Rates from time to time this Authority can review the tariff of NSICT. Legal opinion sought had also confirmed this view. Further the revised guidelines which were published on 31 March 2005 have fully clarified this issue.

4.1. This Authority in its meeting held on 20 January 2005 deliberated on the definite suggestions received from the legal counsel to await promulgation of revised guidelines by the Central Government before undertaking *suo motu* review of the tariff at NSICT. After checking up with the Government that it would finalise the guidelines without further delay, this Authority decided to await for revised guidelines till end of February 2005. In the meanwhile, however, this Authority decided to initiate proceedings for *suo motu* review of NSICT tariff.

4.2. Accordingly, a hearing was held on 17 March 2005 in the Office of this Authority and the NSICT attended the hearing and filed a written submission dated 17 March 2005. The main points made by the NSICT in its written submission are given below:

- (i). The NSICT has continued with the existing tariff despite increase in costs and competition. Timing of the review is not appropriate given the uncertainty NSICT faces in the market.
- (ii). The revised guidelines for tariff fixation are expected to be announced by the Government shortly. The review of NSICT tariff without the revised guidelines will serve little purpose.
- (iii). The private terminal operators have not accepted the stand taken by TAMP in respect of treatment of royalty in fixation of tariff, since concessional agreements were signed prior to issue of the Government notification on royalties. In the case of Chennai Container Terminal Limited (CCTL) an out of court settlement was reached. The Chennai High court has granted an injunction in the case of private operator at Tuticorin Port in the subject matter. The Government and the terminal operator at Tuticorin have not arrived at an agreement on this issue and an injunction of Chennai High Court still continues. The admissibility of royalty in the case of NSICT also needs to be resolved. The TAMP's position in this regard, may be clarified to enable NSICT to consider the position and take up the matter with Government of India for resolution before NSICT filed tariff application or any rates are notified by TAMP.
- (iv). The third terminal at JNPT is expected to commence operations around beginning of 2006. Container Terminals have commenced operations at Mundra and Pipavav. The Mumbai Port Trust (MBPT) has tendered for two offshore berths and it is expected to finalise the award by 3rd quarter of 2005. The CONCOR which is a monopoly supplier of rail service is a 26% shareholder at the third terminal of JNPT. NSICT is dependent on CONCOR for attracting containers from the North India hinterland. The supply of adequate trains by CONCOR to NSICT requires review once operations commence at the third terminal to ensure that NSICT is not disadvantaged. Further, there is already a large gap in the supply of adequate wagons by CONCOR which led to a major congestion during the period of August 2004 to October 2004 which has resulted in reduction in boxes. Without this complete picture of the impact of competition, it is impossible to project traffic and estimate revenue for any reasonable return. The Authority cannot *suo motu* go by past trends of volumes handled by NSICT to arrive at the traffic projections and estimate cost and income.
- (v). Any *suo motu* action by TAMP would harm NSICT and NSICT reserves the right to appropriate legal recourse notwithstanding its submission made here.

4.3. The NSICT did not provide any information required for tariff review in its written submission. When the representatives of NSICT were told that the case would be closed for orders for want of information, the NSICT agreed to forward their audited annual accounts for the years 2000-01 onwards, as filed with the Statutory authorities and sought time up to 21 March 2005 to file further written submissions.

4.4. The NSICT, however, did not forward their audited annual accounts as agreed at the joint hearing. Vide its letter dated 21 March 2005 NSICT reiterated its submissions made earlier regarding review of its tariff. The submissions made by NSICT are summarized below:

- (i). A review is uncalled for a variety of reasons which we have already stated in our various correspondence with TAMP.
- (ii). The NSICT is going to face enormous competition not only from JNPT but also from Mumbai Port Trust (MBPT). A review of tariff at this stage is wholly unnecessary and unwarranted.
- (iii). If TAMP has any empirical basis for a review of tariff, NSICT wants to understand the basis from TAMP and respond.
- (iv). If the process to review the NSICT tariff is undertaken and orders are passed to notify the new tariff without regard to the clear cut and specific issues raised by NSICT and without setting the basis for the conduct of review, any such notified tariff would be bad in law and against the principles of administrative law.
- (v). TAMP is requested to desist from passing any unilateral orders without any specific, scientific and cogent consideration of issues. For the purpose of review issues may be framed for consideration so that there can be meaningful hearing.
- (vi). If TAMP persists with review and desires to proceed with a review NSICT needs at least 60 days time to put together empirical reasoning to deal with the position taken by TAMP.

5. The Government of India announced the revised tariff guidelines. The revised tariff guidelines were notified on 31 March 2005. The NSICT had pleaded earlier that review should be undertaken only after the revised guidelines are firmed up. Further, after the joint hearing, the NSICT gave an indication that it would furnish details if time is allowed. Therefore, NSICT was allowed time upto 20 April 2005 for submission of information required for review of the existing tariff vide our communication dated 4 April 2005. It was also indicated that this Authority might consider any request, if supported by any valid reasons, for some more reasonable time, if required, for providing any part of information provided whatever information readily available was furnished within the stipulated time limit.

6.1. The NSICT, however, did not furnish any details to this Authority. Instead, the NSICT vide its letter dated 19 April 2005 addressed to the Ministry of Shipping, Road Transport & Highways (MSRTH) and endorsed to us stated that the review of its tariff has substantial implications for NSICT and requested for an appointment with the Hon'ble Minister to highlight the difficulties reportedly faced by it. Further, the NSICT vide its letter dated 20 April 2005 intimated us that it has taken up the matter with the MSRTH and requested us to defer the matter till such a time the MSRTH advises its decision.

6.2. This Authority at its meeting on 25 April 2005 considered the NSICT letter dated 19 April 2005 addressed to the Hon'ble Minister of MSRTH and copy endorsed to TAMP and the letter dated 20 April 2005 addressed to Chairman (TAMP) and held that the decision already taken for *suo motu* review of NSICT tariff remained unaltered. It was, however, decided to set up a joint hearing in which relevant major port users associations and JNPT should be invited to participate apart from NSICT.

6.3. In the meanwhile, the NSICT vide its letter dated 21 April 2005, addressed to the Hon'ble Minister of MSRTH and copy endorsed to us, requested the MSRTH to intervene in the matter and advise TAMP to defer the tariff review of NSICT by at least 3 years.

7. A joint hearing was set up on 10 May 2005 in the Office of this Authority. The NSICT, JNPT and other user organizations participated in the joint hearing and made the following submissions:

Nhava-Sheva International Container Terminal (NSICT)

- (i). TAMP Order of 2000 does not mention about 2 year validity.
- (ii). We do not wish to question the *suo motu* powers of TAMP. It is the discretion of TAMP to exercise its power in this regard.
- (iii). The market in this region is stable. Any alteration in our tariff would lead to instability. TAMP should encourage investment and robust service to customers.

Jawaharlal Nehru Port Trust (JNPT)

- (i). We agree that TAMP can *suo motu* review tariff for justifiable reasons.
- (ii). There is no confusion that tariff validity period was two years earlier.
- (iii). NSICT should have furnished the information required by the Regulator. We advise them to do so. But, LA does not have any provision enabling us to require them to provide information.
- (iv). We feel there is enough justification to review tariff in this case.

Mumbai and Nhava-sheva Ship-agents Association (MANSA)

- (i). TAMP's Order of 2000 does not mention two year validity. But it is to be seen in the light of the general position and the guidelines prevailed then.
- (ii). We request NSICT to furnish details so that an objective assessment of tariff can be carried out instead of approximations and estimation by TAMP in the absence of reliable data provided by the Operator.
- (iii). While reviewing tariff, TAMP should also bear in mind that the operator should not be discouraged to provide efficient service which will be detrimental to trade, more so in a congested situation like the one prevailed at JNPT.
- (iv). We feel TAMP has powers to review *suo motu* and this is a fit case for review.

(On a query by NSICT regarding the existing rates, the following statement was made)

- (v). We do not have any problem with the existing tariff. But an objective assessment of its continuance should be made.

Bombay Chamber of Commerce & Industry (BCCI)

- (i). (a). As volume goes up, tariff is expected to reduce.
- (b). New tariff guidelines allow 50% efficiency gain to be passed on to users. This should happen in this case.
- (ii). NSICT, because of higher margins available at the existing tariff, may be allowing discounts in tariff to selected users. But it should be available on common basis for which the tariff should be reduced across-the-board.
- (iii). There is a strong case for review the existing tariff of NSICT.

Indian Merchants' Chamber (IMC)

- (i). We do not question the *suo motu* review powers of TAMP. But, TAMP should generally act on the proposal of the port / terminal operator or the representation of port users. There should be some data support to review tariff.
- (ii). The present situation at JNPT is smooth despite congestion due to larger volumes. We should not de-stabilise and cause disruption of services to Trade by looking narrowly only on the tariff issue alone.
- (iii). The Shipping Lines want handling cost to be reduced with increase in volumes. But, this is applicable to them also. They never reduced freight or THC.

Bombay Custom House Agents Association (BCHAA)

- (i). TAMP should have the powers to review *suo motu*.
- (ii). But NSICT is functioning smoothly. So, please defer review for time being.

Container Shipping Lines Association (CSLA)

- (i). We are not going into the legality of review. But, there is no provocation in this case. Neither the operator nor users have demanded review.
- (ii). Without complete data available, TAMP should not embark on any review.
- (iii). Such a *suo motu* review by Government or Statutory authority will send wrong signals to prospective investors.
- (iv). We do not support any review of NSICT tariff now. But after the third terminal at JNPT commences, the position should be reviewed.

Indian National Shipowners Association (INSA)

- (i). The tariff at NSICT is very high. It needs downward revision.

8.1. Subsequent to the joint hearing, the NSICT, JNPT and user organizations filed their written submissions at our request. The summary of written submissions made by them are given below:

Nhava-Sheva International Container Terminal (NSICT)

Review of NSICT tariff is not warranted for the following reasons:

- (i). On account of additional capital investment brought in ahead of schedule and international standard of efficiency in operations, NSICT has handled more than double the throughput from a facility that was supposed to deliver 5,50,000 TEUs per annum as per concession agreement with JNPT.
- (ii). Shipping lines and trade have derived the following benefits:
 - (a). Faster average turnaround time of less than 12 hours excluding berthing and unberthing time.
 - (b). Average 24 moves per hour of crane productivity against 20 moves per hour required in the concession agreement.
 - (c). New direct services from NSICT to America / Europe resulting in reduction in transshipment cost and quicker transit times.

- (d). Majority of the boxes received at the terminal are moved into CFS in the free period. No storage charges for trade.
- (e). New lines started calling India and new options for Indian trade which has helped India's GDP growth of 8%.
- (f). Reduction in shipping cost, reduction in inventories, reduction in shipping time, reduced damages, greater reliability.
- (iii). Despite increase in cost, NSICT has not applied for revision of tariff and continues with the existing valid tariff in the public interest and in the interest of the trade. A *suo motu* review is not warranted, as borne out by the users.
- (iv). The last tariff Order of NSICT does not specify any expiry date. It is incorrect to presume that NSICT tariff is not valid or has expired.
- (v). The present tariff is accepted by trade with respect to the quality of service and benefits already listed. Every party who attended the joint hearing complimented NSICT's services. MANSA represented that NSICT tariff was reasonable.
- (vi). Timing of review is not appropriate at this stage given the number of uncertainties NSICT faces in preparing and presenting a tariff application.
- (vii). Difficulties in estimation of future traffic volumes to be handled by the NSICT:
- (a). 3rd Terminal at JNPT from beginning of 2006.
- (b). New container terminal at MBPT in 2007.
- (c). Cargo will move out of JNPT to Mumbai.
- (d). A more concrete picture needs to emerge from this competitive scenario.
- (e). *Suo motu* review cannot be done by past trend of volumes handled by NSICT when immediate future will be extremely divergent.
- (viii). (a). NSICT is facing the following escalating royalty payments:
- | Month and Year | Royalty per TEU
(in Rs) |
|----------------|-----------------------------|
| July 2005 | 615 |
| July 2006 | 886 |
| July 2007 | 1,194 |
| July 2008 | 1,542 |
- (b). Royalty continues to escalate to a maximum of Rs.5,610 per TEU.
- (ix). (a). 15% Return on Capital Employed envisaged by revised guidelines will be a myth for NSICT because there is no guaranteed return for the operator, if volumes fall.
- (b). Competition is growing in western region and there is no guarantee of 15% Return on Capital Employed in the coming years.
- (x). NSICT will be forced to discount its rates on account of growing competition. Application for higher tariff will not work in the competitive scenario.
- (xi). It is not fair to consider a single year of operations in isolation. It is necessary to consider the overall concession period with supply demand situation.

- (xii). Supply of wagons by CONCOR:
- (a). CONCOR is a monopoly supplier of rail services.
 - (b). CONCOR is a 26% share holder in the 3rd terminal.
 - (c). NSICT is depending on CONCOR for contracting containers from the north. Already a large gap in the supply of adequate wagons by CONCOR.
 - (d). Congestion during August 2004 to October 2004 resulted in huge cost to the trade.
 - (e). When 3rd Terminal commences, supply of adequate train by CONCOR to NSICT needs to be reviewed to ensure that NSICT is not at a disadvantageous position.
- (xiii). No clear-cut direction on how efficiency will be retained and regulated in the new tariff guidelines.
- (xiv). Implications of tariff review:
- (a). Market is very finely balanced now in terms of demand and supply.
 - (b). In the event of increase in tariff after review, large scale diversion of traffic to other terminals.
 - (c). Other terminals are with poor infrastructure.
 - (d). Additional cost to trade in terms of delays, congestion etc.,
 - (e). Reduction in NSICT tariff:
 - NSICT may have no incentive to work at the increasing levels of efficiency and productivity.
 - Higher cost to trade.
- (xv). Present tariff is working well for the operator and the trade.
- (i). *Suo motu* action will upset the market balance and harm the trade tremendously.
 - (ii). Market balance may be preserved as requested by the users at the joint hearing.
- (xvi). NSICT tariff may not be reviewed till 2009.

Jawaharlal Nehru Port Trust (JNPT)

- (i). Since the present tariff approved by the TAMP in November 2000 has been in force for more than 4 years, TAMP has the full authority to review the tariff of Nhava-Sheva International Container Terminal (NSICT).
- (ii). Since the actual throughput to be handled by NSICT is much more than the projections made by it, TAMP may take a view taking into account actual throughput, interest of trade in terms of tariff, facilities provided by NSICT, the revised guidelines for tariff fixation etc.,

Mumbai Nhava-Sheva Ship Agents Association (MANSA)

- (i). Even though the Order of November 2000 does not explicitly limit validity of revised rates, the tariff validity cycle of two years for NSICT is implied.
- (ii). TAMP has power to initiate *suo motu* review of the Scale of Rates without necessarily requiring tariff proposals from terminal operators or request from port users for review.
- (iii). Any objective Review of rate would require financial and operational information which NSICT has not submitted inspite of request made by TAMP. The MANSA would urge NSICT to adopt a more positive and co-operative stance in its response.
- (iv). MANSA has no objection or complaint on the existing Scale of Rates of NSICT and has no objection to its extension.
- (v). MANSA forecasts critical shortage of terminal capacity in Nhava-Sheva in 2005 and 2006.
- (vi). NSICT has performed efficiently in meeting the demands of increased traffic with no increase in quay length or yard space.
- (vii). A review of NSICT tariff undertaken at this stage should take into account the serious capacity constraint.
- (viii). The results should not impede or impose disincentives on the NSICT's ability to manage the growth in traffic through its existing facilities.

Bombay Chamber of Commerce & Industry (BCCI)

- (i). TAMP has authority to take *suo motu* action on port / terminal tariffs if the situation so warrants.
- (ii). Clause 3.3.2 of the revised guidelines for tariff fixation enables TAMP to *suo motu* review its Orders, for good and sufficient reasons, following a normal consultation process.
- (iii). In the interest of all parties, a simple, transparent and equitable system should be adopted across the ports and terminals to review the rates every 3 years (clause 3.1.8 of the revised guidelines) in order to factor-in financial / cost changes obtaining in each port / terminal. This suggestion would apply to NSICT as well.

Bombay Custom House Agents' Association (BCHAA)

- (i). Role of TAMP is to:-
 - Regulate tariff of major ports for the benefit of trade
 - Create a level playing ground for ports and other players of the shipping industry.
- (ii). *Suo motu* proceedings are to be initiated in exceptional and extraordinary circumstances.
- (iii). Such extraordinary and exceptional circumstances be made transparent by a notification to avoid any disturbance in the normal functioning of the ports / terminals.
- (iv). BCHAA understands that NSICT tariff is valid for two years even though it is not categorically mentioned in the tariff Order. The tariff should have a validity period in future.

- (v). TAMP has within its jurisdiction to initiate *suo motu* proceedings for revision of rates to safeguard interest of trade. However:
- NSICT is out performing inspite of larger volume and constraints to keep the trade in motion.
 - Trade cannot afford inefficiency and non-performance by reducing tariff.
 - Trade may benefit by reduction in tariff; but, trade will incur additional cost for constraints and inefficiency.
- (vi). BCHA strongly recommends to maintain the NSICT tariff at the current level till the commissioning of third terminal in JNPT.

Indian Merchants' Chamber (IMC)

- (i). IMC does not object TAMP's power to review the existing tariff, but, review should be done after taking the trade into confidence.
- (ii). Approved tariff should not be reviewed *suo motu*, unless port users / service providers seek a review.
- (iii). Both NSICT and JNPT are handling one million containers a year each despite their capacity to handle not more than 1.2. million containers jointly per annum. There is no merit to review NSICT tariff at present.
- (iv). Third terminal at JNPT and off-shore terminal at MBPT would necessitate NSICT / JNPT tariff review around January 2007.
- (v). Shipping lines recover huge amount towards congestion surcharge and detention charges due to no fault of JNPT and NSICT but due to the inability of CONCOR to evacuate their containers from the container terminal. The trade learned an expensive lesson last year.
- (vi). Review of NSICT tariff would result in chaotic situation leading to flight of cargo to neighbouring ports besides shipping companies re-invoking congestion surcharge.
- (vii). Downward review of NSICT tariff may seem attractive but would result in detention of vessels at JNPT and diversion of cargo to other ports. Hinterland of Mumbai will be deprived of container business.
- (viii). There is no justification for increase in tariff at present.
- (ix). With the commissioning of third container terminal and fourth container off-shore terminal, there will be reduction in transaction cost.

Container Shipping Lines Association (India)

- (i). NSICT should be allowed to maintain its tariff at current levels:
- (a). NSICT or CSLA or the trade not asked for any change in tariff.
 - (b). NSICT working efficiently and providing the highest productivity standards in the region despite the constraints of berth length and land side space.
 - (c). NSICT has taken into account all factors including the future shipping scenario and competition and does not deem it necessary to approach TAMP for a change in tariff since 2002.
 - (d). It is not logical for TAMP to base its views on the cost and information submitted by NSICT in 2002 which are no longer relevant.

- (ii). Encouragement to terminal operators:
- (a). Shipping lines are keen to see that there is sufficient terminal capacity to cater to the anticipated growth of Indian market.
 - (b). Terminal operators should be allowed a decent return on investment to enhance terminal facilities through greater investments.
 - (c). Terminals with higher productivity need not be penalized by reduction in tariff.
 - (d). TAMP should balance the cost of the terminals against the need to attract more investors.
 - (e). The 3rd terminal project and 4th terminal at Nhava-Sheva will depend on the private investors and operators.

- (iii). Revised guidelines for tariff fixation:

The revised guidelines are recent one. Full implications of revised guidelines have not been studied by all.

- (iv). Time of Review:

When the 3rd terminal is operational, TAMP may take a view on the level of tariff to be fixed – whether to equate JNPT or NSICT.

- (v). Areas which require immediate attention and intervention of TAMP:

- (a). The very high marine charges at JNPT when compared to other ports in the region.
- (b). No progress on deepening of the approach channels at the port, which has resulted in:
 - Increased pre and post berthing delays.
 - Reduced turn-around of vessels.
 - Not able to cater to larger vessels.
 - Loss of business to other terminals of the region.

8.2. It is relevant here to mention that the NSICT in its written submission dated 11 May 2005 requested this Authority, inter alia, not to review its tariff till the year 2009. In order to consider the request made by NSICT, the NSICT was advised vide our letter dated 30 May 2005 to furnish necessary cost / financial details to substantiate its request. This Authority, however, had not received the requisite details from NSICT so far.

9. The Chairman-cum-Managing Director (CMD) of NSICT vide his letter dated 15 June 2005 sought an appointment with Chairman (TAMP). Accordingly the CMD, NSICT met Chairman (TAMP) on 30 June 2005 in the Office of this Authority and gave his written submission dated 30 June 2005. The NSICT did not produce any tariff proposal supported by cost / financial details which are supposed to be filed by them in terms of the decisions taken at the meeting held on 13 June 2005. Instead, the NSICT had only repeated the same arguments made by it earlier.

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

- (i). This Authority follows a cost based model with pre-determined rate of maximum permissible return on capital employed for fixation of port tariff. Cost which is allowed as pass through includes all items of admissible expenditure like salary and wages, repairs, maintenance, depreciation, overheads etc. In case of the private terminal, a pre-tax return of equity of 20% was earlier allowed subject to capacity utilization which has subsequently been modified under the revised guidelines to 15% of the capital

employed. Tariff fixation follows a forward looking model. Accordingly, traffic forecast, income expenditure projection and estimated investment for the succeeding years within tariff validity period are considered. Quantum of tariff revision is decided based on the estimated average deficit/surplus during the tariff validity period after accounting for all admissible costs and permissible return against the estimated revenue generation at the projected traffic level.

Traffic forecast in tariff setting is significant since estimated revenue against which cost and return are set off is based on the volume of traffic. For same level of investment, the unit cost of handling varies with different levels of traffic mainly because of distribution of fixed cost and return over the traffic base. If traffic increases, unit cost and hence unit tariff is generally expected to go down, if no significant change in the investment level takes place. In an increasing traffic scenario at a port, if tariff is not periodically adjusted, the service provider ultimately earns more return on his investment than the pre-determined level at the expense of the users who in such case, pay more than the regulated level of tariff otherwise required.

- (ii). This Authority while allowing the existing tariff at the NSICT in November 2000 relied upon the traffic and income projections furnished by the NSICT without any modification, owing to the limited period of the NSICT operation and non-availability of data from any other reliable source to validate the projections presented before this Authority for its consideration. Even while relying upon the projections furnished by the NSICT, this Authority sounded a note of caution in 2000 itself that projections would be compared with the actuals at the time of the next revision of tariff and any undue benefit accruing to the terminal operator would be set off in future revision of tariff. Information on the actual volume of containers handled by the NSICT clearly show a wide variation with reference to the projections relied upon in the previous tariff fixation exercise. The rates fixed considering the traffic volume of around 5.79 lacs TEUs may not be relevant even when the actual level of traffic is in the region of 12 lacs TEUs. It is, therefore, necessary to spread the cost and return over the revised traffic base. That being so, it is appropriate to review the tariff of NSICT fixed in November 2000. The argument that there is no instability in NSICT because of tariff cannot be accepted for not subjecting for tariff review. Similarly a tariff to continue beyond the permitted period of two years will have to subject itself to costing review. It is also noteworthy that this issue was taken up with the NSICT only after the lapse of two years from the date of initial fixation i.e. after the expiry of tariff validity period.
- (iii). The NSICT has challenged the tariff validity period of two years adopted by this Authority. Its contention appears to be that once tariff is fixed by the Regulator, it should be revised only at the option of the operator. It is important to review the tariff periodically at the end of the prescribed validity period because the validity period prescribed has a direct nexus with the period for which estimates are considered in the previous tariff setting exercise. The NSICT tariff was fixed in November 2000 considering the estimates furnished by NSICT for the years 2000-01 and 2001-02 and, therefore, they can be valid only till end of 2001-02. Clause 18.1 of the tariff guidelines of Feb 1998 clearly mentions about the port pricing to be cost based with the assured rate of return. Since NSICT has extensively referred to these guidelines, they cannot plead their ignorance about the cost plus approach adopted. As a matter of fact, the tariff application dated 16 March 2000 filed by NSICT, which was disposed by this Authority through its Order of Nov 2000, was cost based supported by cost estimates for the years 2000-01 and 2001-02 furnished in the prescribed format. On the basis of the information made available, tariff based on cost plus approach could be fixed only for two years. The NSICT came up subsequently in March 2001 with a review petition challenging some of the decisions of this Authority contained in the tariff order of Nov 2000. The statement made by NSICT at para 8 of the said petition is reproduced below:

“We believe that Authority should review each application for the two years period, as prediction and estimates for a 30 year period really serve no purpose in pricing decisions”

It is evident from the above that NSICT was not only aware of the two years validity cycle, but was also in agreement with the approach adopted by this Authority. That being so, it is not clear why NSICT did not approach this Authority at the end of the tariff validity period in October 2002 even with a request which was subsequently made for continuing with the existing tariff. It is intriguing why the NSICT, even after being reminded, refused to part with its cost and investment details which may substantiate continuance of the existing tariff beyond tariff validity period.

- (iv). Even though the NSICT has subsequently changed its stand, it had initially questioned the powers of this Authority to initiate *suo motu* proceedings. This Authority has no doubt on the statutory powers available to it in this regard. In fact, Section 48 of the MPT Act makes it an obligation for TAMP to frame, from time to time, a Scale of Rates at which and a statement of conditions under which any of the specified services shall be performed by a Board or a person authorized under section 42. NSICT is a person authorized under section 42 and, therefore, this Authority has the power to review the tariff even *suo motu*. Clause 3.3.2 of the revised tariff guidelines issued by the Government as policy direction under section 111 of the Major Port Trust Act also mentions about *suo motu* powers of TAMP. As a matter of fact, the orders of this Authority prescribing hourly berth hire charges, limitation of storage charges on abandoned containers, levy of penal interest on delayed payments, etc are results of *suo motu* proceedings initiated by this Authority. Recently, vessel related charges at the JNPT were reduced by 10% by this Authority in a *suo motu* proceedings. That being so, the NSICT cannot complain about being singled out for any discriminatory treatment. It is to be borne in mind that the decision to take *suo motu* action is the result of the NSICT's failure to furnish necessary details to review the reasonableness of the existing tariff. The subsequent line of argument pursued by NSICT about its inability to estimate for future appears to be a lame excuse as it is difficult to believe an international operator like P&O will operate a facility without having a reasonable assessment of business atleast in the short term. From the proceedings of this case explained earlier in this note, it can be seen that time limit for submission of tariff review proposal by the NSICT were liberally set and adequate opportunity to furnish requisite details was also given. Its request to await revised tariff guidelines to be announced by the Government was also acceded to. The NSICT has chosen to ignore all the requests made and advices rendered.
- (v). The NSICT has only made mere statements on why its tariff should not be reviewed. Even after repeated requests, the NSICT chose not to furnish any cost/financial details required to assess the reasonableness of the existing rate. It is difficult for this Authority to accept general statements made on efficiency improvement, possible change in the competition scenario, etc without substantiating them with facts and figures. What is relevant for this Authority is primarily the cost and financial details to assess the reasonableness of the existing rates. While there can be other non-cost considerations for determining tariff, the basic frame work of cost plus approach adopted uniformly at all the major port trusts and private terminals therein cannot be totally discarded in lieu of such considerations.
- (vi). Since the NSICT did not furnish actual cost / financial details, the Registrar of Companies (ROC), Maharashtra was approached to get the financial statements of NSICT. The ROC furnished a copy each of the Annual Accounts for the financial year 1998-99, 1999-2000, April 2000 to December 2000 and January 2001 to December 2001. Since the Annual Accounts received from the ROC for the years 2000 and 2001 are on calendar year basis, no correlation could be made with the information available which are on financial year basis. In the absence of any data made available by NSICT, this Authority is left with no alternative but to carry out the review based on the information available and the details furnished by NSICT at the time of the last revision with suitable extrapolation and approximation. The analysis for the period 2000-01 to 2004-05 has been done following the general approach adopted by this Authority for review of tariff of private terminal operators. Since the revised tariff guidelines announced by the Government came into force from 31 March 2005 and the revised guidelines prescribed a tariff validity period of three years, the cost analysis for the period 2005-06 to 2007-08 is made in terms of the said revised guidelines. For the

purpose of drawing up cost statements, the 30-year analysis furnished by the NSICT at the time of the last revision vide its letter dated 03 August 2000 is also referred to.

- (vii). Throughput for the years 2000-01 to 2003-04 considered in the cost statement for the purpose of analysis is as reported in JNPT Administration Report. For the year 2004-05, the throughput considered is as reported by the JNPT. Considering the capacity constraints, there may not be any significant traffic growth at NSICT in future. Even though NSICT apprehends diversion of traffic with the advent of new terminals in the nearby area, considering the national level trend of growth in container traffic and the new terminals in the vicinity will take some more time to set up and stabilise, it can be reasonably presumed that there may not be any change in the traffic pattern at NSICT at least in the short run. If any substantial change in traffic takes place, it is open for NSICT to approach this Authority for a review. Throughput projections for the years 2005-06 to 2007-08 is, therefore, considered at 2004-05 level.
- (viii) Operating income is estimated based on the average revenue realisation of Rs.3072 per TEU. The average realisation per TEU is calculated based on the income estimation furnished by the NSICT at the time of 2000 revision and 16% increase allowed by this Authority. Trade discount considered by the NSICT in its cost statement during the last revision is presumed to continue and hence considered for the purpose of this analysis.

Income from storage charge is also computed based on the average realisation from storage charges relying upon the estimates furnished by the NSICT at the time of the 2000 revision. The estimated storage income during the last revision considered a foreign exchange rate of Rs.48.31. The exchange rate as reported by the RBI as on 31 March 2002 is Rs.47.55 and Rs.43.39 as on 31 March 2004. The current dollar rate is Rs.43.72 against Indian rupee. The average realisation of storage charges for the years 2002-03 to 2004-05 is adjusted accordingly for the downward fluctuation in the exchange rate. The estimates of storage income for the years 2005-06 to 2007-08 is made keeping the same level of average revenue realisation of 2004-05.

Other miscellaneous income which are not significant is considered at the levels for relevant throughputs maintained by the NSICT in its 30 years analysis furnished at the time of the last revision.

- (ix). Operating cost, is estimated as follows:

(a). Equipment Running Cost:

(aa). Power cost:

The per TEU power cost as allowed in the last tariff Order is considered for the years 2000-01 and 2001-02 and the total cost in this regard is calculated with reference to the volumes. For the subsequent period, total power cost is calculated by allowing 6% escalation in the per TEU cost of power of the previous year as is in case of other major ports/ private operators.

(ab). Fuel cost:

The per TEU consumption is considered as 5 litres as allowed in the last Order based on the estimates furnished by the NSICT at the time of the last revision.

During the last revision, the unit fuel cost was estimated by the NSICT at Rs.17.16 and Rs.18.36 per litre for the years 2000-01 and 2001-02 by applying an escalation factor of 7.02% over the previous year. No annual escalation was considered for the subsequent years in its 30 years analysis furnished earlier by NSICT. The fuel cost estimated by the NSICT appears to be based on the fuel price prevailing at that

point of time. Since then there has been substantial change in the fuel price. For the purpose of this analysis, fuel cost is updated at Rs.19.24 for the year 2001-2002, Rs.21.34 for 2002-2003 and Rs.25.44 for the year 2003-04, with reference to the fuel price allowed in the recent tariff revision relating to Chennai Container Terminal Limited. For the year 2004-05 fuel cost is considered at Rs.28.24 based on the position obtained from one of the proposals relating to the MBPT.

The estimates for the years 2005-06 to 2007-08 are made allowing 6% annual escalation in per litre cost over the respective previous years.

(ac). Repair cost:

Repair cost is estimated as percentage of equipment cost as considered by the NSICT during the last revision in 2000.

Additions to equipment required to handle 7 lakh TEUS (estimated to be handled by the NSICT during the year 2003-04 in its 30 years analysis) is considered for the year 2000-01 itself since the NSICT had handled similar volumes in 2000-01. Similar updation has been made in respect of additions to equipment based on the 30 years estimates furnished by the NSICT and repair cost estimates are drawn up accordingly.

(b). Labour cost:

The cost for the year 2000-01 is taken at the level estimated by the NSICT for achieving 7 lakh TEUs in the year 2003-04 with adjustment for moving ahead in the time scale. Annual escalation of 7.02% is allowed for the year 2001-02 as done in the last tariff Order. For the subsequent years, 6% annual escalation in cost is considered over the respective previous year figures. It is noteworthy that the NSICT had not assumed any significant change in the number of employees with change in throughput.

(c). Royalty:

As per the revised guidelines, in those cases where the bidding process was finalised before 29 July 2003, royalty / revenue share payable by the private operator to the landlord port is allowed as an admissible cost for tariff computation subject to maximum of the amount quoted by the next highest bidder. In the instant case, since it is *suo motu* review of tariff, the entire royalty amount payable by the private operator to the JNPT is allowed as cost for tariff review exercise giving the benefit to the NSICT. Royalty for the years 2000-01 to 2002-03 is considered as reported in the JNPT Annual Accounts. For the year 2004-05, royalty as reported by the JNPT is considered in the cost statement and for the subsequent years, royalty payable by NSICT is computed based on the rate per TEU prescribed in the Concession Agreement and the throughput projections.

(d). Property cost:

The NSICT in its estimation had considered rental for its Mumbai office in dollar denomination and converted into rupee terms reckoning the variation in the exchange rate. For reasons explained in our earlier Order, the rental in dollar terms was not allowed and a rental of Rs.6 lakhs per month was considered. The property cost for 2000-01 and 2001-02 is considered as per the moderation done in our Order. In the absence of any information about any subsequent revision in the lease rentals, 6% annual escalation is allowed in the lease rentals and other items of property cost from the year 2002-03 onwards as done for other items of cost.

(e). Depreciation:

The depreciation as estimated by the NSICT for the relevant year is considered and updated for additional investment envisaged to achieve the throughput projections. The depreciation rate considered by the NSICT during the last general revision (reported to be as per the Companies Act) is considered for computation of depreciation on additions to the gross block.

(f). Equipment hire charges:

The NSICT has not considered any increase under this head on account of increase in volumes except for escalation of 7.02% per annum for the years 2000-01 and 2001-02. These estimates are, therefore, considered at the level estimated by the NSICT for these two years. For the subsequent years the cost is however, escalated by 6% per annum as considered for other items of cost.

(g). Miscellaneous Expenditure, Upfront fee and preliminary expenses write off:

In the last tariff Order upfront fee (Rs.72 crores) was spread over the life of the project and preliminary expenses has been written off over five years. As per the general principle adopted (subsequent to NSICT revision) preliminary expense is also to be written off over the entire project period. In the instant case, since this Authority had allowed the methodology proposed by the NSICT at the time of last revision, the same approach is considered for the purpose of this analysis. The amortisation of miscellaneous expenses, upfront fee, and preliminary expense considered in the cost statement are as furnished by the NSICT in the 30 years analysis.

(x). The Technical Service Fee paid/ payable by the NSICT to its promoter company was disallowed in the last tariff order and the same position is maintained till 2004-05.

However, the revised guidelines for tariff fixation which came into effect from 31 March 05, allows this item to be admitted as cost in tariff fixation process provided the private operator establishes 'arms length relationship' of this transaction as prescribed u/s 92A of the Income Tax Act. It is presumed that the NSICT will be in a position to furnish the relevant IT assessment Order to establish 'arms length relationship' of the TSF payment made to its promoter company. Based on this presumption, the TSF as estimated by the NSICT is admitted as item of cost from the year 2005-06 onwards. If the presumption is found to be wrong at the time of next review, the benefit allowed will be set off in future tariff.

(xi). Capital employed is estimated considering the additions to the gross block required to achieve the similar kind of volumes as estimated by the NSICT in its 30 years analysis. In short, the gross block as estimated by the NSICT during the year 2003-04 is considered for the year 2000-01 since it has handled around 7 lakh TEUs in the year 2001-02 itself (as against its estimation to handle this volume in 2003-04).

As per the 30 years analysis furnished by the NSICT during the last revision, the capital employed is proposed to be funded by preference share capital to the extent of Rs.130 crores, and the balance by equity share holders fund and debt.

For the period 2000-01 to 2004-05:

14% dividend on the preference share capital is allowed as considered during the last revision order.

The balance capital employed is assumed to be funded 50% by equity and 50% by debt for computation of return on investment. Pre tax return on equity is allowed @ 20%. The cost of debt is allowed at 10.5% in line with the position maintained by the NSICT in the 30 years analysis.

For the period 2005-06 to 2007-08:

15% Return on Capital Employed is considered for these three years in line with the revised guidelines for tariff fixation.

- (xii). During the last revision, the cost statement for the NSICT showed average net deficit of 15.61% for the years 2000-01 and 2001-02. Based on this deficit position, this Authority accorded 16% increase in container handling charges of the NSICT to cover this deficit.

The cost statement prepared based on the assumptions explained above, indicate an average additional surplus of 29% for the years 2000-01 to 2004-05 after allowing maximum permissible return on its investment and admissible costs. This amounts to Rs.473.42 crores for the period 2000-01 to 2004-05.

The accrual of additional surplus is on account of estimation error and the NSICT's failure to come with its proposal for review of tariff on expiry of the tariff validity period. This Authority while passing the 2000 Order has relied upon the traffic and income projections made by the NSICT. It may be relevant to mention here that our earlier Order of 2000 specifically states that if this approach of this Authority has given any undue advantage to the operator, at the time of next review, the undue benefit will be set off against the future tariff.

The NSICT has argued that as to how it is contented that they have got undue benefit. It is clear from the discussion above, the substantial change in traffic has resulted in increase in their income from the level considered while fixing the tariff in November 2000. It is an undue advantage because the resultant accumulation is over and above the permissible level of return. It is noteworthy that the permissible level of return considered in tariff computation is not devised only for NSICT; it is applied uniformly at all private terminals in the country. And, such an accumulation is the result of, as mentioned earlier, estimation error and NSICT's unwillingness to submit itself to a regulatory review at the end of the two year validity period.

As per the Order of November 2000, the entire such benefit accrued in the past needs to be set off in future tariff. The revised guidelines for tariff fixation recently announced by the Ministry, however, requires only 50% of such benefit/ loss accrued to be set off in the next tariff revision cycle if the projections relied upon at the time of the last revision and the actual physical and financial performance varies more than + or (-) 20%. As a result, only 50% of the benefit accrued in the past is considered for adjustment in the revised tariff. This would answer NSICT's contention that additional income had accrued on account of increase in efficiency and additional investment. Even this adjustment is ordinarily to be made within the tariff validity cycle of three years. However, in order to smoothen the impact of this adjustment, this Authority has taken a liberal view and spread it over next five years i.e. till 2007-08. Incidentally, even the NSICT states it will come for revision in the year 2009.

It is noteworthy that the additional surplus mentioned above does not take into consideration the benefit continued to accrue to the NSICT from April 2005 till implementation of the revised tariff.

- (xiii). Subject to the above analysis, a copy of the cost statement of the NSICT is attached as **Annex- I**. The summarised position of the results disclosed by this cost statement is as follows:

Sr. No.	Year	Surplus(+)/Deficit (-) (Rs. in lakhs)	Surplus(+)/Deficit(-) (in % of operating income)
1.	2000-01	(-)364	(-)1.80%
2.	2001-02	7481	25.58%
3.	2002-03	14418	38.79%
4.	2003-04	13225	34.91%

Sr. No.	Year	Surplus(+)/Deficit (-) (Rs. in lakhs)	Surplus(+)/Deficit(-) (in % of operating income)
5.	2004-05	12581	33.15%
6.	Total for 2000-01 to 2004-05	47342	29.14% (Avg)
7.	2005-06	14726	38.8%
8.	2006-07	11659	30.7%
9.	Average surplus as % of operating income for the years 2005-06 to 2007-08.		30.2%

- (xiv). The final revenue surplus position clearly points out that there is no case for any tariff increase, as claimed by NSICT (although not a formal tariff proposal supported by facts and figures) as its entitlement which it wants to forego in the interest of Indian trade. It is also clear that there is no justification for conceding the demand of NSICT to allow it to continue with the existing tariff which, if acceded to in spite of the huge revenue surplus position, will only amount to ratification of the additional surplus earned by NSICT in the past and permitting such a surplus generation to continue in future. That some of the users have expressed their willingness to continue with the existing rates cannot require this Authority to close its eyes to the additional revenue surplus generated by NSICT and particularly when this kind of approach finds no place in guidelines. Incidentally, some of the users who have expressed such a view are not representatives of importers – exporters who are ultimately affected by the port tariff. Above all, if this position even after it has come to the notice so clearly is ignored at one private terminal, it could set a bad precedence and may give rise to demands for more than entitlement from other private terminals / port trusts. Whereas it would be difficult to accept as per guidelines.
- (xv). Strict application of cost plus principles followed for regulating port tariff will warrant a reduction to the extent of approximately 30% in the existing tariff of NSICT. But, it has to be recognised that the estimates constructed are based on approximations and assumptions. With the increasing throughput, there could be additional investment more than the levels assumed in this analysis. Further, the recently implemented government policy on concessions for coastal movement will have some impact on the revenue which is not captured in the estimates considered in this analysis. More importantly, perhaps for the first time in the history of TAMP, the users are not keen to reduce the tariff to the levels warranted by the cost plus approach. In view of these considerations, it may be reasonable to moderate the reduction in tariff otherwise necessary as per the cost statements.
- (xvi). It is noteworthy that the earlier tariff Order of 2000 allowed a 16% increase in tariff (other than storage charges) to NSICT over the tariff of JNPT. The JNPT still continues to operate at the same level. Even though it may not be absolutely essential that both the terminal operators in the same port should have the same tariff level, the JNPT tariff level is an important input which is considered for reducing NSICT tariff. This consideration should not in anyway be construed to mean that this Authority accepts the tariffs at JNPT as ideal. It could be possible that the existing rates of JNPT may undergo a change when the port's proposal for general review which is to be filed shortly, is disposed of. A reference is made to JNPT's tariff because it is the only container terminal in the country other than NSICT to handle annual volumes in excess of 1 million TEUs.

As mentioned earlier, the revision effected in November 2000 is limited to amending (i.e.) allowing 16% increase in the rates prescribed in Sections 1 to 4 of the Scale of Rates of NSICT and introduction of Section 9 for allowing rebates. That being so, only these categories of tariff are considered for reduction for time being in order to bring the tariff level to that of JNPT. The effect of this reduction will only be around 12.8% of the revenue.

It is noteworthy that reduction in tariff is not effected to the level warranted by the cost / revenue surplus position because the cost statements have been framed with

assumptions and approximation. The additional surplus (i.e. over and above the admissible cost and return) will be assessed at the end of the tariff validity period and will be set off in the tariff to be fixed for the next cycle (i.e. commencing from the year 2008)

- (xvii). Even after the tariff reduction, it is to be recognised that the NSICT retains Rs.236.71 Crores on account of the unadjusted additional surplus made for the period 2000-01 to 2004-05. This apart, there is an accrual of additional surplus for the year 2005-06 till the tariff reduction takes effect prospectively. These accumulations should take care of the possible tariff adjustment which may be warranted due to competition in future, an apprehension made by the NSICT.

11. In the result, and for the reasons given above, and based on a collective application of mind, this Authority amends the existing Scale of Rates of NSICT accordingly. The revised Scale of Rates of the NSICT to the extent amended is attached as **Annex - II**.

12.1. Following 3 year validity period, the revised tariff will be valid for 3 years from the date of its notification, after which the validity will automatically lapse unless it is specifically extended by this Authority.

12.2. Even though the validity period of the revised tariff is prescribed as 3 years, considering the fact that the cost analysis in this case is made based on various assumptions and approximations under the given circumstances, this Authority is willing to take up the matter ahead-of-schedule if NSICT seeks a review by furnishing all relevant cost / financial details required.

13. In terms of Clause 3.2.8 of the revised tariff guidelines, the revised tariff may become effective after expiry of 30 days from the date of its notification in the Gazette of India.

(A.L. Bongirwar)
Chairman

ANNEX - I

**COST STATEMENT OF NHAVA SHEVA INTERNATIONAL
CONTAINER TERMINAL LIMITED**

		Financial years							
		Rs in lakhs							
Sr. No.	Particulars	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
	Throughput in TEUs	694,899	943,928	1,201,119	1,230,355	1,232,470	1,232,470	1,232,470	1,232,470
I	OPERATING INCOME								
	Income from Container Handling	18,486	26,946	34,288	35,122	35,183	35,183	35,183	35,183
	Income from Storage and others	1,679	2,281	2,859	2,735	2,740	2,740	2,740	2,740
	Other Income	17	19	28	28	28	28	28	28
	Total Operating Income	20,182	29,246	37,175	37,885	37,951	37,951	37,951	37,951
II	OPERATING COST								
	Equipment Running Costs	1,786	2,578	3,358	3,803	4,115	4,362	4,623	4,901
	Operating & Direct Labour	748	807	856	907	961	1,019	1,080	1,145
	Maintenance Labour	253	271	287	304	323	342	363	384
	Staff Welfare	88	98	103	110	116	123	131	138
	General Operations	484	532	596	610	617	625	627	633
	Royalty	407	1,171	1,847	3,682	4,562	6,826	10,053	13,727
	Property Costs	198	198	210	222	236	250	265	281
	IT/Communications	174	184	201	219	239	260	266	273
	Operations Equip. Depn.	3,965	3,966	3,966	3,986	3,986	3,986	3,986	3,986
	Equipment Hire	205	220	233	247	262	278	294	312
	Technical Service Fee	0	0	0	0	0	643	641	637
	Sub Total (a)	8,309	10,025	11,657	14,090	15,416	18,714	22,330	26,418
	Non-operating Depreciation	259	327	328	328	328	328	328	328
	Misc Exp.	310	310	310	310	255	24	24	24

	Management & General Overheads	560	594	634	676	722	770	822	877
	Sub Total (b)	1,129	1,231	1,272	1,314	1,304	1,122	1,174	1,229
	TOTAL (II) (a+b)	9,438	11,256	12,928	15,404	16,720	19,835	23,504	27,647
III	SURPLUS(I-II)	10,744	17,990	24,246	22,481	21,230	18,115	14,447	10,304
IV	Computation of Return (I) For the period 2001-02 to 2004-05								
	Preference Share Capital (found nil in its Annual accounts)	13,000	13,000	13,000	13,000	13,000			
	Equity and debt considered in the ratio 1:1 of the capital employed after it being funded by the preference share. Equity share holder funds	30,453	28,487	26,255	24,382	22,389			
	Debt	30,453	28,487	26,255	24,382	22,389			
	14% dividend on preference shares	1,820	1,820	1,820	1,820	1,820			
	10.5% as the cost of the debt	3,198	2,991	2,757	2,560	2,351			
	20% Return on equity share holders funds subject to debt /equity in the ratio of 1:1 of the capital employed allowed for the year 2000-01 to 2004-05	6,091	5,697	5,251	4,876	4,478			

	Total return for the period 2000-01 to 2004-05	11,108	10,508	9,828	9,257	8,649			
	(ii) 15% Return on capital employed for the period 2005-06 onwards as per the revised guidelines for tariff fixation.						8,123	7,522	7,024
V	NET SURPLUS/DEFICIT after admissible Return and payment of royalty (III-IV)	-364	7,481	14,418	13,225	12,581	9,992	6,925	3,279
VI	NET SURPLUS/DEFICIT AS A PERCENTAGE OF INCOME (after allowing payment of royalty as admissible cost and after admissible return)	-1.80%	25.58%	38.79%	34.91%	33.15%	26.33%	18.25%	8.64%
VII	Average net surplus/ deficit as a percentage of total operating income for the years 2000-01 to 2004-05 and 2005-06 to 2007-08 in addition to the admissible return allowed at VI above	29.14%					17.7%		
VIII	50% of net surplus/ benefit for spreading it over the subsequent years at the time of tariff review/ revisions (V * 50%)	-182	3,741	7,209	6,612	6,291			
				cumulative for 5 years	23,671				
IX	Setting off 50% of the benefit / loss accrued during the years 2000-01 to 2004-05 over the next five years						4,734	4,734	4,734

X	Net surplus in addition to admissible Return, payment of royalty as cost item and after adjustment of past benefit/ loss over the subsequent years(V+IX)	14,726	11,659	8,014
XI	Net surplus as a percentage of total operating income for the years 2005-06 to 2007-08 in addition to the the return allowed and after setting off 50% of the benefits/ losses accrued in the past five years	38.8%	30.7%	21.1%
XII	Average net surplus as a percentage of total operating income for the years 2005-06 to 2007-08 in addition to the the return allowed and after setting off 50% of the benefits/ losses accrued in the past five years (X/I)	30.2%		

Nhava Sheva International Container Terminal Limited
Amendment to the Schedule of Rates

I. The existing tariffs given in Sections 1,2,3 and 4 of the Schedule of Rates are substituted with the following schedules:

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

SECTION – 1 CHARGES FOR ALL NORMAL AND REEFER CONTAINERS

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

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
20'	2600	1560
40'	3900	2340
over 40'	5200	3120
ICD Container		
20'	2600	1560
40'	3900	2340
over 40'	5200	3120
Empty Container		
20'	2100	1260
40'	3150	1890
over 40'	4200	2520

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

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
20'	925	555
40'	1388	833
over 40'	1850	1110
Empty Container		
20'	925	555
40'	1388	833
over 40'	1850	1110

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

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
ICD Container		
20'	1300	780
40'	1950	1170
over 40'	2600	1560

D. Yard to truck / Truck to yard

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
20'	400	240
40'	600	360
over 40'	800	480
Empty Container		
20'	400	240
40'	600	360
over 40'	800	480

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

SECTION – 2 CHARGES FOR ALL TRANSHIPMENT CONTAINERS

A. 1- 3000 TEUs

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
20'	3000	1800
40'	4500	2700
over 40'	6000	3600
Empty Container		
20'	2600	1560
40'	3900	2340
over 40'	5200	3120

B. 3001 – 6000 TEUs

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
20'	2800	1680
40'	4200	2520
over 40'	5600	3360
Empty Container		
20'	2400	1440
40'	3600	2160
over 40'	4800	2880

C. 6001 – 9000 TEUs

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
20'	2600	1560
40'	3900	2340
over 40'	5200	3120
Empty Container		
20'	2200	1320
40'	3300	1980
over 40'	4400	2640

D. Above 9000 TEUs

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
20'	2400	1440
40'	3600	2160
over 40'	4800	2880
Empty Container		
20'	2000	1200
40'	3000	1800
over 40'	4000	2400

- Note: 1. A transshipment container is the one which is discharged from one ship, stored in the yard and transported through other vessel.
2. A container originally declared as transshipment container, subsequently moved by rail or road will lose its identity as a transshipment container and shall be treated as normal import container and prescribed charges as applicable shall be payable.

SECTION – 3 CHARGES FOR ALL HAZARDOUS CONTAINER

A. Ship to yard using port crane.

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
20'	3000	1800
40'	4500	2700
over 40'	6000	3600
ICD Container		
20'	3000	1800
40'	4500	2700
over 40'	6000	3600
Transshipment Container		
20'	3000	1800
40'	4500	2700
over 40'	6000	3600

B. Yard to CFS – Transport and lifts at CFS

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
20'	1000	600
40'	1500	900
over 40'	2000	1200

C. Yard to Rail for ICDs only

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
ICD		
20'	1500	900
40'	2250	1350
over 40'	3000	1800

D. Yard to truck

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded		
20'	500	300
40'	750	450
over 40'	1000	600

Note: A container containing hazardous goods as classified under IMO is a hazardous container.

SECTION – 4 CHARGES FOR ALL OVER DIMENSIONAL CARGO CONTAINERS

A. Ship to yard using port crane.

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded		
20'	5200	3120
40'	7800	4680
over 40'	10400	6240
ICD		
20'	5200	3120
40'	7800	4680
over 40'	10400	6240
Transshipment		
20'	5200	3120
40'	7800	4680
over 40'	10400	6240
Empty		
20'	4200	2520
40'	6300	3780
over 40'	8400	5040

B. Yard to CFS – Transport and lifts at CFS

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
20'	1850	1110
40'	2775	1665
over 40'	3700	2220
Empty Container		
20'	1850	1110
40'	2775	1665
over 40'	3700	2220

C. Yard to Rail for ICDs only

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
ICD		
20'	2600	1560
40'	3900	2340
over 40'	5200	3120
Empty		
20'	2600	1560
40'	3900	2340
over 40'	5200	3120

D. Yard to truck

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
20'	800	480
40'	1200	720
over 40'	1600	960
Empty Container		
20'	800	480
40'	1200	720
over 40'	1600	960

Note: Containers carrying over dimensional cargo beyond the normal size of standard containers and needing special devices like slings, shackles, lifting beam, etc., are termed as over dimensional cargo containers. They also include damaged containers and other types which require special devices.

II. The existing condition No.9 under General notes is substituted with the following:

“9. With the prior permission of the NSICT authorities, rebates shall be applicable to port users for carrying out various operations with their own arrangements. The rebates applicable along with conditions are as follows:

- (i). If ship's own gears are used for loading / un-loading containers from shore to ship or vice versa, rebates in handling charges shall be allowed as under:

Particulars	Rebate (in Rs.)	Coastal (in Rs.)
Loaded Container		
20'	600	360
40'	800	480
over 40'	1200	720
Empty Container		
20'	600	360
40'	800	480
over 40'	1200	720

- (ii). If a port user employs his own Tractor Trailer (T.T) for transporting containers from
- (a). Quay to container yard,
or
(b). container yard to quay
a rebate in handling charges shall be allowed as under:

Particulars	Rebate (in Rs.)	Coastal (in Rs.)
Loaded Container		
20'	300	180
40'	450	270
over 40'	600	360
Empty Container		
20'	300	180
40'	450	270
over 40'	600	360

- (iii). If a port user provides the labour for lashing / un-lashing operations of containers, a rebate of Rs.30/- per container shall be allowed in the handling charges.

The rebate shall be limited to the number of containers actually lashed.

- (iv). If a user brings his own equipment for lifting containers from the container yard to truck and vice versa, the following rebates in handling charges shall be allowed:

Particulars	Rebate (in Rs.)	Coastal (in Rs.)
Loaded Container		
20'	250	150
40'	375	225
over 40'	500	300
Empty Container		
20'	250	150
40'	375	225
over 40'	500	300

- (v). No rebate will be admissible for back to town containers handled by private equipment.
