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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 42

New Delhi, 15 March 2002

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of a proposal of the Chennai Container Terminal Limited for fixation of tariffs for container operations at the Chennai Container Terminal as in the Order appended hereto.

(S. Sathyam)
Chairman

Tariff Authority for Major Ports
No.TAMP/73/2001-CHPT

The Chennai Container Terminal Limited (CCTL)

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Applicant

ORDER

(Passed on this 6th day of March 2002)

This case relates to a proposal received from the Chennai Container Terminal Limited (CCTL) for fixation of tariffs for container operations at the Chennai Container Terminal.

2.1. A Concession Agreement was signed between the CCTL and the CHPT on 9 August 2001 for developing, operating and managing the Container Terminal at the Chennai Port for thirty years. As per the Agreement, the CCTL project was to be implemented within 90 days, i.e. by 7 November 2001. In anticipation of commencement of operations, the CCTL had proposed tariffs based on its estimate of traffic and costs.

2.2. The CCTL has made the following assumptions in the proposed tariff application:

- (i). The proposed stevedoring charge includes services of stowage planning, electronic transfer of information and bay plan processing.
- (ii). The throughput projections considered in the financial statements are based on the traffic estimates of the CCTL.
- (iii). Royalty at the rate of 37.128% of the gross revenue as per the Licence Agreement, is considered in the cost analysis.
- (iv). The cost elements have been grouped into operating cost, management and general overheads and financing cost covering interest and other charges on loans.
- (v). The foreign exchange rate has been considered based on present trend of exchange rate fluctuation; and, in consultation with the experts.

2.3. On being requested, the CCTL subsequently furnished a comparative statement showing the current CHPT tariffs and tariff proposed by the CCTL. It has also pointed out that the services provided by the CHPT and the CCTL are not comparable and hence the tariff items may not compare.

3. In accordance with the consultation procedure prescribed, the tariff proposal of the CCTL (other than the cost / financial data) was initially circulated to the CHPT and various concerned users / representative bodies of port users for their comments. The comments received from them are summarised below:

The Tamil Chamber of Commerce (TCC)

- (i). The Trade is bearing the financial burden over the years due to delay in vessel berthing, very poor productivity, premium on sea freight and heavy surcharge imposed by the Lines under the pretext of congestions and berthing delays due to inefficiencies of the port.
- (ii). The trade has to pay speed monies for landing / loading the containers and additional stevedoring charges to vessel operators apart from the official tariff prescribed by the CHPT. In view of the above, though the tariffs proposed by the CCTL appears to be higher than the tariffs prevailing at the CHPT, they will actually workout less than the total THC paid by the trade at the CHPT.
- (iii). The CCTL must ensure that the quality of service proposed to be offered at the Chennai Port is similar to the services offered at the NSICT. It should introduce and encourage electronic

transfer of data between the Trade, Shipping Lines and the Terminal similar to the services provided at the NSICT.

- (iv). The CCTL should also improve the truck turn around time at the Container Terminal and allow delivery and pick-up of boxes 24 hours a day/365 days a year.

The Chennai Custom House Agent's Association (CCHAA)

- (i). Its members disagree to pay the port charges proposed by the CCTL in dollar terms.
- (ii). There is an across the board hike ranging from 20% to above 2000% in the tariff items proposed by the CCTL for specific services. The CHPT Scale of Rates were last notified in March 2001. There is absolutely no justification in again revising the rates in September 2001 when no extra services are rendered by the CCTL.

The Hindustan Chamber of Commerce (HCC)

- (i). The very purpose of privatisation is to bring down the effective cost of handling by way of efficient use of capital, labour force and systems.
- (ii). The Chennai Port Container Terminal achieved a record throughput of 3,62,000 TEUs in the year 2000-01 and is expected to surpass this level in the year 2001-02 with the present handling system. As against this, the CCTL's commitment is to handle 3,50,000 TEUs in first year of operation using the existing equipment. That being so, the tariff increase proposed in the region of 35% for 20' and 44% for 40' container is not justified.
- (iii). The increase proposed in wharfage charges from Rs. 540/- to (US \$4 + Rs. 360/-) for 20' container; and, from Rs. 810/- to (US \$6.4 + Rs. 576/-) for 40' container is not justified.
- (iv). The CCTL has proposed to allow 3 free days as against 10 free days allowed by the CHPT. It is a well known fact that Customs clearance of cargo takes on an average 3 days. Storage charge will have to be paid in case of any intervening holidays and Saturday / Sunday. It is requested to consider a 7 day free storage period. Alternatively, storage charges may be prescribed similar to the tariff level of the CHPT for the initial slab of 1-15th day after the expiry of free days.
- (v). There is no justification for the increase proposed in Lift on/Lift-off charges from Rs. 315/- to Rs. 928/- for 20' container; and, from Rs. 470/- to Rs. 1392/- for 40' container. Even if the equipment are replaced, they shall have a long usage life span. Such a steep increase is, therefore, not warranted.
- (vi). There is no reasonable justification to propose all the tariff items in dollar terms. Hence, all charges may be levied in Indian Rupees only.
- (vii). The proposed Scale of Rates does not prescribe any charges for demurrage on cargo. It is, therefore, assumed that the CCTL shall not levy this charge. The demurrage charges proposed for the LCL seem to be astronomical.

The Chennai Steamer Agent's Association (CSAA)

- (i). The tariff proposed for handling FCL container is very high as compared to the tariffs prevailing at the CHPT as well as those levied at the PSA SICAL.
- (ii). The increase proposed for handling LCL container is exorbitant even though no additional services are offered with reference to CFS operations.
- (iii). Some consignments, which are not presently classified under 'hazardous cargo' as per the CHPT Scale of Rates, shall fall within the provisions of IMO as per the CCTL proposal.

- (iv). The wharfage charges proposed is exorbitant compared to the CHPT tariff. This shall lead to an exorbitant increase in the cost of operating at the Chennai Port.
- (v). There is a wide disparity in the rates proposed by the CCTL for reefer containers as compared to the CHPT tariffs, especially with reference to 40' reefer container.
- (vi). The increase proposed for storage charge is very high for the initial slabs. The CCTL is fully aware that most of the containers will fall within this slab.
- (vii). The tariff proposed for Lift on / Lift off at CY, charges for handling hatch covers, charges for shifting containers, landing/re-loading hatch covers are exorbitant.

The Madras Chamber of Commerce and Industry (MCCI)

- (i). The Government's initiative to privatise the operation of the Chennai Container Terminal will bring about modernisation of equipment and efficiency in operation which will lead to larger volumes. All these positive factors logically contribute to reduce the tariff level.
- (ii). The CCTL has taken over an extremely profitable ongoing venture. In the last fiscal year, the Container Terminal operations at the CHPT generated a revenue of Rs.89.0 crores resulting into a profit of Rs. 52.4 crores after taking into account all expenditure including arrears paid to the workers attached to the Container Terminal.
- (iii). Out of the 572 workers currently employed in the Container Terminal as per the Terminal Agreement with the CCTL, only 42 workers have opted to join the CCTL. The balance have chosen to revert back to the CHPT. This shall dramatically reduce the labour cost burden of the CCTL.
- (iv). With the rationalisation between the CHPT and the Chennai Dock labour, the concept of notional gang is eliminated from the Container Terminal. Stevedoring operator at the Container Terminal is, therefore, exempted from utilising the CHPT gang. This shall result into a monetary saving to the extent of Rs. 134/- per unit in the existing stevedoring charges.
- (v). Separate rates are proposed for 20' and 40' containers handled by the on-board stevedores. This is fundamentally incorrect since the governing factor in stevedoring operations is not the size of the container; but, the number of lifts achieved per shift.
- (vi). A comparison between the existing cost at the CHPT Container Terminal and the tariffs proposed by the CCTL indicates 47.6% increase in THC, 59.8% increase in LCL import, 51% increase in reefer container and 0.2% decrease in ICD export. Such a steep increase proposed by the CCTL shall have a direct impact on the cost of exports / imports of containers from the Chennai Port.
- (vii). In light of the above facts, the revenue envisaged by the CCTL need to be reduced. Since the tenure of the BOT is very long, the CCTL can use this to get a very attractive lending rate for its debt rather than increasing the tariffs for its customers.

The Shipping Corporation of India Limited. (SCI)

- (i). The rate proposed by the CCTL is very much on the higher side as compared to the existing rates of the CHPT. Such a disproportionate increase will definitely affect the shipping trade at the Chennai port.
- (ii). The existing throughput at the CHPT Container Terminal is 3.62 lakh TEUs. The CCTL has projected 4.25 lakhs TEUs as against the guaranteed traffic of 3.5 lakhs TEUs in the first year. Any increase in the throughput will automatically bring down the cost per unit. The magnitude of increase proposed in the traffic estimates, therefore, does not justify the increases proposed in the tariff items.

- (iii). The present rate at the CHPT has been fixed on a cost plus formula. It has proved to be reasonable as the CHPT is able to earn profit from the existing Container Terminal operations. Moreover, the CHPT's request to revise these rates during the last revision was turned down by the Authority as it found that the port was financially comfortable at the existing level of rates. Any increase proposed in the existing tariff, for container operations is, therefore, not justified.
- (iv). The tariff items for certain services have been proposed in dollar terms. This will automatically increase the tariffs with the fluctuation in the exchange rate. Since, the Container Terminal is not spending any money in convertible foreign exchange, it is neither rational nor justifiable to collect the charges in dollar terms.
- (v). Any substantial increase will not only affect the trade; but, also the various industries availing the facilities of the port, as their products may not be cost competitive in the international market.
- (vi). Specific comments on each components of the proposed tariff cannot be offered since the basis/cost details have not been circulated along with the proposal. It has, however, compared the important tariff items proposed by the CCTL vis-à-vis the existing CHPT tariff and brought out the following main points:
 - (a). Charges for handling FCL containers using on-board stevedoring labour are 50% more than the CHPT rates.
 - (b). The increase proposed in stuffing/destuffing charges using on-board stevedoring labour varies from 300% to 400% approximately.
 - (c). There is a marginal reduction in the wharfage rate proposed on containerised cargo. The increase proposed in the container wharfage is, however, more than 500%.
 - (d). A steep increase of 300% has been proposed for shifting the containers. The tariff proposed for reefer containers, shut out containers, charges for extra movement of containers is more than 200% for each of these tariff items.

4.1. The CSLA expressed its inability to comment constructively in absence of cost/financial data. It had also requested to send a copy of the Concession Agreement (CA) so as to enable them to understand the performance criteria committed by the CCTL for the increase proposed in the tariff items.

4.2. The details relating to the CCTL tariff proposal was not initially circulated to the users bearing in mind the 'commercial sensitivity' of proposals attached to the tariff applications from the Private Terminals, notwithstanding the absence of any specific request from the CCTL about maintaining confidentiality of. Subsequently, as agreed by the CCTL, the traffic and income projections for ten years and Profit & Loss Account (excluding the portion relating to Capital structure) for ten years were circulated to the various concerned port users / representative bodies of port users for their comments.

4.3. On a request from the Authority, the CCTL furnished extracts from the Lease Agreement signed between the CHPT and the CCTL. The important performance conditions prescribed in the CA were forwarded to the CSLA. The standard services prescribed in the Concession Agreement are summarised as follows:

- (i). Facilities in accordance with "Good Industrial Practice".
- (ii). Replace all existing and new equipment with new equipment, not inferior to the equipment being replaced.
- (iii). Replace all equipment after a certain economic life.

- (iv). Employ efficient Information Technology.
- (v). Develop Chennai as a Hub Port within 3 years and provide for 30% of total traffic to be non-transshipment traffic by year 5.
- (vi). Adhere to a certain operating methodology at the Container Terminal.

5.1. A joint hearing in this case was held on 4 October 2001 at the CHPT premises. At the joint hearing, the following submissions were made:

The Chennai Container Terminal Limited (CCTL)

- (i). We will give all the information required. On some issues we may need time to respond. Please allow us to make a written submission subsequently.
- (ii). For valuation of assets, Independent / Valuer Engineers have to be appointed by the CHPT. They have to give their report. On receipt of the report we will communicate to the Authority.
- (iii). We have assumed Phase-II to commence by February 2002.
- (iv). Acquisition of only forklifts are 'optional'; rest all equipment are 'compulsory'. We have no choice. Whenever we dispose of the 'obsolete' equipment we will give that credit to the tariff computation and make appropriate adjustment with your approvals. We give that assurance today.
- (v). Benefits will start flowing steadily. They will not be apparent from day one.
- (vi). Performance standards specified in the Concession Agreement is based on the IDFC draft. The IDFC advised that the Terminal Operators need not be bound by performance requirements which the Government accepted.
- (vii). The work involved for empty and laden containers is the same. Why then distinguish?
- (viii). Why does the CSLA want to see our Balance Sheet. We do not see their Balance sheets.
- (ix). Why penalties for delayed deliveries? Do lines pay penalties for delays?
- (x). Wharfage is being reduced. Why not talk about it?
- (xi). Container charges were last revised in 1991. The total impact now will be 1.6% more. What is the big deal? Why are there so many furores about it?
- (xii). Dollar denomination of on-board stevedoring has no implication for the consignees. It is part of sea freight and the Lines cannot recover again.
- (xiii). On hazardous cargo, we will do several additional things. There is enough justification for the increase proposed. We will also provide insurance cover on hazardous cargo.
- (xiv). 'Storage charge' even now is denominated in dollars terms at the CHPT.
- (xv). The CCTL is constrained by yard space. We therefore, have to reduce the free period'. If free period is not reduced, tariff will have to be raised.
- (xvi). Our emphasis is on efficiency. As a result, the turn around time will drastically decline. The Lines will benefit a lot.
- (xvii). With professional operation of the Container Terminal, the container turn around time also will decrease. Consequently, the trade will benefit.

The Chennai Port Trust (CHPT)

Labour is assigned to the CCTL. The CHPT will bear the cost of VRS.

The South India Chamber of Commerce and Industry (SICCI)

- (i). We had great expectations. There is no specific assurance from the CCTL about efficiency, productivity, reduction of tariffs and reduction of freight.
- (ii). Two month's time is not enough to discuss the details of a proposal like this. Widespread discussion is required.
- (iii). Please see our written submission. We are worried about costs escalating.

The Chennai Steamer Agents' Association (CSAA)

- (i). They assure of better efficiency. Then cost must come down. Incredibly, their tariff goes up even with respect to an inefficient CHPT rate which is based on a 'cost plus' model.
- (ii). For dollar denominated tariffs a very high exchange rate fluctuation has been assumed. This will give them unjust enrichment.
- (iii). With DLB merger there are no 'notional' gangs. This must lead to reduction of cost and not increase in cost.
- (iv). With implementation of VRS, their labour cost will go down. This must result in reduction of tariffs.
- (v). 'Hidden costs' are a reality no doubt; but, they are included in the box rate paid to the stevedores. The CCTL rate is double of that. Where then is the 'saving'?

The Container Shipping Lines Association (CSLA)

- (i). It will be useful if we can see the Concession Agreement, Profit and Loss statement, and the details attached to the Balance sheet.
- (ii). There is no justification for the increase proposed by CCTL. It must be rejected.
- (iii). In the current global situation of recession, everyone is being pressurised to reduce cost. The CCTL must do so too.
- (iv). From the west coast of India to Europe, the container handling charges have fallen from US \$1300 per TEU to US \$ 500 per TEU. How can we accept an increase? All the Lines are opposed to it.
- (v). Traffic forecast assumptions need careful and critical scrutiny.
- (vi). Depreciation for tariff purposes must be considered over a longer period.
- (vii). Tariff must be related to productivity levels. The TAMP need not prescribe the norms. The TAMP must require the CCTL to enter into a bilateral agreement.

The Madras Chamber of Commerce & Industry (MCCI)

- (i). With economic crisis things are very bad. There is no scope for cost increases. The TAMP must stop that.

- (ii). In the CHPT general revision case, container rates were not revised as there was no justification. It is being taken over as a going concern. How can they increase the rate so much?
- (iii). Why the Company Act model is adopted for depreciation calculation? It gives an unnecessary padding for tariff setting.
- (iv). The TPT problem was that vessels even with 2 containers were required to go to the Container Terminal. The CHPT follows a cut-off point of 30 containers. Will the CCTL continue with this procedure?
[CCTL clarified that the cut off limit as per CA was 40 containers].

The Shipping Corporation of India (SCI)

- (i). The costs are already high. The CCTL proposal will increase it further.
- (ii). Dollar denomination of tariffs results into an inbuilt provision for further increase.
- (iii). 8% exchange rate fluctuation considered by the CCTL is unrealistically high.
- (iv). Wharfage on containers is proposed to be increased by 400% which is exorbitant.
- (v). Why a 50% increase is proposed for Hazardous cargo? What additional service is proposed to be provided?
- (vi). For container storage charges there is an unjustifiable increase of 350-400%. We will have to pass it on to consignees.
- (vii). Is LCL destuffing compulsory at the CCTL; or, can it be done in a CFS?
- (viii). The reefer charges proposed are too high.

The Chennai Port Stevedores' Association (CPSA)

There is no labour involvement at all in container handling. Why then the steep hike? There should only be a nominal charge for lashing / unlashng.

The Chennai Custom House Agents Association (CCHAA)

- (i). The CHPT Container Terminal is very inefficient. We are suffering. We welcome the privatisation. But, we object to the steep increase proposed by the CCTL.
- (ii). Let them come in, show their performance; and, earn the tariff increase. Do not increase straightaway.
- (iii). In case of delay in delivery of a box after all documents are given, prescribe a penalty.

The Southern India Shippers Association (SISA)

- (i). Please maintain status quo for one year. Let them show their worth. Thereafter, increase the rates, if necessary.
- (ii). Why talk of a justification for increase. There is no need for any increase. We were expecting a reduction. We are shocked.
- (iii). 'Storage' is not a vessel related activity. How can it be dollar denominated?

- (iv). 41% increase is being projected as a 'reasonable return'. It is a phenomenal increase; and, shall not be allowed.
- (v). Their investment is for 30 years period. The CHPT itself makes a Rs. 52 crore profit from the Container Terminal. Where is the need for a higher return?
- (vi). For Hazardous cargo, where is the extra service for the tariff to be hiked?
- (vii). Wharfage is increased; and, the free period is reduced. This is double jeopardy.

The Hindustan Chamber of Commerce (HCC)

- (i). It is not true that there is a reduction in wharfage. The wharfage of Rs. 400/- has become 440/- per container.
- (ii). In the year 2000, the TAMP said there is no justification for increase in container charges at the CHPT. Hardly one year has gone by and the CCTL is talking of greater volumes and economies of scale. How can rates go up?

5.2. Some of the port users/representative bodies of port users have furnished further written submissions which are summarised as follows:

The Southern India Shippers Association (SISA)

- (i). The CCTL proposal has come at a time when there is world wide recession; and, India in particular has been hit by the recession.
- (ii). The increase proposed by the CCTL if implemented will hit the trade very badly. Such an increase on the exporters will drastically increase the cost upwards and in the case of many commodities they will not be able to compete in the international market.
- (iii). Privatisation of the Public Sector Undertakings and Corporatisation of PSUs are stressed everywhere as they improve efficiency, reduce unwanted paper work, reduce bureaucratic delays resulting into an overall reduction in cost. The CCTL must prove these parameters and only then it can ask for any reasonable fixation of tariffs.
- (iv). All charges for stevedoring, etc. are collected in Indian rupees at the CHPT. But, CCTL is seeking tariff in dollar denomination. It needs to be clarified whether prescription of dollar denominated tariffs is part of the tender conditions.
- (v). The port will earn a royalty of Rs. 57 crores during the year 2001-02 which shall go upto Rs. 117 crores within the year 2005-06. The CHPT cannot expect huge profits from investments which are already depreciated.

The Southern India Chamber of Commerce and Industry (SICCI)

It has reiterated points made in the written submissions furnished by the SISA.

The Chennai Steamer Agents' Association (CSAA)

- (i). The Government has announced that its objective is to help the trade to reduce its transaction cost. The proposed CCTL tariff defeats this very objective.
- (ii). The CCTL has a minimum start up of cost. Hence, there is no justification to increase the tariff.
- (iii). Since the majority of cost to the CCTL is in Rupees, there is no justification for proposing for dollar denominated tariffs.

- (iv). Any change in the current operating procedure which may increase the current operating cost needs to be indicated by the CCTL.
- (v). The CCTL must clarify whether the value of the equipment proposed to be imported is written down as per the Companies Act or as per the actual life of the equipment.
- (vi). The Authority may insist the CCTL to develop a mechanism in order to check the revenue generated due to depreciation in the rupee.
- (vii). The operating expenses are unnecessarily inflated by considering the TSA fees payable to the P & O Ports Limited, Australia.
- (viii). The Authority may constitute an independent Audit Committee to verify the proposed operating cost with the present cost at the Container Terminal before accepting the proposal.
- (ix). A comparison of the tariff proposed by the CCTL vis-à-vis the existing CHPT tariff reflects that there is no justification for the increased proposed by the CCTL.
- (x). The classification of hazardous cargo is to be defined. The CCTL must also clarify the segment of operating cost which will attract the additional charge for hazardous cargo and over dimensional cargo.
- (xi). There is no justification for proposing a dollar denominated tariff for shutout containers. There must be no differential rate for boxes over 40' in length. These cost should be recovered from the party who requests the shut out (shipper / shipping line).
- (xii). The charges for extra movement of containers are to be recovered from the importers/exporters.

The Tamil Chamber of Commerce (TCC)

In addition to its earlier comments, it has made the following points:

- (i). It has congratulated the CHPT for reducing loss in handling containers; and, also for increasing the revenue by way of earning royalty @ 37.128% on gross revenue.
- (ii). The existing equipment at the Container Terminal are all aged one. The CCTL must replace it with new equipment to bring in more output and to give efficient services.

The Container Shipping Lines Association (CSLA)

- (i). The proposal made by the CCTL is not supported by any justification for various tariff items proposed by it. Further, it is not possible to derive any justification based on the information provided. The proposal shall, therefore, be rejected in toto.
- (ii). Indian ports are uncompetitive to their rivals ports in the Indian Ocean. Notwithstanding that marine costs are not within the purview of this enquiry, the Authority must take into consideration the overall cost of Indian ports and make recommendations to the Government.
- (iii). The CCTL is to be required to comment as to why a tariff reduction should not be implemented.
- (iv). The impact of the proposed increase will vary from operator to operator depending upon the mix of containers, move types, etc. The overall cost impact, however, is expected to be in the region of 35% to 40%. A like to like comparison of the cost payable at the CHPT under the existing operating condition with the tariff proposed by the CCTL reflects that the increases proposed are substantial and unjustified.

- (v). The increase of 40% and 72% proposed on transshipment containers will become very significant with increase in its volumes when the transshipment procedures and regulations are streamlined.
- (vi). It has been argued that the increases are not as high as the “hidden” costs - i.e. inducements, in the existing operation will disappear when the CCTL takes over. This argument is baseless since the stevedores charges paid by the Lines include these hidden cost.
- (vii). There is no justification for proposing a 50% premium for hazardous cargo. The Lines do not generally charge extra for hazardous cargo, except for serious hazards.
- (viii). The tariff proposed for 40’ container is more than 1.5 times the 20’ container rate; and, 45’ container is more than 2 times the 20’ container rate. These proposal deviates from the tariffs prevailing at the other ports (NSICT/JNPT) where a rule of 1.5 times and 2.0 times is applied.
- (ix). The increase of over 350% proposed in storage charges for the slab upto 15 days is substantial. The Lines find it very difficult to recover storage charges from customers for this period. Hence, the increase proposed must be moderated.
- (x). The exports must have 7 days free as offered at the JNPT and the NSICT.
- (xi). The CCTL has proposed to include new items of tariff for fixation of seal, shifting the containers within the terminal, charges for additional move between Terminal and Rail, etc. The CHPT does not have separate tariff for such items and has still managed to produce substantial profit.
- (xii). The rationale for proposing tariff for change in status Rail / Road is not understood as there is no additional physical operation involved. Presently, no costs are incurred and in such a scenario a direct lift onto a trailer is given from the CONCOR without the container going back into the C.Y. This tariff item should, therefore, be deleted.
- (xiii). The charges for power supply and reefer monitoring are proposed to be increased by 7% for 20’ container and 50% for 40’ container. There is no logic for such disparity in rates.
- (xiv). The DLB/Port gang rationalisation will result into savings of around 25%. It will also facilitate inter-changeability of labour. The majority of the current terminal employees are opting for VRS; therefore, the CCTL will be relieved of the future liabilities. Furthermore, the cost of labour will reduce as it will not be required to employ the same number of labour as was previously employed.
- (xv). The TAMP declined any tariff increase in Container activity at the CHPT in the year 2000 as it was found to be generating revenue surplus. The CCTL is taking over an existing profit making operation without any initial deployment in new equipment except for some minor civil works and modifications. It is unclear why the present level of profit will not be maintained without increase given the reducing cost base and increase in efficiency.
- (xvi). In Tuticorin, the PSA SICAL had considered the CHPT tariff without alteration and started their operation with brand new equipment and after a substantial civil works programme. It is unclear why the CCTL with less onerous capital expenditure cannot do the same.
- (xvii). The CCTL will be in a position to secure economies of scale as a result of improved operating practices and by dint of increased berth length. It is not clear why these benefits cannot be fed back into their pricing regime.
- (xviii). The non-operating depreciation, upfront payments and VRS expenses (written off) seem high in the initial years. The normal accounting practice is to treat a VRS as an exceptional item and not as a part of the Profit and Loss statement.

- (xix). The payment of Technical Service (TS) Fee is unjustified. It appears to be a device to maximise the profit extracted by P&O Ports Limited, Australia. The increase proposed in the TS Fee is not acceptable as once the company is mature most of its work will be undertaken by the local management.
- (xx). The volumes of 20' container reduce by over 50% after the year 2007. This is inconsistent with the growth shown for 40' container. It will be helpful to understand the CCTL's assumptions for traffic forecast.
- (xxi). While estimating the revenue, first 7 days are considered free for export FCL whereas, the tariff manual proposed by the CCTL stipulates only 3 free days. This discrepancy in the tariff proposed needs to be clarified.
- (xxii). The royalty payment to the CHPT is sought to be recovered from the end user. It is however, a commercial arrangement between the CHPT and the CCTL. The validity of inclusion of this item in setting the tariff is, therefore, questionable.
- (xxiii). The depreciation in Rupee vis-à-vis US\$ has been taken @ 6% in the initial years (2001-04) and @ 5% in the period 2004-07. This is contrary to the historical depreciation of the rupee at a normal average rate of 3 % during the period 1991-2001. This gives an unjustifiable 50% additional increase in the exchange rate calculations.
- (xxiv). The CHPT will pay all the capital dredging costs, the benefits from which will accrue to CCTL. Thereafter, no benefit appears to accrue to Lines through reduced rates.
- (xxv). The Authority must compare marine costs in Chennai, other Indian ports and other ports in the Indian Ocean. In this context, the cost details at the Dubai / Colombo / Chennai / Cochin / Nhava Sheva / Tuticorin and Haldia Ports have been furnished.
- (xxvi). There appears to be a lack of clarity in respect of the rate of return that are to be allowed to port operators which is a key element in regulating the port pricing.

5.3. Subsequent to the joint hearing the CSLA has made further submissions. It has stated that its earlier submissions need to be amplified in light of the consultation with the Lines. Some of the main points made by it are as follows:

- (i). The Lines have no objections to the changes to be introduced, provided they are beneficial. If the Authority allows any increase in port charges, the Lines will be forced to recover these increase from the Trade.
- (ii). The CCTL must give its commitments relating to productivity improvements rather than verbal assurances. It is not appropriate to contemplate changes in tariffs without such commitments.
- (iii). A comprehensive understanding is required about the planned capacity of the terminal and the forecast utilisation thereof. If the installed capacity is more than the level of utilisation, it shall have direct impact on the operation and maintenance cost.
- (iv). There is a fundamental difference between the empty and laden containers. Empties can be blocked, stacked handled en mass unlike the loaded containers which must be handled individually. The rates must reflect this aspect.
- (v). The CSLA comments on the report of Arthur Anderson in the NSICT case may be taken into account while disposing of the CCTL proposal.
- (vi). The Lines have repeatedly justified the components of the THC. They have pointed out in particular that the ocean freight does not include on-board stevedoring.
- (vii). The LCL unstuffing of imports are proposed to be increased by 61% and 89% for 20' and 40' container; empty container handling by 50% and 75%; FCL import and export handling by

14% and storage charges in 15 day slab is proposed to be increased by 328% and 428% per 20' and 40' container. Such a steep increase is proposed for a terminal where only relatively minor civil works are required as against the NSICT where a new quay face was constructed.

- (viii). There is a choice between the terminals in Nhava Sheva whereas no choice is available in the Chennai Port. It appears that the P&O Ports Limited contemplates such a steep increase to exploit its dominant position.
- (ix). Indian Ports are expensive as compared to its competitors in neighboring Indian Ocean. The Government's policy in respect of rewarding the port investors is to be understood as it appears that the present policy over-rewards the terminal operators which is detriment to the lines and the trade.

5.4. The CCTL and the CHPT had not furnished complete information on various points raised for clarification / additional information from them based on a preliminary examination of the proposal. At the joint hearing, both the CHPT and the CCTL agreed to submit complete information with reference to a number of issues raised by the Authority. The CCTL was also allowed to file written submissions subsequently if it was not able to respond on any of the issues at the joint hearing itself.

6. After the joint hearing, the CCTL had furnished its comments on some of the issues raised at the joint hearing. The main points made by the CCTL are summarised as follows:

- (i). The argument that there should be no hike in tariff as the Container Terminal has made a profit of Rs. 52 crores from a turnover of Rs. 89 crores does not hold good due to the following reasons:
 - (a). The veracity of the profit quoted by the CHPT is unknown.
 - (b). The CHPT does not provide a complete range of services to customers as will be offered by it. Presently at the Chennai Port, the customer has to pay additional charge for services provided by external contractors / agencies.
 - (c). Further, it has to pay a Royalty, lease rent, tax, etc. whereas the Port Trust is free from all these charges.
 - (d). At its terminal customers are required to pay only tariffs approved by the TAMP. Payment of speeds monies are not allowed.
- (ii). The shipping industry is not suffering from recession; but, from over capacity / over tonnage. Its efficiencies at the operational level will lead to almost negligible pre-berthing time (5 to 6 days at present) and quick turn around of vessels. This will result into a large savings to the lines.
- (iii). The CSLA contention that the overall cost impact from the proposed tariff will be 35%-40% is not true. A detailed analysis of costs including payment of speed monies and savings from efficiency will in fact bring in a savings of 35%-40%.
- (iv). It is not true that it has sought for a rate increase, before making any investment. It has already invested Rs. 110 crores as payments to the CHPT towards up front fee, lease rent, value of equipment taken over, Rs. 3 crores in IT and Rs. 2.5 crores in other costs (training, preliminary expenses etc.). In addition, large investment is proposed to be made in refurbishments civil works, procurement of other equipment and IT.
- (v). The provisions made for the repairs is expected to exceed its earlier estimates since the Terminal is in a much worse condition than what was originally envisaged.

7.1. Based on a preliminary examination of the information furnished, the CCTL was requested to furnish additional information / clarification / documents on various points. Some of the important points raised are listed below:

- (i). The designed capacity of the Container Terminal at Stage-I and Stage-II with the equipment acquired or hired by the CCTL.
- (ii). Productivity norms of various equipment deployed.
- (iii). The basis of estimating capital cost of assets transferred by the CHPT.
- (iv). The rupee and foreign currency portion in the capital structure alongwith the debt servicing plan for the entire loan period.
- (v). The reasons for acquiring the assets from the CHPT, which have already outlived their normal lives.
- (vi). Details of the estimated number of the CHPT employees likely to avail the VRS and computation of the VRS liability. Subsequently, based on the information furnished it was requested to clarify whether the proposed rate took into account the full salary commitment of 572 employees or only to the extent of employees taken over by it.
- (vii). The reasons for not considering other expenses, preliminary expenses and equipment cost written off while computing the earnings before depreciation, interest and tax (EBIT) for arriving at the variable portion of TS fee. It was also pointed out that for the stated reasons TS fees were not considered for fixing the tariffs at the NSICT.
- (viii). The reasons for variation in the depreciation rate for similar types of assets procured at different time period. Reasons for variation in the rate of depreciation as compared to the NSICT proposal.
- (ix). A detailed cost sheet for each equipment or service centre for which the tariff has been proposed.
- (x). The reasons for proposing dollar denominated tariff for various services provided by the CCTL.
- (xi). The reasons for proposing same tariff for empty and FCL containers.
- (xii). The estimate of demurrage income to be justified with reference to average dwell time of different categories of containers at the CHPT for the last two years.
- (xiii). The additional services provided by the CCTL in the case of ICD containers as compared to other than ICD containers so as to justify the differential rates proposed.
- (xiv). A detailed working of the proposed wharfage charge excluding labour costs for stevedoring and on shore operations.
- (xv). Cost details to justify the proposed rate for reefer containers taking into consideration the suggested upgraded facilities and refurbishing as compared to the existing CHPT tariff.
- (xvi). A revised cost statement based on the income estimates at the CHPT tariff level for the throughput projected by the CCTL. In absence of any detailed working from the CCTL in this regard, we had forwarded a detailed working of income estimated by us at the CHPT tariff taking into consideration the traffic projection of the CCTL. The CCTL was then requested to confirm these income estimates.
- (xvii). The details of individual tariff items supported by cost and financial statement for each activity reconciling with the overall expenditure as shown in the Profit and Loss Statement.

- (xviii). The estimates of repairs and maintenance costs are to be justified in light of the actual repairs and maintenance cost incurred by the CHPT for its container handling equipment. Comparison of these estimates with the repairs and maintenance cost at the NSICT.
- (xix). Some discrepancies observed in the schedule relating to machinery and equipment were pointed out. The CCTL was requested to reconcile this schedule with reference to phasing of procurement indicated and the procurement cost of the equipment proposed to be added; and, also specify the basis of index considered from the year 2002-03.
- (xx). Valuation of the assets by the Independent Engineer / Valuer for the assets taken over by the CCTL widely differed from the assessment made by the CHPT. Confirmation whether the assessment made by the Independent Engineer has been finally accepted by both the CHPT and the CCTL.
- (xxi). A premium equivalent to the lease rentals has been considered for each year in the revised cost statements furnished by the CCTL. The lease premium is, however, payable initially at the time of allotment. The differential premium is required to be paid in that particular year when lease rentals are revised upwards. Further, the lease premium paid at the time of allotment holds good during the entire period of lease. That being so, comments on whether this payment may be amortised over the entire period of the Concession Agreement.
- (xxii). Recognising the separation payment to be received by the CCTL in the terminal year of the Licence period at the present value in each of the years during the life of the Concession Agreement for computation of tariffs.
- (xxiii). Depreciation on the unrealised foreign exchange loss; and, the depreciation on the gross block of assets (excluding unrealised foreign exchange loss) are to be indicated separately.
- (xxiv). Since the one time set up fees payable @ 1% on the loan amount is the cost related to the loan amount, the effect of these fees may be spread over the tenure of the loan.
- (xxv). The cost of the equipment acquired and written off in the year 2001-02 and also the preliminary expenditure written off in five years may be spread over the entire concession period.
- (xxvi). The cost statements furnished by the CCTL reckoned with income and expenditure for the whole of the year 2001-02 whereas it has commenced operations only at the end of November 2001. The periods shown in the cost statements may, therefore, be adjusted.

7.2. In response to the queries raised by the Authority, the CCTL has furnished requisite information at different points of time. Taking into consideration all the responses received from the CCTL together, the information / clarifications furnished are summarised as follows:

- (i). The throughput forecast taking into consideration various factors like quay length, back-up area and the equipment deployed has been furnished.
- (ii). Productivity norms of various equipment deployed has not been furnished. The CCTL has explained that the specifications of equipment may change in the future due to technological improvements.
- (iii). The valuation report sent by the Independent Valuer / Engineer was subsequently furnished. The Independent Valuer (Price Water House Coopers) has assessed the existing equipment taken over from the CHPT at Rs. 32.43 crores. The civil works has been valued at Rs. 5.50 crores and the equipment at the New CFS and the container workshop has been estimated at Rs.0.028 crores by the Independent Engineer.
- (iv). The foreign currency participation in the equity share element is 77% and the resident holding is 23%.

- (v). The details relating to terms of loan were not furnished at the first instance. The CCT reiterated that its estimates were reliable and based on the present economic trend. Subsequently, it forwarded the terms of loan indicated by some of the financial institutions. In accordance with the terms stipulated by these financial institutions the interest rate on Rupee loan were reduced from 15% to 13.5% in the revised cost statements. The one time fee on the loan amount drawn was also reduced from 2% to 1% in the revised cost statements.
- (vi). It has stated that it had expressed its inability to the Government to take over the equipment which had already outlived the normal lives. The Government had, however, made the acceptance of this condition as mandatory.
- (vii). It has accepted that no VRS payment has to be made by it. Out of the 572 employees of the Container Terminal only 43 employees have opted to join the CCTL.
- (viii). A copy of the agreement signed with the P&O Australia as regards terms for payment of TS fee has been furnished. Clarification sought by us regarding computation of TS fee has, however, not been furnished.
- (ix). Depreciation on existing assets has been calculated on the basis of remaining economic life of assets. A marginal difference observed in the depreciation rate of other assets is due to the fact that it has not benchmarked depreciation rates of the CHPT with that of the NSICT.
- (x). A detailed cost sheet for each equipment or centre could not be made available. The value of variable cost per unit is based on its estimate and is reasonable. The systems are not yet geared to break up each individual item for each equipment as it treats the entire business as one consolidated service and not a clutch of various services provided to the customer.
- (xi). It has stated that it is not aware of the methodology adopted by the CHPT for arriving at the lease charges. Subsequently, based on the lease rentals indicated by the CHPT, the annual lease rentals for the year 2001-02 was revised to Rs.9.6 crores. Lease premium equivalent to annual lease rent was also incorporated in the revised cost statements.
- (xii).
 - (a). The tariff items relating to containers handled by on-board stevedoring labour has been proposed in dollar terms flowing from the decision of the Authority in one of the MBPT case that the cost of on-board stevedoring of containers is a part of ocean freight.
 - (b). In line with the dollar denominated tariff prescribed at some other Container Terminals in India, the charges for handling hatch covers, shifting containers within the vessel, reefer containers and shut out containers have been prescribed in dollar denomination.
 - (c). The stuffing / destuffing charges has been proposed in dollar terms since these charges are levied by the Lines in dollar denomination.
- (xiii). The rates for handling empty and laden containers are proposed at the same level since they will be handled by same equipment, which will perform the same work at the same cost of operation and maintenance. On-board stevedoring labour does not make any distinction between the empties and the laden containers in respect of the rates.
- (xiv). The demurrage income has been estimated on the basis that it will encourage shipping lines to move the boxes to off-dock CFS quickly as is being done at the NSICT.
- (xv). As per Indian law and as per TAMP precedence, the container is an extension of a ship; and, accordingly wharfage on containers have been proposed in dollars terms.
- (xvi). Additional transportation from the terminal to the rail yard is provided in case of ICD containers. The CONCOR services will be used for transporting the goods from the rail yard for onward journey.

- (xvii). A detailed working of wharfage charges excluding labour charges on stevedoring and on shore operations has not been furnished. It has only stated that wharfage rate takes into account the lease rent and Royalty of 37.128% of revenue payable to the CHPT.
- (xviii). In case of reefer container, the CHPT has prescribed a tariff of Rs.185/- per shift for supply of power. In addition to this, Rs. 60/- per shift has to be paid on an average to the lines for providing the service of plugging and monitoring. The CCTL has proposed a tariff of US \$25 /- per day for all the three services that is power supply, plugging and monitoring.
- (xix). The profit and loss statement and the Balance sheet for the years 2001-02,2002-03 and 2003-04 based on the CHPT tariff was furnished. A detailed working of income estimates at the CHPT tariff was, however, not furnished. Subsequently, when the detailed working was forwarded by us for confirmation of income estimates, it has indicated the tariffs considered by it while estimating the income at the CHPT tariff level.
- (xx). The service provided under the tariff is an integrated process. All items of cost have been charged and the tariff has been calculated on the overall basis.
- (xxi). The existing equipment at the CHPT are not at the optimum productivity levels, hence it would be unfair to compare the CHPT repair cost to those of the CCTL. The lower allocation of funds by CHPT for repairs and maintenance is perhaps the reason for the very poor state of disrepair that the terminal is in now. It would not be justifiable to compare cost elements projected by CCTL against those of NSICT as they are two different companies.
- (xxii). It has reconciled the procurement cost of equipment with reference to phasing of the procurement indicated. The unit cost of equipment has been considered in US dollars and then converted into Indian currency. Hence the unit cost appears to be indexed.
- (xxiii). The valuation of assets assessed by the Independent Engineer / Valuer has not been accepted by the CHPT. The CHPT has estimated the Buildings at Rs. 8.0 crores and equipment and spares at Rs. 76.86 crores. The CHPT is employing the remedies available in the CA to review this valuation.
- (xxiv). The lease premium is a sunk cost as this amount is not recoverable. Hence as per the correct accounting practice it has to be treated as an expense in the years it is paid.
- (xxv). A number of additional costs will have to be incurred at the time of separation which is difficult to judge at this point of time. Hence it is preferable not to include any Termination cost for fixation of tariff.
- (xxvi). The depreciation on unrealised foreign exchange loss is in accordance with the Accounting Standard prescribed in this regard.
- (xxvii). The funding fee of 1% on the loan taken is a sunk cost; and, hence has to be accounted in the year of expense.
- (xxviii). The preliminary expense has been written off in five years as per the accepted accounting practice.
- (xxix). The cost statements for the year 2001-02 may be considered as first year of the project and so on. Hence there is no need to adjust the income and expense on prorata basis.

7.3. In line with the various information / clarification given above, the CCTL has submitted revised cost statements on 22 November 2001 and subsequently made further modifications in the cost statement vide its letter dated 10 January 2002. The main modifications made by the CCTL in the revised cost statements are summarised as follows:

- (i). The VRS liability has been removed; and, adjustment in cost has been made with reference to the actual number of labour taken over from the CHPT.
- (ii). The cost statement has been revised based on valuation report given by the Independent Engineer / valuer.
- (iii). A premium equal to the lease rentals has been considered in the revised cost statements.
- (iv). Interest rate and one time setup fees has been reduced based on the indications given by lenders.
- (v). Cost of a new sub-station proposed to be constructed at an estimated value of Rs. 11 crores in year 1 has been added.
- (vi). Few other modifications have been done in the Schedule pertaining to repairs to civil works.
- (vii). An additional cost of Rs. 40.32 lakhs has been added in the equipment running cost to incorporate hire charges of 5 additional reach stackers (till December 2002).

8.1. Apart from the clarifications sought from the CCTL, the CHPT was also requested to give information / comments / clarification on the following specific points:

- (i). The traffic projections made at the time of bidding. The container mix of 20' / 40', FCL / LCL / empties and rail / road cleared containers handled at the CHPT for the last two years.
- (ii). The asset-wise details of transfer cost as assessed by the Independent Valuer / Engineer as per the terms of the Licence Agreement.
- (iii). The designed capacity of the Container Terminal proposed to be handed over to the CCTL in Stage I; and, also the estimated capacity when the extended Terminal will be handed over.
- (iv). Comments on those services indicated as not being provided by the CHPT in the comparative statement furnished by the CCTL.
- (v). The charges levied by the MDLB and other agents for 'on- board services' for lashing / unlashng and stuffing / destuffing.
- (vi). Whether the CHPT provides necessary services towards survey of containers and recovers the charges accordingly or is it directly taken care of by the container operators.
- (vii). The total lease charges receivable from the CCTL and also the amount of Security Deposit and premium, if any, for the first three years.
- (viii). The present stevedoring charges at the existing level of levy for 'on-board' workers.
- (ix). The cost statement for the container handling activity for the year 2000-01.
- (x). The number of employees who have actually opted to join the CCTL. The VRS liability, if any, of the port towards the employees identified for transfer to the CCTL.

8.2. The CHPT has furnished the information / clarification on the various points raised by us which are summarised as follows:

- (i). The traffic handled at the CHPT for the last two years with details of container mix has been furnished.
- (ii). The civil structure / buildings including electrical and mechanical fittings has been valued at Rs. 6.13 crores by an Independent Engineer. The mechanical equipment and spare parts have been valued by Independent Valuer at Rs. 32.68 crores. It has received the

consideration under dispute as it considers the valuation is not fair. The CCT has also paid Rs. 2.02 crores to take over the newly procured spreader from M/s. Brohma Fareast.

- (iii). The designed capacity of the Container Terminal which was earlier estimated at 2.10 lakh TEUs at Stage I and 4.74 lakh TEUs at Stage II was revised to 4.74 lakh TEUs for the year 2000-01, 5 lakh TEU for the year 2001-02 and 6 lakh TEU for the year 2002-03 taking into consideration previous year productivity and 70% of berth occupancy.
- (iv). It has compared the tariffs proposed by the CCTL vis-à-vis its existing tariffs. Some of the main points observed are as follows:
 - (a). The container handling charges of the CHPT does not include services for stowage planning, data handling, processing and transfer of data between vessels, Containers Terminal and the Shipping lines.
 - (b). No premium is levied for handling over dimensional container or hazardous container as against 50% and 25% premium proposed by the CCTL.
 - (c). Wharfage on LCL cargo is recovered as per cargo classification prescribed in the wharfage schedule.
 - (d). Charges prescribed for shutout container includes services for shut out, subsequent delivery and extra movement charges at the CPY.
- (v). The charges levied by the MDLB for 'on-board service' includes / lashing and unlashng charges. No labour is engaged for stuffing and destuffing by the MDLB.
- (vi). It does not provide survey-related services to the port users. It does not monitor the reefer containers. The respective MLOs deploy the private agencies for monitoring the reefer containers.
- (vii). A detailed working of annual lease charges receivable from the CCTL was given vide its letter dated 8 January 2002. Subsequently it has clarified that the CCTL paid the annual lease charge of Rs. 9.62 crores for the back up area leased out to them as per the Port Scale of Rates. No premium or security Deposit is payable by the CCTL for the area leased.
- (viii). The stevedoring employers have to engage the working of Cargo Handling Division for on board i.e. for lashing and unlashng on container vessel. It has furnished the manning scale for each gantry crane.
- (ix). The requisite cost statement for the container handling activity has been furnished.
- (x). Out of 572 employees at the Container Terminal only 43 employees have given their option to join the CCTL. All these employees have availed the special VRS 1992 scheme. The VRS liability will be borne by the Port.

9.1. The Container Terminal which was supposed to be handed over by the CHPT to the CCTL by 7 November 2001 as per the Concession Agreement was finally handed over on 30 November 2001. The CCTL had requested this Authority to allow it to continue with the existing CHPT tariff as an interim arrangement, till disposal of its proposal for separate tariffs.

9.2. Accordingly, an Order was passed on 4 December 2001 authorising the CCTL to levy the existing rates notified for the CHPT as an interim arrangement till final disposal of its proposal.

10.1. Subsequently, the CCTL has requested for immediate approval of its proposal relating to wharfage and storage components at least in view of the following:

- (i). When it took over the Container Terminal on 30 November 2001 the condition of all the equipment taken over from the CHPT was in a deplorable condition. It was in a state much worse than what it had anticipated.
 - (a). No RTG's were available in the Terminal to lease.
 - (b). Most of the ITV's taken over from the CHPT were unusable. Hence it had to lease it at a very expensive rate.
 - (c). Only two reach stackers were available. The owners of these reach stackers charged an astronomical rent taking advantage of the situation.
- (ii). Immediately after taking over the Container Terminal it took the following steps to improve the productivity:
 - (a). Additional Reach Stackers and Top lift trucks a total of 7 such equipment were hired on short term / long term leases.
 - (b). Some of its processes which created difficulties or caused delays for the trade were altered.
 - (c). Experts from all over the world were invited to evaluate the equipment quickly and to repair the same.
 - (d). Arrangement were made with the CONCOR to move import containers en-block from the CY to the CONCOR-CFS to reduce congestion in the import yard. The Consignees were requested to take deliveries directly from the CONCOR-CFS. Similarly, the major Shipping Lines were intimated that their containers will be stacked separately in the CY. The Shipping Lines were advised to move their import containers en-block to their preferred CFS immediately after 3 days free period.
- (iii). In spite of all its attempts to reduce congestion at the import yard, the volume at the import yard continued to built up. This was mainly due to the following reasons:
 - (a). After it took over the Container Terminal, wharf efficiency had increased exponentially. It had even reached berth move of 1526 TEUs per day. As a result of increase in wharf efficiency more import containers have entered the yard and at a faster rate than normal.
 - (b). Also, the waiting time of ships has come down from 21 days to nil. Thus all the import containers that hitherto would be "stored" at anchor were now stored in the CY.
 - (c). The Trade / Shipping Lines did not respond to this change in working practice. They still lifted their containers after the same delays as they used to do earlier. The CY was used as a storage area as the tariff allowed 10 days free time for cargo.
- (iv). The gradual increase in imports has throttled its ability to serve the trade. At present it is delivering a little over 500 import boxes per day. Its equipment can do more. Since the Trade is not taking delivery of their imports, its efficiency at the wharf is damaging container operations; and, choking the import and the export yard capacity.
- (v). If the boxes are not moved, its operations shall slowly come to a halt as there will be no more space to store import containers. This shall result into loss of valuable foreign exchange of India.
- (vi). The CY is an interim storage area and not an area for long term storage of containers. The CY at the CHPT is only 15 hectares as against 28 hectares and 38 hectares at the NSICT and the JNPT.

- (vii). With the removal of congestion surcharge the throughput is bound to increase which will aggravate this already critical situation.

10.2. With reference to the CCTL's request to approve demurrage and wharfage schedule it was felt that these tariff items would have significant implication on costing. Since these tariff items cannot be analysed in isolation, the CCTL's proposal to approve a part of its tariff proposal was, not accepted. It was informed that its proposal would be taken up in totality for disposal after the proposed second joint hearing.

11.1. This case was taken up for a preliminary discussion in the meeting of this Authority held on 13 December 2001. The Authority considered the fundamental issues arising out of the proposal as well as the Concession Agreement between the CHPT and the CCTL.

11.2. In view of a definite position emerging with reference to equipment valuation, employee cost, financing arrangements, etc. and in the light of some of the basic issues arising like reasonableness of revenue sharing arrangement, services rendered during the initial stage, cross-subsidisation, etc., it was decided that another joint hearing should be set up to specifically discuss the identified issues whereafter the case could be processed for final consideration.

12.1. Pursuant to the decision taken by the Authority, the Chairman fixed joint hearing on 18 January 2002 to consider the specific issues identified.

12.2. A detailed background note on these issues had been prepared and circulated in advance to all concerned. The six specific issues identified for consideration are as follows:

- (i). Reduction of the tariff cycle.
- (ii). Tariff-implications of the liabilities arising from the lease rentals and the revenue sharing arrangement agreed upon between the CHPT and the CCTL.
- (iii). Adoption, during the initial phase, of the existing tariffs at the CHPT for container handling.
- (iv). Need to readjust tariffs of the CHPT relating to activities other than container handling in view of the financial benefits accruing to it under the Concession granted.
- (v). Labour redundancy at the CHPT as a result of privatisation of its container terminal and its implications for tariffs.
- (vi). Dollar-denomination of charges for on-board stevedoring.

12.3. At the joint hearing held on 18 January 2002, the following submissions were made:

Chennai Port Trust (CHPT)

- (i). We support the proposal. It will give us additional revenue.
- (ii). The CHPT will have 450 redundant labour as a result of privatisation of the container terminal.
- (iii). Revenue / cost relating to the Container Terminal may be totally excluded from the CHPT tariff proposal. Do not count this 'profit' or 'loss' for other activities. Revenue share receivable is not an income from a port-related activity.
- (iv). Issue-2: We have followed the IDFC model document. That was discussed with all before it was finalised as a model. Users should have raised these objections then.
- (v). Issue-4 and 5: The revenue earning will not be more profiteering. There will be substantial expenditure on many long term projects relatable to container handling. In this regard we will give a detailed note in a week's time.

Container Shipping Lines Association (CSLA)

- (i). Why has the 'free period' issue assumed significance now when it was not a problem earlier?
- (ii). The container terminal has worked in the past with a 10 day free period for 'cargo'. Why should we change now and add to the tariff burden?
- (iii). Issue-1: Let there be a 2 year cycle. Let it not only be cost based. Let it be market based; performance based.
- (iv). Issue-2:
 - (a). At the NSICT / PSA SICAL royalty was allowed. If it is disallowed here, the CCTL cannot allege discrimination. Please look at the per TEU royalty rates: Rs. 47/-; Rs.102/-; and, Rs.1364/-. The CCTL cannot exploit like this.
 - (b). As regards the CHPT operation and the CCTL operation there is no change. Why add on elements like royalty and lease rental.
- (v). Issue-3:
 - (a). Existing tariff must be reduced. Performance standards must be built in and specified.
 - (b). The CCTL must commit itself to performance levels. This, however, must be left to be decided bilaterally.
 - (c). We will give a written submission about Special Service Request (SSR) introduced by the CCTL.
- (vi). Issue-6:
 - (a). It is not logical to denominate in dollar terms on-board stevedoring. That expenditure is incurred in rupees.
 - (b). There is a TAMP decision on this issue in another port. We do not accept the decision that on-board stevedoring is part of freight. We, therefore, reserve our right to protect our interests.

Chennai Steamer Agents' Association (CSAA)

- (i). The container terminal has worked in the past with a 10 day free period for 'cargo'. Why should we change now and add to the tariff burden?
- (ii). Issue-1: We have no objection to a 2 years cycle provided that: -
 - (a). The tariff is not hiked too much from the CHPT rate;
 - (b). The CCTL does not ask for an upward revision before that.
- (iii). Issue-2: The CCTL shall not be allowed to load the royalty to tariff. This will set in motion a dangerous trend. In future, operators will offer more and more royalty with the implied assurance of passing it on to the trade
- (iv). Issue-3:

- (a). The CCTL has not given any performance parameters on a sustainable basis.
- (b). The PSA SICAL with new equipment charged much less. The CCTL with old equipment is charging much more. How can they fleece us? They seem to be collecting money from us to fund purchase of their new equipment.
- (c). The SSR is unauthorised. The CCTL must refund with interest.
- (v). Issue-6:
 - (a). On-board stevedoring of Rs. 448/- was fixed with respect to DLB gang and notional gang. There are no such gangs in the CCTL. Rs. 448/-, therefore, is not relevant. The CCTL must provide its own costing.
 - (b). Incidentally, the rate now is Rs. 385/- i.e. about US \$ 9. The CCTL proposes to raise it to US \$ 36.

Chennai Container Terminal Limited (CCTL)

- (i). We are more concerned about the 'delays', about congestion at the yard.
- (ii). Issue-1:
 - (a). Compare like with like. The components are not the same in the CCTL and the CHPT.
 - (b). Our data may not be 'actuals'; but, they are as close to actuals as possible. Let us stick to a 2-year cycle.
- (iii). Issue-2:
 - (a). Royalty and Lease Rentals have to be considered purely from a cash flow point of view. There is an implied assurance that these will be reckoned with as cost items in tariff computation. The world over, this is the practice. In the Indian context of cost plus system, this has to be considered.
 - (b). Users in their comments have not raised this. Why are we talking about it?
 - (c). 'Royalty' is relevant for tariff or not is not an issue for discussion now. It should have been settled before bid.
 - (d). The CSLA argument against 'cost plus' model is a double-edged sword. It can work adversely also.
 - (e). The NSICT / PSA SICAL is a case of increasing royalty. The CCTL is a case of constant royalty. They are not comparable unless the averages are taken for comparison.
 - (f). If the TAMP accepts a lower figure, will it also reduce our payment of royalty to the CHPT?
- (iv). Issue-3:
 - (a). The TAMP does a calculation on a 30 year basis. If equipment are not there now, the benefits will be there later for which, on a 30 year calculation, they will then be paying less.
- (v). Issue-6:

This issue is a settled one. If it can be so in the MBPT, it must be so in the CCTL also.

Southern India Chamber of Commerce and Industry (SICCI)

- (i). Issue-1: We agree with the CSAA. 2 year cycle is good. Start at the end of 18 months so that we are ready at the end of 2 years. Too many and quick changes will upset the trade.
- (ii). Issue-2:
 - (a). Bid given by the CCTL was a big commercial venture. There must have been careful consideration of details. There is no link with tariffs.
 - (b). Privatisation brings in efficiency which in turn brings down costs.
- (iii). Issue-3: The CHPT was making substantial profit / surplus on the existing tariff. There is no reason why the CCTL, which is capable of better efficiency, should raise it. If at all, they should reduce it.

Tamil Chamber of Commerce (TCC)

- (i). Issue-1: We agree with the views of the SICCI.
- (ii). Issue-2: We agree with the CCTL. Some reasonable tariff incorporating all legitimate costs must be given.
- (iii). Issue-3: The CCTL has improved the system. This will increase efficiency. They shall not, therefore, be forced to keep the same tariff. Some 'reasonable' tariff should be fixed.
- (iv). Issue-6: We agree it should be dollar denominated.

Chennai Custom House Agents Association (CCHAA)

- (i). Issue-1: We are for 2 years tariff cycle. Existing tariffs must continue.
- (ii). Issue-2: We agree with the SICCI. Benefits of privatisation must flow.
- (iii). Issue-3:
 - (a). Existing tariff is not being maintained by the CCTL. They have unauthorisedly introduced an SSR (Special Service Rate). The TAMP must order refund.
 - (b). They talk of a higher payment for better service. In fact, there is no service at all.
 - (c). If they are allowed to function like this, traffic will go away, revenues will decline and royalty will diminish. The CHPT will repent later on that better for them to have continued.
- (vi). Issue-6: Convert existing rupee tariff to dollar terms at today's conversion rate. We have no objections.

Madras Chamber of Commerce and Industry (MCCI)

- (i). Issue-1:
 - (a). Exporter / Importer has his own trade cycle of 90 days. We, therefore, support a 2 year cycle.
 - (b). The current tariff must continue. With the CCTL efficiency they can cut costs to make enough profits.

- (ii). Issue-2:
 - (a). Port Trust exists for the benefit of the trade. The CHPT cannot give this a go-by during privatisation.
 - (b). The concessionaire shall not be allowed to add on royalty, etc., to charge abnormal tariffs.
- (iii). Issue-3:
 - (a). The CHPT has carried out container handling operations for 19 years. There has been no congestion all along. 29 move per hour was achieved earlier. The CCTL cannot cite 'better efficiency' as a reason for higher tariff.
- (iv). Issue-6:
 - (a). The trade is given the go-by always. The CSLA says if on-board stevedoring is denominated in dollar terms, then, the THC will be equally dollar denominated.
 - (b). At the CHPT it is a custom / practice to denominate this item in rupee terms. Please follow that. The MBPT decision need not necessarily apply.

Hindustan Chamber of Commerce (HCC)

- (i). Issue-1: Let there be a 2 year cycle. Let the CHPT tariff also be retained for 2 years (unless, there is a proposal to revise it down wards).
- (ii). Issue-2:
 - (a). Can royalty be accepted as an integral part of the tariff? Theoretically, they can offer 100% royalty and add it on to tariff.
 - (b). The CHPT said, we support the proposal because we get more revenue. Is this a good attitude for a Public Trust?
- (iii). Issue-3:
 - (a). Users have objected to any increase at all and not to "substantial increase" as cited in the background note.
 - (b). The CCTL has claimed extra ordinary efficiency levels. We wish to quantify the performance level at 31 moves per hour.
 - (c). Press release of the CCTL indicates equipment induction mainly after November 2002. Why increase tariff now?
 - (d). Just before handing over the terminal, the CHPT handled 274 containers with 3 Gantry Cranes per shift. If the CCTL is not able to maintain this, there is something wrong with them. They cannot blame the equipment and lease new ones. If they do, they cannot add it to the tariff computation.
 - (e). The TAMP's interim Order allowed the CHPT tariff. Whatever they have collected unauthorisedly, the CCTL must refund with interest.

- (f). The CCTL has admitted that they could hand over boxes after Christmas. For the period prior to that there should be no demurrage, ground rent, etc. The CCTL cannot blame the trade for their inefficiencies.
- (iv). Issue-4 and 5: Labour redundancy cost should not be a burden on the CHPT tariffs. They should not be reckoned with at the time of the CHPT general revision of tariffs.
- (v). Issue-6:
 - (a). If this is dollar denominated, the THC will also become dollar denominated. We want the rupee denomination to continue.
 - (b). Quantum of existing on-board stevedoring of Rs. 448/- need not be a basis. The CCTL must provide its own costing.

Chennai Stevedores Association (CSA)

- (i). Issue-1: We endorse the user views already expressed.
- (ii). Issue-2: Privatisation is for more efficiency and less cost. Adding royalty will increase the cost.
- (iii). Issue-3: We feel tariff must be reduced.
- (iv). Issue-6:
 - (a). What is the stevedoring work involved? In the court, they argued that there will be no stevedoring; there will be no labour.
 - (b). Only lashing / unlashng is relevant. That is subcontracted. It will cost not more than Rs. 15/- per box.

**Indian National Shipowners' Association (INSA) /
Shipping Corporation of India (SCI)**

- (i). Issue-1: There are not enough data to support a new tariff. They may continue with the existing tariff for 2 years. The C.A. also talks of starting with the existing tariff.
- (ii). Issue-2:
 - (a). Royalty and lease rental in the present stage may not be added. The CCTL knew what they were getting into. They shall not be allowed to increase tariff.
 - (b). If at all, allow lease rental; and that also in a subsequent revision.
 - (c). 'Royalty' is profit sharing. This cannot be added to tariff.
- (iii). Issue-3:
 - (a). Existing tariff shall not be raised. The CCTL was aware of all the details. Nothing has changed. They cannot raise tariffs.
 - (b). The CHPT performance levels had been quite good. There is not going to be any substantial scope for improving efficiency.

(iv). Issue-6: This may not be dollar denominated. The practice at Chennai shall be continued.

13.1. The Madras Chamber of Commerce & Industry (MCCI) has sent a representation bringing out certain tariff related and procedure related issues concerning the CCTL. It has stated that the TAMP had indicated that during the interim period the CHPT tariff shall be applicable and the CCTL shall follow the procedure and practice as in vogue in the CHPT. Contrary to the understanding of the trade, the CCTL has deviated on the various tariff / procedure related matters. The Chennai Customs House Agents Association (CCHAA) has also brought out a few points relating to the tariff levied by the CCTL which is not as per the CHPT tariff. At the joint hearing held on 18 January 2002, all the users present raised the issues relating to the action taken by the CCTL to shift containers to CONCOR CFS and the charges imposed by the CCTL for 'special services'.

13.2. Copies of representations received from the users in this regard were forwarded to the CCTL. The CCTL has also furnished its comments on the issues raised by the users.

13.3. Since the issues raised are relevant in the context of the interim rates approved for the CCTL, it was decided to deal with these issues separately and not to club with the CCTL's proposal for fixing tariffs. A joint hearing was also held on 2 February 2002 to consider the issues raised. This matter is being processed separately for final consideration.

14. Subsequent to the second joint hearing, written submissions have been furnished by the CCTL, CHPT and other user organisations on the specific issues considered in the joint hearing, which are summarised below:

Chennai Container Terminal Limited (CCTL)

(i). Issue- 1: Reduction of the tariff cycle.

- (a). The container handling tariffs at the CHPT were not revised by the Authority in April 2000 at the time of general revision of Scale of Rates. The rates were last reviewed in 1992. Thus many of the tariff items are hopelessly out of date, as costs have increased manifold in the last nine years.
- (b). The estimates of costing furnished by it may not be accurate. It is, however, based on similar experience gained in other projects as well as a very detailed analysis and studies. These are definitely accurate figures for the purpose of tariff determination.
- (c). The process of revising tariffs is taxing for the TAMP, the Operator and the Trade. Thus it will be beneficial for everyone involved if the Authority continued with a tariff cycle of 2 years.

(ii). Issue-2: Tariff implication of liability arising from lease rentals and revenue sharing.

- (a). Lease rentals is the expense incurred by it for using the Port's land, which is a legitimate business expense like a rent paid by a company.
- (b). The NSICT and the PSA SICAL had incurred capital expenses for the development of the area, on which depreciation was accounted for in the cost structure in their tariff application. This is not the case at Chennai where it is being provided with land that is ready to use and is also surfaced. It is thus logical to charge lease rentals in the instant case.
- (c). Lease rental is not a bid value. It is paid according to the rates notified in the Scale of Rates of the CHPT. It is, therefore, a legitimate cost that should be included in the tariff calculation.

- (d). The issue of payment of lease rentals in addition to royalty was agitated the time of pre-bid negotiations by the P&O Ports. The (then) Ministry of Surface Transport (MOST) vide its reply dated 17 May 2000 had clearly advised that lease rent should be paid in addition to royalty in this case.
 - (e). The method of financial return to the port as percentage on gross revenues earned was determined as part of the Non-Negotiable Conditions (NNC) that governed this bid. They were not open to question by the bidders.
 - (f). The CA and the system of royalty follows the pattern set by the IDFC model adopted by the Government. Before the IDFC model was finalised and accepted, it was discussed with the Trade and various Chambers of Commerce. At that stage, no objection on this issue was raised.
 - (g). The question about treatment of royalty as a cost in tariff determination must have been raised prior to bidding and should have been advised to bidders.
 - (h). The commitment that royalty will be treated as a cost is implied from privatisations all over the world where this is a routine practice as well previous privatisations in India where royalty has been treated as a cost item in tariff computation.
 - (i). The only way to ensure 'reasonableness' in a competitive bidding process will be to prescribe a royalty ceiling. If this is done, the bid will not remain competitive as all bidders may quote the maximum limit which will take away the basic fundamentals and competitiveness of a bid.
 - (j). At the time of evaluating the bids received, the Government and the Port must have assessed the reasonableness of the royalty payable before approving the Project.
 - (k). It is agreed that the CA does not give the Licensee any assurances about tariff adjustment. This is solely because tariff adjustment is a conference between the TAMP and the Terminal Operator unlike the CA which is an agreement between the Port and the Terminal Operator.
 - (l). A comparison of the royalty at the CCTL has been made with the royalty paid at the NSICT and the PSA SICAL for the first year. This is not a like to like comparison since they are fundamentally different projects. At the NSICT and the PSA SICAL, royalty is on a 'per TEU' basis. At the CCT, however, the royalty is a fixed percentage of gross revenue. If a comparison of the royalty payable at the CCTL vis-à-vis NSICT in the 28th year is made, the NSICT royalty will work out to 73% of gross revenue based on modest tariff increase as against 37.128% of gross revenue at the CCTL.
- (iii). Issue-3 : Adoption of the existing tariff during initial phase.
- (a). It took over the Chennai Port when it was at its peak of congestion; and, as a result a surcharge of US \$200 per container was being levied. The CHPT took 21 days to turn around a vessel. Within a month of taking over, the CCTL has got removed the surcharge, and eliminated the payment of speed money. Average truck turn-around has been reduced from 7.2 hrs. on 4.1 hrs. (including waiting for customs examination). Against an earlier average of 810 moves a day, the CCTL has achieved 1000 moves a day. It has caused substantial improvements and palpable change in the quality of service. There is, therefore, a very valid justification for an increase in the tariff in the first year itself.

- (b). New equipment have already been ordered, IT systems have been installed and contracts have been signed with the civil works. Hence the objection of the users to a tariff increase on the ground that new equipment and systems will come in only after a year is erroneous. A considerable amount of expenditure has already been incurred / proposed to incurred for procurement of various QCs, RTGs, reach stackers, IT, for repairs and refurbishment etc. so as to increase efficiency.
- (c). It will not be fair to draw a comparison between the NSICT, the PSA SICAL and the CCTL. The TAMP disallowed USD tariffs at the NSICT but granted Rupee tariffs which resulted in the NSICT being encumbered with the existing tariff. For the PSA SICAL the tariff that then existed in the CHPT was approved. Moreover the Chennai tariff was in Rupee terms whereas at the PSA SICAL many of the items were prescribed in dollar denomination. The PSA SICAL used a tariff set for a mechanised port in spite of the fact that Tuticorin, when it started was a non-mechanised Port. The container handling equipment was used at the Port one and a half years after commencement of operations by the PSA SICAL.
- (iv). The issue No.4 needs to be resolved by the CHPT and the Government. The CCTL has, therefore, no comments to offer.
- (v). As regards Issue No. 5, the suggestion that the CHPT may use its proceeds from the privatisation of the Chennai Port to meet the liability of redundant labour force is a very legitimate suggestion. It has further clarified that it has not included any costs to pay off any redundant labour taken over from CHPT in its revised tariff application.
- (vi). Issue-6: Dollar denomination of charges for on-board stevedoring.
 - (a). The international norms and practice are that all the cost incurred for having cargo loaded and discharged from a vessel is a part of sea freight. The above being applicable to liner terms of Bills of Lading; and, has been confirmed by various international Publication and has also been accepted by the Karmoham Conference.
 - (b). The cost of discharge and loading of cargo unto the vessel is part of sea freight; and, it is recovered by the Lines from the exporters and importers in dollars terms, though the denominated in Indian Rupees. In this backdrop it has requested to consider the proposed on-board stevedoring charges in dollar denomination.
 - (c). The Authority has upheld with reference to the MBPT that on-board stevedoring cost forms part of freight levied under Liner terms. There is no difference in tariffs in this regard at the CHPT.

Chennai Port Trust (CHPT)

- (i). Issue-4: The tariffs for the other activities at the CHPT may be fixed in accordance with the prescribed government guidelines to eliminate cross-subsidisation. The container handling activity has already been found to be a surplus activity. As per the revenue sharing arrangement, earnings by way of royalty payments will enhance the net surplus from the container handling activity. This net surplus will not be used by the CHPT to cross-subsidise other activities.
- (ii). Issue-5:
 - (a). Out of a total number of 572 employees at the container terminal, 529 workers have remained with the CHPT. All the direct and indirect expenditure pertaining to these workers will not be taken into consideration for fixing tariff of other activities of the CHPT. The expenditure of these employees will be met out of the royalty payments received from the CCTL.

- (b). It is being considered to redeploy the surplus manpower to the other operational areas like oil jetty, ore handling plant, etc. depending on the suitability of the workers to the job. In this case salary of the workers shall be considered for fixation of tariff where they are deployed and the royalty from CCTL and expenditure of surplus manpower will not be considered.
- (c). The investments made in the infrastructure leased out to the CCTL will also be excluded for calculating depreciation and the ROCE for fixing tariff of other activities of the CHPT.

Container Shipping Lines Association (India)

- (i). Issue 1:
The current (CHPT) tariffs may be maintained for 12 months whereafter a 2 year cycle can be introduced. Annual reviews are a cumbersome and time consuming process.
- (ii). Issue 2:
 - (a). Only reasonable cost must be taken into account in tariff computation.
 - (b). Allowing royalty and lease rentals in tariff computation means that the CCTL and the CHPT, both monopoly service providers, can make a private commercial arrangement and pass on the whole cost to customers.
 - (c). It is a fundamental tenet of the policy of privatisation that service and cost benefits will accrue to the Trade. This will not happen at the CCTL, if unreasonable cost elements are allowed.
- (iii). Issue 3:
 - (a). There is no reason why the CCTL should not, at the very least, accept the current tariff. Indeed it is perfectly reasonable to expect the CCTL to give tariff reduction.
 - (b). Container terminals must be prepared to give performance assurances. Such assurances may not be required to be applicable equally to all operators; they should be agreed bilaterally.
- (iv). Issue 4:
Even at a standstill rate, the CHPT's position will improve due to royalty and lease rentals against which there is no corresponding outflow for operation. It follows, therefore, that some downward adjustment of CHPT tariffs must follow if cross-subsidisation is to be reduced.
- (v). Issue 5:
 - (a). The issue of implication of labour redundancy in tariffs at the CHPT is illustrative of the problems that can arise out of adopting a 'cost-plus' regime. Cost plus policy is entirely inappropriate to container terminal pricing and must be replaced with a system that will encourage efficiency and share the benefits of privatisation.
 - (b). It will be wrong for either the CCTL or the CHPT to charge for any more labour than that required at a minimum to operate the facilities.
- (vi). Issue 6:
 - (a). On board stevedoring is not part of ocean freight under Lines terms for reasons explained elsewhere.

- (b). The logic that suggests that just because an activity takes place, to some extent, on board it must be dollar denominated is untenable. The labour performing the activity are paid in rupees.
- (c). The Lines reserve the right to denominate on board stevedoring element of the THC in dollars, if it is ruled that the CCTL may denominate this component in dollar terms.

Chennai Port Stevedores Association (CPSA)

- (i). The question of a stevedoring charge, be it in US\$ or Indian Rupee, does not arise in the case of the CCTL. The Government has exempted it from engaging any Port Dock labour for non-board operations.
- (ii). It is understood that the CCTL has sub-contracted the Lashing / unlashng and shoe-fixing works at a flat fee of Rs. 8000/- per vessel. This approximately works out to Rs. 8/- per container, if 1000 containers are loaded / unloaded onto / from a ship.
- (iii). Stowage planning is primarily the prerogative of the Master of the vessel. If the CCTL is providing a value addition by carrying out these services, it is for the benefit of the vessel to ensure optional and safe voyage. The cost of this service cannot be levied on the importer or exporter.
- (iv). Transferring information electronically is the mode of communication in all business. It will be an irony for users to pay an exorbitant charge that too in US dollar terms for electronic communication, especially when the cost of electronic transfer of data is extremely insignificant in this country.
- (v). The stuffing / de-stuffing of containers carried out at the terminal or its ancillary areas are devoid of any Port or Dock Labour. The CCTL has sub-contracted this work and the rate paid to the sub-contractor is hardly one fourth of the rate proposed by the CCTL for approval.

15.1. One of the six issues on which all users have vehemently voiced objection is about the tariff implication of the liabilities arising from the lease rentals and the revenue sharing arrangement envisaged in the Concession Agreement. Bearing in mind the substantive significance of this issue for tariff setting in this case as well as in any other BOT projects, it was decided to refer the issues involved to the Ministry of Shipping to have the benefit of the views on the subject of the Government.

15.2. It is noteworthy that such a reference has to be made at this stage on issues arising from the privatisation model because this authority was no a party to the deliberations relating to finalisation of the Concession Agreement in this case in particular or of IDFC – developed privatisation model in general.

15.3. The Ministry of Shipping has sent a brief reply on 5 March 2002 stating that ‘it has not been considered advisable by the Ministry to involve itself with the proposal at this stage’.

16. The CCTL has vide its letter dated 12 February 2002 submitted the revised cost statements. The important changes made in the cost statements are summarised below:

- (i). Inclusion of a capital expenditure of Rs. 9.295 crores required to support new quay cranes to be put in operation.
- (ii). Inclusion of a capital expenditure of about Rs. 9.21 crores towards replacement of rail fastening system.
- (iii). Changes in the drawn down amount of loan and equity capital.
- (iv). Marginal upward correction in income estimates.
- (v). Exclusion of equipment hire charges and slight adjustment of repair cost.

17. With reference to the totality of information collected during the processing of this case and based on the arguments advanced at the joint hearings, the following position emerges:

- (i). The CCTL has been awarded on 9 August 2001 the licence for developing, operating and managing the container terminal at the Chennai Port for a period of 30 years. As per the Concession Agreement (CA), the CCTL was to commence operations on 7 November 2001. This tariff proposal of the CCTL was submitted in August 2001 in anticipation of commencement of its operations on 7 November 2001. The taking over of the terminal was delayed reportedly due to some litigation; and, finally the CCTL commenced its operations from 30 November 2001.

Even though the CCTL had submitted its proposal in August 2001, it could furnish some of the very important details like the exact number of employees taken over by it from the CHPT, valuation of equipment and further structure transferred to it, debt financing, etc. only by the end of November 2001.

The first Joint Hearing in this case was held in October 2001; another joint hearing had to be set up on 18 January 2002 in view of a definite position emerging with reference to the various details furnished by the CCTL subsequently and in the light of some of the basic issues arising with reference to the admissibility of the revenue sharing arrangement envisaged in the CA for the purpose of tariff determination, cross-subsidisation in the CHPT tariffs, etc.

It may appear, if one does not go into the various events relating to this case, that it took slightly more than six months from the date of filing the tariff application for this case to be taken up for final consideration. Notwithstanding the serious staff constraints faced by this Authority, all efforts have been made to process this case expeditiously so that the terminal operator can have his own rates at the earliest. Nevertheless, the delay has occurred partly owing to the nature of the proposal which is based purely on estimates and forecasts which were also revised by the CCTL twice subsequently and due to various issues involved in this case which have emerged for the first time for consideration. It is noteworthy that the cost statements were revised last by the CCTL as recently as on 12 February 2002 mainly to include some changes in the estimated capital expenditure and the consequential changes in the capital structure.

- (ii). Since this is a new arrangement to develop and manage the container terminal, the proposal for fixation of tariff has been based on the CCTL's own projections of traffic and income and the project outlay for development and cost of operations based on its estimates subject to certain assumptions. On taking over of the container terminal, the CCTL's request to operate on the basis of the CHPT tariff pending disposal of its proposal was allowed as an interim measure. There is a demand from the user side to make this interim arrangement as the final tariffs for the CCTL at least for the initial period. This is based on the argument that the entry of a new terminal operator is only for the change of management of the terminal and, for all practical purposes, at least in the first year the situation on the ground will virtually remain the same. The users have objected to any change in the tariffs on the ground that there will be no *quid pro quo* at all.

One difficulty in adopting in toto the CHPT tariffs will be the difference in capital structure of the CHPT and the CCTL. Further, such an approach will pass on to the CCTL the benefit of certain inevitable, but not directly relevant to its operations, items of expenditure of the CHPT such as expenditure on staff colony, hospital and general overheads and other social obligations. Unlike the CHPT, the CCTL has no compulsion to cross-subsidise any other activity relating to port operations out of the surplus (after accounting for all admissible costs and margins) generated from the container terminal operation.

It may be more logical to go by the terminal operator's costs themselves and fix tariffs with reference to admissible and reasonable costs. Another noteworthy feature is that the capital cost of the CCTL consists of cost of old structures and equipment taken over from the CHPT and the cost of strengthening / refurbishing them as well as the cost of new additions. Even if a status quo is maintained for the tariff levels, re-grouping of tariff items to suit the operational

procedures adopted by the CCTL will be necessary which calls for consideration of the CCTL's proposal.

It can be argued that the NSICT had been allowed to adopt the existing rates of the JNPT when it commenced its operations; and, the PSA SICAL was allowed to adopt with some minor modifications the tariffs applicable for the CHPT when it commenced its operations at the TPT. It may be noteworthy that new models and approaches will have to be developed to suit emerging requirements and based on experience gained in the past. It may not be reasonable in any transitional situation to expect a rigid model which provides for no scope for bringing any reasonable changes in approach.

- (iii). In any computation of tariffs, with reference to the Licensee's cost data, it is inevitable to deal with the admissibility and reasonableness of some of the cost items like royalty, lease rentals, technical service fee, etc.

The CCTL's proposal includes a revenue sharing of 37.1% of the gross revenue and payment of lease rentals to the CHPT for the lands allotted as items of the cost for termination of tariffs. While provisions of the CA may govern the actual transactions, it becomes necessary for this Authority to inquire into the very admissibility of these items or from the angle at least of reasonableness of the quantum. There can be an opinion that the Tariff Authority shall have no concern about matters relating to 'royalty / revenue-sharing arrangements' between a Port Trust and its Licensees. It is not reasonably possible for this Authority to accept such a contention. It has to be recognised that hefty royalty or substantial revenue sharing arrangements do have definite tariff implications in such cases.

- (iv). (a). The CCTL proposal will effectively amount almost to a 50% increase of the container handling cost at the CHPT. The main reason for this proposed hike is the revenue sharing arrangement envisaged in the CA and payment of rentals to the CHPT for the properties leased.

The CHPT can take the stand that the 37.1% figure was quoted by the CCTL in a competitive bid; and, that there can be no legitimate objection to the CHPT realising it. The CCTL has contended that in the 'cost plus' model that is adopted wherein all 'actuals' are reckoned with by this Authority it will be discriminatory not to include these items in the computation of tariffs only in the case of the CCTL. It is noteworthy in this connection that there has been no commitment from anywhere, in the context of the revenue sharing arrangement, about any consequential tariff adjustments. The CA also does not give any assurance to the licensee about adjustment of tariff corresponding to the revenue sharing offered. The CCTL has argued that the commitment that royalty will be treated as a cost is implied in the system in vogue and has been inferred therefrom. If there is reason to question the treatment of royalty as a cost, this shall have been done prior to the bidding; and, the bidders must have been so advised.

- (b). Since the CCTL has raised an issue relating to the bidding model adopted by the Govt., we have in fact made a reference to the Govt. on the issue of revenue sharing arrangement and lease rentals in order to have the benefit of their views. This reference was made since these are issues of substantive concern to any terminal operator. Further, we were constrained to bother the Govt. at this stage for its views on these issues because this Authority has not been a party to the deliberations relating to finalisation of the CA in this case in particular or of the IDFC-developed privatisation model in general. The Ministry of Shipping has, however, categorically informed that it does not wish to be involved in this matter at this stage. This stand of the Government has now left it to this Authority to decide its approach in tariff setting in such cases without the benefit of the Govt's views on the privatisation model adopted and its implications for the issues identified by us in the tariff-setting context.

- (c). It is to be admitted that this Authority has been adopting a 'cost plus' model for determination of tariffs, in view of the difficulties expressed by the regulated entities to move towards a different approach. Even as it reckons with 'actuals' in its computation of tariffs under a 'cost plus' model, this Authority does go into the reasonableness of the cost elements. In other words, there can be no automatic admission of any and every cost item in the name of actuals. If this is not so, then, there is no need for a third party regulator prescribing the tariffs; the operators themselves can work out the tariffs considering all the actuals since it will then only be an arithmetical exercise.
- (d). Irrespective of the commitments and assurances available in the CA signed between the licensor and the licensee, a third party neutral regulator has to go into the reasonableness of such arrangements envisaged for the purpose of determining the tariff, which affects the consumer of the services provided. A case in point is the Dabhol Power Company. The concerned Regulatory Commission refused to reckon with the implications of all the assurances made in the CA in favour of the licensee and proceeded to fix tariffs based on reasonable cost elements.
- (e). If automatic admission of any and every cost item is made, then, theoretically speaking in cases like the one in reference, a licensee can conveniently offer a revenue sharing of the order of 99.9% and so formulate his tariff proposal as to cover all his other costs and margins in the balance 0.1% to be retained by him. Obviously, it will be preposterous to consider such a proposition. As has been pointed by many of the users and the CSLA in particular, allowing royalty in tariff will mean that the CCTL and the CHPT, both of whom enjoy a dominant position, can enter into any commercial arrangement between themselves and pass on the consequential cost to the customers. Privatisation of state owned assets is expected to result in improvement in operational efficiency and thereby reduction in cost to the customers. Contrary to this reasonable expectation in the instant case, the cost to users is sought to be escalated mainly due to the revenue sharing arrangement in which the CCTL has proposed to fund its commitment to the CHPT from recoveries to be borne by the users.
- (f). There can be an argument that this Authority has already allowed the element of royalty in the computation of tariffs of the NSICT and has recognised it while fixing tariffs for the PSA SICAL. The royalty payable in the case of the NSICT during the first year during its operation was Rs. 47.00 per TEU and it was Rs. 102.00 per TEU in the case of the PSA SICAL. The impact of inclusion of the royalty in these cases in the respective tariffs was not very significant. It is not so in the instant case; it forms a substantial $\frac{1}{3}$ share in the proposed tariffs. This Authority, therefore, finds it unreasonable to allow the 37.1% revenue share as a cost element for computation of tariffs at the CCTL.
- (v). Although this Authority is not concerned with the approach adopted by the Govt. for granting concessions to private operators for taking over of the existing assets of the major port trusts or development of new port facilities within major ports, we are constrained to make certain observations on it in view of the issues that have surfaced while processing the case. While going in for privatisation of the terminal under the IDFC model adopted, the attempt seems to have been to maximise the revenue to the licensor by awarding the concession to the qualified bidder who quotes the highest percentage share of revenue as royalty in addition to payment of lease rentals. The bidding process does not seem to have clearly indicated that the bidder shall quote the highest percentage of revenue share as royalty considering the existing framework of tariff. Further, the CA does not require the licensee to maintain any specified minimum performance standards. As has already been mentioned, if a revenue maximising objective is pursued, the basic objectives of privatisation like efficiency improvement, cost reduction, etc. are likely to be relegated in importance; and, in the process, the interests of users may to some extent remain ignored. It may be advisable if the bid document contains

an explicit non-negotiable condition that no commitment is made about tariff adjustments with reference to the revenue sharing to be quoted.

- (vi). The other major cost item relates to payment of lease rentals. There can be an opinion that when the revenue generated out of the operation of the terminal is shared, it may not be necessary or reasonable to consider separately the cost of fundamental inputs into the operation i.e. the lands in this case. There is no doubt that the lease rentals in addition to revenue sharing amount to a double cushion available to the licensor.

The CCTL has rightly pointed out that the lease rentals have not been quoted by them as a bid value. It was a non-negotiable condition and is leviable based on the SOR prescribed for the CHPT by this Authority. In the case of the CCTL a fully developed facility has been handed over by the CHPT contrary to a greenfield situation as in the case of the NSICT. It will, therefore, be reasonable for the CHPT to seek recovery of lease rentals for the lands allotted. Viewed in this light, it is reasonable to consider this payment while determining the revenue sharing offered. In any case, this element is to be seen as a cost for utilising the assets of the CHPT by the CCTL; and, hence, is accepted as a cost element for computation of tariffs.

- (vii). The CA provides for transfer of 572 employees from the CHPT to the CCTL provided they opt for such transfer. However, only 42 employees have opted to take employment with the CCTL and, that too after taking VRS from the CHPT. The CHPT will, therefore, have to continue with a redundant labour force of more than 500. Labour redundancy at the CHPT apart, the CCTL has created a separate group of workers for operating its terminal. This means, effectively the work force has increased for the same service and avoidably the wage cost may be passed on to the users by the CHPT / CCTL. The measures to tackle the cost of this labour redundancy at the CHPT is discussed in detail elsewhere in this Order. It is to be accepted that labour redundancy is an inevitable by-product in the process of privatisation. That being so, this Authority is inclined to recognise the ground reality in this regard. Be that as it may, the proposal of the CCTL has reckoned only with the cost of the actual number of employees required by it to operate its terminal.

- (viii). Another noteworthy offshoot of the revenue sharing arrangement is its impact on the level of cross-subsidisation between various activities at the CHPT. It may be recalled that the container handling activity cost center was found to be a surplus one at the time of last general revision of the CHPT SOR; and, accordingly, no increase in tariffs was allowed so as to contain cross-subsidisation at the existing level. Even though the agreed revenue sharing is not recognised as a cost element for determining the tariffs at the CCTL, the CHPT will continue to derive the benefit of inflows on account of the revenue sharing and lease rentals since the relevant provisions in the CA will govern the actual transactions between the licensor and the licensee. The result will be an enhancement of the cross-subsidisation available to 'other activities' of the CHPT.

This issue was specifically considered at the second joint hearing held in this case. The CHPT has agreed that the enhanced net surplus from container handling will not be used to cross-subsidise the other activities but will be taken to meet expenditure relating to the workers rendered surplus due to the CCTL project. It has also agreed that the revenue share received will be applied to finance capital expenditure on projects related to container handling. Although it had agreed to give a list of such projects, we have not received it so far. The stated position of this Authority (as indeed of the Government) is against cross-subsidisation. This Authority also recognises the fact that complete elimination of cross-subsidisation at one go may not be possible. It has, therefore, been decided to contain cross-subsidisation at the existing levels. The last general revision of tariffs at the CHPT was decided considering cross-subsidisation available from the container handling activity to the other activities. Since the CHPT will not operate its container terminal anymore, the subsidies from container terminal activities will not be available to the other activities. If a provision towards this is not made from the revenue share received, it will amount to complete elimination of cross-subsidies in some of the activities. Since complete elimination of cross-

subsidy may have serious repercussions for some weak commodities, it will be appropriate for the CHPT to set aside funds from the revenue share to the extent of surplus available in the container handling activity at the time of last general revision so that it can continue to cross-subsidise the other activities at the (then) existing level.

After meeting the cost of surplus labour and providing for cross-subsidisation to other activities at the existing level, we find it reasonable to require the CHPT to maintain 50% of the balance revenue share available in an Escrow Account for the purpose of creation of capital assets to modernise handling facilities for containers and other cargo. Our experience with analysis of expenditure of major port trusts indicates that there is no marked preference for spending surplus funds for operational purposes. We are, therefore, firmly of the view that revenues generated in the privatisation process shall be utilised by the major port trusts at least partly for improvement of operational facilities so that relief to users will be available in tariffs apart from the benefit of having efficient port facilities. It is needless to mention that investments made out of the Escrow Account will not qualify for 'return on capital employed' in the context of tariff computation. We realise, this Order is being passed to fix tariffs for the CCTL; it may not, therefore, be very appropriate for us to go into tariff matters pertaining to the CHPT. Our intention is only to enable the establishment of the Escrow Account without loss of time. Issues relating to utilisation of the revenue share received by the CHPT, and more particularly funds available in the Escrow Account, will be more pointedly dealt with at the time of the general revision / review of the CHPT tariff which is due for consideration in a couple of months' time.

- (ix). One of the items of cost included by the CCTL in its proposal is Technical Service Fee (TSF) payable by the CCTL to the P&O Ports for technical and management services to be provided by the latter. The issue of inclusion of service fee as a cost element has already been settled while deciding revision of tariffs at the NSICT in November 2000. The BOT contract for development and operation of the terminal has been awarded to the consortium led by P&O Australia Pty Ltd. based, inter alia, on the expertise and standing of the promoter. The CCTL was a later creation. The TSF has no linkage with the service provided by the promoter; it is essentially a fixed payment more in the nature of a return to him. The BOT agreement has been awarded based on the (technical) expertise that the promoter is expected to pass on to the Indian company floated under the respective CA. The TSF payment is definitely in the nature of a return on capital employed and needs to be treated as a part of profit. It cannot, therefore, be recognised as a cost element for determination of tariff. It is relevant here to mention that it effectively emerged from the report of M/s. Arthur Andersen, which was considered as a part of the proceedings relating to a review petition filed by the NSICT, that none of the other regulators had explicitly admitted TSF payment as a pass-through in tariff.

The decision taken in the case of NSICT will equally apply in the CCTL case also. That being so, this Authority does not like to recognise this payment as a cost element for determination of tariff. By way of abundant caution, it may be mentioned that exclusion of this item for the purpose of tariff should not be taken to mean that this Authority has declared the TSF payment as improper or illegitimate or questioned the propriety of the TSF payment. These issues are to be dealt with by the concerned agencies under the relevant statutes.

- (x). Another major item is the return on capital employed. Recognising the difference in the capital structure of the major ports and the private terminal operators, this Authority has already decided to allow returns on different sources of capital instead of considering a return on capital employed. It has already been decided that a pre-tax return of 20% will be allowed on equity subject to observance of a debt equity norm of 1:1 and limited by capacity utilisation. The actual cost of debt is also allowed to be recovered through tariff. This model has already been applied to decide the tariffs at the NSICT. Even though this model was an interim arrangement adopted in the NSICT case, it will equally apply in case of all private terminals till an alternative model is developed. That being so, in the CCTL case also, it will be reasonable to allow a 20% pre-tax return of equity subject to capacity utilisation plus the actual cost of debt.

The debt-equity ratio of the CCTL is closer to the ratio accepted in the case of the NSICT. The case of the CCTL can be said to be still evolving. After the initial phase is over, its capital structure may stabilize at a different level. For the time being, therefore, we are not unduly disturbed by the current position. Return on equity and cost of debt are allowed on the basis of the actual debt-equity position obtaining in the CCTL.

- (xi). It may be relevant here to recall that there has been a demand for allowing a 3% contribution each to the Development Fund and Renewal Fund to the Private Terminals also in line with such an allowance allowed in the ROCE of the major port trusts. This demand has been primarily based on the argument that Private Terminals should have sufficient funds to meet the employee liabilities and uncovered depreciation of assets arising at the end of the concession period.

The termination liability relating to employees will be substantially (if not fully) covered by the annual provision built into the wage component, which is admitted as a pass-through in tariff. The depreciation of assets can be adjusted depending on the concession period left. There will be no development liability on the part of the terminal operator requiring maintenance of a 'development fund'. Even if such a necessity arises in a rare case, the private terminals have the option to raise equity or borrow funds, for which compensation is allowed while revising tariffs in the concerned year. That being so, this demand cannot be considered to be reasonable.

- (xii). The CCTL has considered a traffic projection of 4,24,908 TEUs for the year 2002 and 4,84,395 TEUs for the year 2003. The CCTL was requested to furnish the capacity of the Terminal (taken over by it) after arrival of the new equipment proposed to be added in the initial 2 years and refurbishment of the old equipment. The CCTL has not furnished such an estimate; it has only claimed that its traffic estimate is based on the capacity available. Responding to our request, the CHPT has indicated the estimated capacity of the container terminal as 5,00,000 TEUs for the year 2001-02 and 6,00,000 TEUs for the year 2002-03. It has explained that its estimation is based on the average productivity level achieved by it and considering a berth occupancy level of 70%. It is a reasonable expectation that the productivity level at the container terminal will go up with the entry of an experienced private terminal operator; and, the CCTL has in fact assured so. Based on this, the capacity of the terminal should have been more than what has been estimated by the CHPT. In the absence of any other reasonable figure to consider the productivity level, we have accepted the estimates given by the CHPT.

Since the capacity of the terminal is not going to be fully utilised in the years under consideration, the CCTL cannot possibly expect maximum return on its investment to create that capacity.

It is noteworthy that the estimate of the CCTL has considered nearly 22% of the capital employed as working capital for the first year and about 27% for the second year. These estimates of working capital, particularly the current assets, appear to be very high. In the absence of actual operational data pertaining to the CCTL, it is not possible for us to moderate the estimates of the current assets to any reasonable level. In view of this built-in cushion available in the capital structure, we find it reasonable to allow only 80% of the maximum return on equity even though the average capacity utilisation for the initial 2 year period comes to around 83%.

- (xiii). The CCTL has also sought recovery of tax payable through tariff. It has already decided to exclude the effect of taxation from the tariff computation. This decision was taken since the rates of tax were subject to periodic changes and estimation of this liability beforehand for tariff setting might pose problems. For example, the changes proposed in the recent Union Budget about the incidence of Dividend tax would have warranted an immediate tariff review if dividend tax liability had been reckoned with in tariff computations in such cases earlier. It is relevant here to point out that a pre-tax return on equity is allowed since taxes are not

considered as a pass-through. This approach has been adopted in the NSICT case; and, it will equally apply in the instant case also.

The references to the NSICT in this context should not be mistaken to have been made because the main promoter of it and the CCTL is the same. The reference of NSICT has been made since it was the first private container terminal to come up in a major port trust and its proposal for fixation of tariffs based on its cost of operation was the first one decided for any private terminal operator by this Authority; and, while doing so, a specific model for fixing tariffs at the private terminals was evolved. The reference to the NSICT case has been made in this analysis for the purpose only of indicating the tariff setting model adopted for private terminal operators.

- (xiv). The Govt. of India has already issued Guidelines to all the major ports trusts prescribing the life-norms for different types of assets employed in port operations. These norms are being followed uniformly by all the major port trusts to work out the depreciation of capital assets; and, accordingly, are recognised and considered for tariff determination. Considering the corporate tax liability of a company, it has already been decided that in the cases of Port Companies, the depreciation norms given in the Companies Act or the life of the asset prescribed in the CA, whichever is less should be taken into account for arriving at the depreciation cost for the purpose of tariff fixation.

The Companies Act does not prescribe a definite rate of depreciation for each and every asset employed by a company. It allows a certain amount of freedom to the management to decide on the rate of depreciation in such cases. Even though the CCTL and the NSICT are subsidiaries of the same parent organisation, we find the rate of depreciation adopted for some of the assets like computer systems, other IT related assets, etc. proposed at the CCTL are slightly at variance with those adopted at the NSICT. In our analysis we have allowed the estimates given by the CCTL without any modification. The correctness of the estimates furnished by the CCTL can be verified at the time of the next revision of its tariff; and, any undue benefit accrued to it due to wrong estimation may be set off against the next revision in tariffs.

- (xv). The CCTL has claimed return on unrealised foreign exchange loss and has also considered depreciation of assets after capitalising this unrealised loss. In terms of Accounting Standards applicable for Indian companies the difference arising from the restatement of the foreign currency loan can be capitalised and depreciated over remaining life of the asset. But the approach adopted by the CCTL by considering such loss on restatement of foreign currency loan by considering it in the depreciation once and again as actual recovery on the instalment of loan repayable in the relevant years can not but be seen as double-counting. While considering the NSICT proposal for tariff revision, the loss due to foreign exchange fluctuation on the instalment of loan repayable during the relevant years was allowed as an admissible cost. A similar treatment is to be given in the instant case also. That being so, the component of unrealised foreign exchange loss considered in the estimation of the depreciation of the operating assets need to be eliminated.

The CCTL was requested to bifurcate the depreciation estimates to show the component of unrealised foreign exchange loss considered and the normal depreciation on the historical value of the asset. The CCTL has not furnished this information; it has only maintained that the treatment given by it is as per the Standard Accounting Practice. As has already been mentioned, the approach adopted by the CCTL leads to a double-counting, which may not conform to the standard practice. In the absence of any actual information available (not furnished by the CCTL), depreciation on unrealised foreign exchange loss has been estimated based on the average depreciation rates of assets and excluded from the estimates of depreciation.

- (xvi). In addition to lease rentals payable to the CHPT for the lands allotted, the CCTL has also considered a premium equivalent to annual lease charges in each of the years. The CCTL was requested to correct its estimates of expenditure on account of lease rentals since

premium was a one time payment payable at the time of allotment of land. The CCTL has, however, maintained that the premium paid is a sunk cost and hence needs to be treated as an expenditure in the year in which it is incurred.

At our request, the CHPT has furnished a detailed working of the lease rentals leviable from the CCTL for the lands allotted to it based on the notified rates. The CHPT has clarified that no lease premium or security deposit is payable by the CCTL for the lands allotted to it. It is noteworthy that the CHPT being the lessor will levy the lease rentals from the CCTL. That being so, there is no reason why we should not accept the estimates of lease rentals leviable on the CCTL as furnished by the CHPT. The cost statement has, therefore, been revised considering the lease rentals as indicated by the CHPT.

- (xvii). Preliminary expenses incurred amounting to Rs. 58.50 lakhs are proposed by the CCTL to be written off in the initial 5-year period. The CCTL has clarified that this treatment is as per the accounting practice. It is noteworthy that the preliminary expenses incurred are relevant for this project and hence it will be reasonable to spread such expenditure over the entire period of the license instead of loading the burden on tariffs in the initial 5-year period. The revised cost statements have been accordingly prepared by spreading the preliminary expenses over the entire project period.

A similar logic is applicable in case of treating the expenditure on writing off of some of the equipment acquired by the CCTL from the CHPT, which are proposed to be disposed of in the first year of operation itself. One can, and in fact we did, question the logic behind acquiring an asset which is to be written off immediately. The CCTL has pleaded that it had no choice but to take over the assets listed in the CA. The effect of writing off of such equipment is not significant for the purpose of tariff computation when the cost is spread over the entire period of the project.

- (xviii). The CA stipulates that on expiry of the license period, the CCTL shall be liable to transfer the entire facility at the Terminal, excluding the cargo handling equipment, to the CHPT against a consideration of US \$ 1.0 million. The CA further provides that if the CHPT decides to take over the equipment it shall pay the CCTL the value of equipment as determined by an Independent Valuer on the basis of replacement cost less depreciation arrived on straight-line method. The CCTL was requested to consider the effect of these provisions and spread over the benefit over the life of the project. The CCTL has, however, pointed out a number of additional payments will have to be made in the terminal year of the license and hence it is preferable not to include the termination cost for fixation of tariffs.

The CCTL has not indicated clearly about the 'additional payments' to be made in the terminal year of the license. In any case, all admissible costs (to be incurred by the CCTL) will be considered while reviewing tariffs for the last phase of the project. Further, when the preliminary expenses and upfront fee paid to the CHPT are admitted as pass-through, there is no reason why a definite benefit accruing to the CCTL in the terminal year of the license should not be considered while determining the tariffs. In the absence of any detailed figures, the termination payment of US \$ 1.0 million and the book value of the equipment at the 30th year at Rs. 59.90 crores have been considered as the separation payment to be received by the CCTL at the end of the license period. For the purpose of our cost analysis, this receipt has been annualised over the entire period of the project by discounting it at the rate of 12%. The discounting rate of 12% to arrive at the net present value at the end of each year has been applied bearing in mind the prevailing PLR rates of commercial banks and the cost of debt procured by the CCTL.

- (xix). The estimation of overhead expenses made in the revised cost statements furnished by the CCTL contains some arithmetical error which has been rectified.
- (xx). The repairs and maintenance cost as estimated by the CCTL has been taken into consideration. It would have been more logical to validate these estimates with reference to the actual repair and maintenance cost at the NSICT at least in the cases of new equipment

proposed to be added. The CCTL has only maintained that it will not be justifiable to compare cost elements projected by the CCTL against those of the NSICT as they are two different Companies. While we fully recognise that the NSICT and the CCTL are two different legal entities, the comparison was requested to be made since the operations were similar; and, as a part of the same management, the required information might be easily available to the CCTL.

The wage cost estimated by the CCTL is for the proposed number of employees to be employed by it and contains a provision for 30% to meet indirect expenses like contribution to PF, gratuity funds and, other staff welfare measures.

As has already been mentioned, in the absence of any other details available to validate the estimates given by the CCTL, they have been considered as such in our analysis. The actual position with reference to these estimates will be known at the time of the next review of the CCTL tariff; and, undue benefit, if any, accrued due to wrong estimations can be set off against future revisions.

- (xxi). The traffic forecast and income estimates have been considered as furnished by the CCTL. Based on the tariffs proposed by the CCTL at the projected traffic, the gross revenue will be Rs. 156.54 crores for the year 2002 and Rs. 195.86 crores for the year 2003. Considering the existing CHPT tariff, the estimates furnished by the CCTL show a gross revenue of Rs. 100.10 crores for the year 2002 and Rs. 119.69 crores for the year 2003. It is to be pointed out that the income estimates based on the existing CHPT tariffs, reckon with an additional income towards on-board stevedoring services estimated at the rate of Rs. 448/- per container levied by private stevedores when the CHPT was operating the Terminal as it was a cost incurred by the users at the CHPT.
- (xxii). Subject to the discussion above, the cost statements have been modified. The modified cost statements disclose the following average net surplus / deficit position for the years 2002 and 2003 after accounting for all admissible costs and return:

Particulars	Average net surplus (+) / deficit (-) over gross revenue
At the tariff level proposed by the CCTL	(+) 44.7%
At the existing CHPT tariff level	(+) 11.5%

- (xxiii). The cost positions given above clearly show that there is no case at all to accept the tariffs proposed by the CCTL. It also emerges that the CCTL can be allowed to continue with the existing CHPT tariffs. But, a decision on tariff must also take into account other non-cost issues also.

Irrespective of the fact whether some of the cost items are not allowed in tariff computation, the actual transactions will be governed by the provisions in the agreements, relevant statutes, etc. This means these outflows are to be met by the CCTL out of the return on equity considered in the tariff computation. The return allowed in this case may perhaps not adequately cover such outflows. No private investor will enter into a business venture for making loss. Privatisation is gathering momentum in the country as a whole and in the major port trusts in particular. In this backdrop, we have to keep in mind the implications of decisions taken in this case on the privatisation process, in the overall interests of the country. With a view to allow a cushion to the shareholders of the CCTL to earn a decent return in the initial phase after meeting other legal and contractual obligations, it becomes reasonable to fix tariffs at such a level which may result in revenue generation at around 10% more than the revenue estimated based on the existing CHPT tariffs (plus stevedoring cost).

The CCTL has argued that the existing CHPT tariffs are nearly 10 years old and since then various input costs have increased manifold. This statement may not be true since a review of the cost position carried out in the year 2000 did disclose a surplus position. Notwithstanding

this position, it is to be admitted that no significant increase in cost of handling containers at the Chennai Port has been faced by the users in the last 10 years. Bearing in mind this fact, a modest increase of about 10% in tariffs allowed now may not impose a severe financial burden on users.

By way of abundant caution, however, it is to be clarified that the decision to allow an increase should not be seen as an admission of all contractual liabilities of the CCTL for tariff computation or as a deviation from the maximum return on equity allowed. The increase is allowed as a one time benefit to the CCTL so that it can tide over the problems in the initial phase and achieve efficiency and cost reduction in future.

- (xxiv). This Authority generally allows a tariff validity cycle of two years. Since the entire proposal has been formulated based on projections, estimates and assumptions, it may be advisable to consider a tariff validity period of one year only. This suggestion has been considered specifically at the second joint hearing held in this case since such reduction in review period will not only eliminate the uncertainty in the costing details but also provide an opportunity to the CCTL to adjust tariffs at an early date with reference to actual performance and financial data.

The CCTL and almost all the users suggested continuance of a two year validity period in this case also with a view to have stability of tariff.

We find it reasonable to fix a tariff validity period of 18 months in this case. This decision is reached bearing in mind the possibility of having by then the accounts of the CCTL for the periods ending 31 March 2002 and 31 March 2003 so that tariffs can be reviewed at the end of the validity period more meaningfully with reference to actual financial and operational data. It may nevertheless be clarified that, for good reasons, this Authority will be ready to entertain a proposal for revision (even) ahead of this schedule.

- (xxv). In view of a composite service procedure adopted by the CCTL and the issues of dollar denomination of the some of the tariff items, it may not be possible to make the CHPT SORs apply to the CCTL with an across-the-board hike of 10%. We generally are inclined to agree with the tariff structure proposed by the CCTL. Rates for individual components of different services could have been more scientifically determined with reference to cost of rendering services, if such details had been furnished by the CCTL. Even though the CCTL was repeatedly requested to furnish activitywise costing, it could not furnish such details. In the absence of such details, we have to fall back on the existing CHPT rates. That being so, while formulating the revised SORs, the rates for different tariff items, except storage charges, have been generally arrived at by adding up the relevant CHPT tariffs after considering a 10% increase thereon and with a rounding off and approximation, wherever necessary. While prescribing the revised rates, the commonly accepted ratio of 1 : 1.5 between a TEU and a FEU has been maintained, except in storage charges.

The approach adopted in arriving at the rates now prescribed in the SOR may not tally exactly with the cost of rendering services for individual components of services in isolation for reasons explained above. It is to be recognised that the overall cost position considered for the Terminal as a whole takes into account all admissible operating expenditure estimated by the CCTL. This means, a cost deficit, if any, under one of the components of services, is made good by surplus available in some other components since the tariffs are not exactly with reference to cost of rendering individual services.

We have proceeded to process this case further without insisting for activitywise costing from the CCTL recognising that it may not have reliable data for such costing relevant for the Chennai Container Terminal, which has been taken over by it only recently. The CCTL will be advised to draw up its proposal supported by costing details for individual activities, at the time of the next general revision / review of tariffs.

- (xxvi). Denomination of some of the container related charges in US dollar terms has come into being by virtue of a legal fiction of treating containers as an extension of the vessel's hatch.

Even though at other ports / terminals like the MBPT, JNPT, NSICT, PSA SICAL, etc. (and even at the CHPT insofar as container storage charges are concerned) some of the admissible tariff components have been denominated in US Dollar terms, there is an immediate necessity to review the issue of currency denomination of tariffs. But, such a review is to be taken up commonly for all ports trusts / terminals. Till such review results in a decision for common adoption by all major ports / terminals, the approach adopted elsewhere needs to be applied in the case of the CCTL also. There is no justification to follow a different approach in the case of the CCTL by accepting the plea made by some of the users to go by the customs and practices followed at the CHPT so far; that will tantamount to a discriminatory treatment against the CCTL. That the CHPT did not opt to change currency denomination of some of the admissible tariff items may not be a valid reason for denying the CCTL its claim based on precedence available elsewhere.

- (xxvii). The CCTL has proposed dollar denominated tariffs for handling containers on-board and quay side including lashing / unlashings. In the case relating to prescription of ceiling rates at the Mumbai Port Trust for various services rendered by persons authorised under Section 42, this Authority found that on-board stevedoring cost was included in ocean freight under liner terms; and, containers were mainly carried under liner terms. As rightly stressed by the CCTL, this finding is not confined only to the MBPT but will act as a guiding principle for setting tariffs at other ports also. Flowing from the finding is the position that on-board stevedoring is unquestionably a Vessel Related Charge; and, hence, it can be denominated in US dollar terms.

Even before the principle was set in the MBPT case, this Authority has allowed denomination of quay crane charges in US dollar terms at the MBPT and the PSA SICAL. Lashing / unlashings charges have also been allowed to be denominated in US dollar terms at the PSA SICAL. In view of the precedence available and the principle set in the MBPT case, there cannot be any objection to denominating the proposed charge at the CCTL in US dollar terms. For the purpose of arriving at the rate, as has already been mentioned, we have considered the quay crane charges leviable as per the CHPT tariffs. Eventhough the stevedoring charges levied earlier by private stevedores has been reckoned with for the purpose of revenue estimation, such charge is not relevant in the context of the on-board services provided by the CCTL. It is noteworthy that the on-board stevedoring charge levied earlier was mainly for (notional) deployment of dock workers whereas the CCTL does not require such deployment of workers for its operation. The Chennai Port Stevedores Association has given an estimate of lashing / unlashings cost. The rate for handling containers on-board and at quay side including lashing / unlashings charges for the CCTL has been revised considering these two elements (i.e. quay crane charges and lashing / unlashings cost) and converting the rupee value into US dollar based on the exchange rate adopted for drawing up the estimates.

The CCTL has proposed the same on-board handling rate for both loaded and empty containers. At the joint hearing, the Chennai Port Stevedores Association has indicated that no such differentiation has been made in tariff for on-board stevedoring services. It has also indicated that charges for on-board stevedoring services are realised on a per-container basis. Prima facie, there appears no sufficient ground to maintain the same rate for empty and loaded containers since the efforts involved in handling the two are different. It is, however, to be noted that quay crane charges have been prescribed for both empty and loaded containers at the same level at the MBPT and PSA SICAL in view of the fact that wharfage on cargo is levied separately. A differential in rates has, however, been maintained at these places with reference to the size of containers. It is to be admitted that the structure followed elsewhere of not distinguishing laden and empty containers for the purposes of prescribing quay crane charges needs to be reviewed. Till a decision applicable commonly to all container terminals in the major ports is taken, the approach adopted at the MBPT and the PSA SICAL has been maintained in the CCTL case also.

- (xxviii). The CCTL has proposed denomination of stuffing / destuffing of cargo in a LCL container in dollar terms. The service in this regard is predominantly supply of labour. There is no reason for denominating a tariff which is mainly for supply of labour in US dollar terms. Nevertheless, denomination of this tariff item in US dollar has come into being due to the legal fiction of

treating container as an extension of the ship's hatch; and, the instant service is to be seen as loading / unloading of cargo from a ship's 'extended hatch'. It is noteworthy that for a similar operation in the MBPT, the charges have been denominated in US dollar terms. Till a review of the entire issue involved in dollar denomination of Container Related Charges is done, the stuffing / destuffing charges at the CCTL also are allowed to be denominated in US dollar terms.

- (xxix). The proposal of the CCTL does not specify charge for stuffing / destuffing half-a-container. It is noteworthy that the issue relating to prescribing stuffing / destuffing charges of part containers was considered by this Authority in a Cochin Port Trust case based on a permission granted by the Central Board of Excise and Customs for networking of LCL boxes in gateway ports. In that case, it was prescribed that 50% of the charges for stuffing / destuffing of full containers would be levied for a similar service rendered to half containers. Since the CBEC circular is commonly applicable to all the ports, this Authority has to introduce a similar tariff arrangement for stuffing / destuffing part containers at all the major ports / private terminals. Since the CCTL case is under consideration now, it will be reasonable to introduce such a tariff arrangement at the CCTL immediately without waiting for a common adoption order to be issued. Accordingly, a suitable provision has been introduced in the Scale of Rates.
- (xxx). The tariffs denominated in US dollar terms are applicable in the case of foreign-going vessels. The tariffs applicable for coastal vessels are always denominated in Indian rupees. In the case of Vessel Related Charges, in terms of the Govt. policy, a 30% concession in tariffs is allowed to coastal vessels vis-à-vis the foreign-going vessels.

Since some of the container handling charges have been denominated in US dollar terms, it is necessary to prescribe a corresponding rate in Indian rupees, which will be applicable to coastal vessels. It is noteworthy that a 30% concession available to coastal vessels in Vessel Related Charges are not extended to container handling charges in any of the major ports trusts / private terminals. This position is to be maintained at the CCTL also. It is to be clarified that the US dollar denominated tariffs will be applicable for containers loaded to / landing from a foreign-going vessel. Containers loaded on / landing from coastal vessels will only pay tariffs notified in Indian rupees.

- (xxxii). The handling charges for LCL containers are prescribed at a higher level than those applicable for FCL containers in view of the additional services required by LCL containers. It may be relevant in this context to recall that this Authority has already held in a case relating to the CHPT that a LCL container moving out of the port trust as a 'unit load' should be treated as a FCL container for the purpose of levying tariffs. This prescription will equally apply in the CCTL case also.
- (xxxiii). The CCTL has proposed to levy a premium of 50% over the prescribed handling charges in the case of hazardous containers and a premium of 25% in the case of over-dimensional containers. The proposed level of premium in the case of hazardous containers has been objected to by many of the users as being exorbitant. A reference made to the Scales of Rates of other container terminals reveals that the premium levied in such cases is in the region of 20%. That being so, a premium only of 25% is allowed for handling hazardous containers and over-dimensional containers at the CCTL.
- (xxxiiii). The existing CHPT Scale of Rates clearly specifies that the containers and the containerised cargo covered by the operation of shifting of the containers from one hatch to another of the same vessel via the quay shall not attract any wharfage. A similar prescription has been made in the case of the PSA SICAL also. It will be reasonable to extend this prescription in the case of the CCTL also. That being so, the CCTL cannot levy any wharfage on the containers and the containerised cargo shifted within the vessel by landing and re-shipping. The CCTL can, however, reasonably levy handling charges on restow containers; and, this item of tariff, like in other private terminals, is approved for denomination in US dollar terms.

- (xxxiv). The CCTL has proposed a very high level of tariffs for reefer containers in view of high electricity cost. As has already been mentioned, the entire exercise is based on the overall cost position and on estimates and projections at that. It may not be reasonable to fix tariffs based on cost of rendering an individual service in only one case when such costing has not been made available for many other major items. If this position is allowed, it will be difficult to assess overlap of various common cost elements between different service components. That being so, the reefer charges can be fixed following the general decision taken in this case to treat the existing CHPT tariffs as the base.

Following the position obtaining in other private terminals, this tariff item can be denominated in US dollar terms.

The CCTL has proposed to levy this charge on a per day basis. This Authority has already reduced the unit of charging berth hire to 8-hour basis. The logic applied for reducing the unit of berth hire charges from a 24-hour basis to an 8-hour basis will equally apply in the case of reefer charges also. It is noteworthy that the rates for reefer containers prescribed in the CHPT Scale of Rates are also for a 'shift' of 8 hours. Accordingly, in the revised Scale of Rates of the CCTL, the unit of levying reefer charges is prescribed as 8-hour or part thereof. It is noteworthy that this decision will equally apply in the case of other major port trusts / private terminals; and a common adoption order in this regard will be passed separately for the other major ports / private terminals.

- (xxxv). Following the prescription made in the case of some other private terminals, the charges for shut-out containers can be denominated in US dollar terms at the CCTL also. Notwithstanding this decision in the instant case, it is to be admitted that currency denomination of shut-out charges requires a review. It is to be recognised that a shut-out container does not become part of the vessel's hatch since it has not been accepted for loading by the designated vessel. The charges payable by the shut-out containers may not, therefore, qualify for dollar denominated tariffs as the 'legal fiction' may not be justifiable in a shut-out situation.
- (xxxvi). A container yard is meant only for temporary storage of containers and it cannot be used as a warehouse. This position assumes significance particularly when a container terminal has relatively less back-up area for storage as in the CCTL. The storage charges in such cases are meant to be a deterrent to avoid the container terminal being used as a warehouse. Besides, the possible congestion in the yard in future, when both traffic-volume and productivity level increase at the CCTL, is to be borne in mind in the light of the fact that the yard area available to the CCTL will remain more or less static.

In view of the position explained above, a slight deviation from the general approach adopted to prescribe the rates for the CCTL keeping the CHPT tariffs as the base has been made while prescribing storage charges. The storage charges proposed by the CCTL more or less compare with those levied at the JNPT / NSICT. The revised Scale of Rates have been formulated by moderating the rates proposed by the CCTL to a level which will keep the overall revenue of the terminal within the 10% increase approved.

- (xxxvii). The CCTL has proposed a free period of 3 days for export containers. In case of other private terminals and even in the existing CHPT Scale of Rates, a free period of 7 days is allowed for export containers. In fact, the CCTL has prepared its revenue estimates considering a free period of 7 days for export containers. It is, therefore, reasonable to prescribe a free period of 7 days in the case of export containers.
- (xxxviii). The CCTL has proposed that the storage period will include Sundays and holidays. It is a general prescription of this Authority that demurrage free period must exclude Sundays, Customs notified holidays, and the port's non-operating days. This prescription has been included in the Scales of Rates of many port trusts including the CHPT. Accordingly, a similar prescription is inserted in the Scale of Rates of the CCTL also. It may be clarified that exclusion of the specified periods is only for the purpose of calculating free periods; and, on

expiry of the free period, storage charges can be levied without providing for such an allowance.

- (xxxix). The CCTL has proposed storage / demurrage charges at the CFS in US dollar terms. This charge is levied on the cargo; and, as a matter of principle, this Authority does not allow denomination of Cargo Related Charges in US dollar terms. That being so, the storage / demurrage charges on cargo at the CFS of the CCTL can only be in Indian rupees.
- (xxxx). The CCTL has proposed charges for various other miscellaneous services which appear to be reasonable with reference to the overall position and are approved with necessary modification of rates.
- (xxxixi). In the revised Scale of Rates of the CCTL, suitable provisions have been made to include the Orders passed by this Authority relating to levy of penal interest on delayed payments and refunds, levy of storage charges on abandoned containers, re-conversion of tariff items denominated in US dollar terms at the time of billing, etc. It may be mentioned that the Orders passed by this Authority earlier with reference to container handling operations at the CHPT will continue to apply in the case of the CCTL also, unless they are specifically superseded by the Order notified in this case.
- (xxxixii). Based on the Scale of Rates framed by us, an estimation of income has been made. The revised income level is about 10% more than the income level estimated based on the existing CHPT tariffs. A cost statement prepared based on the revised revenue is attached as **Annex-I**. At the revised tariff level and considering only the admissible cost and return, the CCTL will have an average surplus of 19.5% for the years 2002 and 2003.
- (xxxixiii). Many of the users particularly the CSLA have strongly voiced their demand for prescription of performance standards as a part of tariff conditionalities. It is noteworthy that, like many other drawbacks pointed out earlier in this Order, the CA does not subject the Licensee to a stated level of performance. The CCTL has claimed that it is committed to offering a level of performance achieved at other international terminals. We have no reason to discredit this claim as the container terminal at the NSICT under the same main promoter has indeed demonstrated such performance levels. But, it has to be recognised that a general statement made by the CCTL may not be sufficient for inclusion in the Scale of Rates as a performance condition. Such condition has to be based on accepted performance levels quantified objectively.

It may be recalled that this Authority has already decided to constitute a Working Group for formulating an efficiency linked tariff scheme for Container Terminals. We are in the process of identifying members of the proposed Working Group who will be drawn from Port Trusts, Private Terminals, Lines and Trade. The final approach towards introduction of an ELT Scheme for container terminals can be meaningfully decided only on receipt of the recommendations of the proposed Working Group. Till such a decision is taken commonly for all container terminals, it is not possible to introduce performance conditions in tariffs of only one container terminal in isolation. It is relevant here to stress that an interim ELT Scheme introduced earlier at the NSICT had to be rescinded as it did not factor in various relevant aspects.

- (xxxixiv). In terms of the tariff setting arrangements envisaged in the Statute, the rates prescribed by this Authority are only ceiling levels in the case of Private Terminals; and, they have a discretion to levy charges at a level lower than the prescribed rates. While this discretion may be exercised by the CCTL in some cases for commercial considerations, it may be more reasonable to prescribe a volume discount scheme in the Scale of Rates so that a minimum level of discount will be available uniformly to all users who fulfil the stipulated conditions. It is noteworthy that such volume discounts are prescribed in the Scales of Rates of the JNPT, NSICT and the PSASICAL.

Based on the experience gained in operating the container terminal, the CCTL is advised to come up in six months time with a suitable proposal for introduction of a volume discount scheme.

18.1. In the result, and for the reasons given above, and based on a collective application of mind this Authority approves the Scale of Rates of the CCTL attached as **Annex-II**.

18.2. According to a decision recently taken by this Authority, at the instance of the IPA, even changes in cargo related charges will come into effect only 15 days after their notification. But, this lead time need not apply in this case since the CCTL is only operating on CHPT tariffs applied as an interim arrangement; there is no regular tariff arrangement yet at the CCTL. In the event, the Scale of Rates approved in this case will come into effect immediately upon its notification in the Gazette of India. In this connection, it has also to be recognised that this matter has already been delayed somewhat.

(**S. Sathyam**)
Chairman

COST STATEMENT BASED ON THE REVISED SOR FRAMED

(Amount in Rs.'000)

Sr. No.	Particulars	Schedule	2002	2003
	Throughput in TEUs		424,908	484,395
I	REVENUE			
	Gross Revenue		1,120,565	1,295,639
	TOTAL (I)		1,120,565	1,295,639
II	OPERATING EXPENSES			
	Operating & Direct Labour	1	108,284	104,599
	Maintenance Labour	2	21,471	17,213
	Equipment Running Costs	3	117,986	138,353
	Operations Equipment Depreciation	4	108,086	153,353
	Other Expenses	5	136,616	165,225
	TSA Fees - P&O Ports	6	0	0
	Sub Total		492,443	578,744
	OVERHEADS			
	Management and Administration Labour	7	19,721	18,785
	Non-operating Depreciation	8	40,054	40,054
	General Overheads	9	33,696	42,696
	Preliminary Upfront Payment write off	10	3,525	3,525
	Equipment written off during the year	11	82	82
	Sub Total		97,078	105,142
	TOTAL (II)		589,521	683,885
III	SURPLUS (I-II)		531,044	611,754
IV	FINANCING CHARGES			
	Interest on Loans/ Financing Costs	12	88,134	191,707
	Forex Losses on repayment	13	0	0
	TOTAL (IV)		88,134	191,707
V	SURPLUS AFTER FINANCING CHARGES (III-IV)		442,910	420,047
VI	Credit back of the amount receivable at the end of the 30th year (Discounted @ 12%)		6,690	7,496
VII	NET SURPLUS/(DEFICIT) AFTER THE CREDIT BACK (V+VI)		449,601	427,543
VIII	Equity Share		1,063,463	1,533,793
	Borrowed Funds		705,076	1,595,475
IX	Return on Equity Share @ 20% linked to capacity utilisation of around 80%		170,154	245,407
X	NET SURPLUS AFTER INTEREST, CREDIT BACK AMOUNT AND RETURN		279,447	182,136
XI	NET SURPLUS AS A PERCENTAGE OF GROSS REVENUE AFTER ALLOWING RETURN ON EQUITY AND ACTUAL INTEREST		24.9%	14.1%
XII	AVERAGE NET SURPLUS AS A PERCENTAGE OF GROSS REVENUE		19.5%	

Chennai Container Terminal Limited Scale of Rates

(As on 15 March 2002)

PREFACE

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

1. DEFINITIONS

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

- 1.1. “**CCT**” means Chennai Container Terminal.
- 1.2. “**CCTL**” means Chennai Container Terminal Limited, a company incorporated in India its successors and assigns.
- 1.3. “**CFS**” means Container Freight Station at the CCT.
- 1.4. “**Coastal Vessel**” shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal license issued by the competent authority.
- 1.5. “**Container**” means the standard ISO container, suitable for the transport and stacking of cargo and must be capable of being handled as a unit and lifted by a crane with a container spreader.
- 1.6. “**FCL**” means Containers said to contain Full Container Load.
- 1.7. “**Foreign-going Vessel**” shall mean any vessel other than a coastal vessel.
- 1.8. “**Hazardous container**” means a Container containing hazardous goods as classified under IMO.
- 1.9. “**ICD**” means Inland Container Depot.
- 1.10. “**LCL**” means Containers said to contain Less than full Container Load (Container having cargo of more than one importer/exporter).
- 1.11. “**Over Dimensional Container**” means a Container carrying over dimensional cargo beyond the normal size of standard containers and needing special devices like slings, shackles, lifting beam, etc. Damaged Containers and Container requiring special devices for lifting is also classified as Over Dimensional Container.
- 1.12. “**Per day**” means per calendar day or part thereof.
- 1.13. “**Reefer**” means any Container for the purpose of the carriage of goods, which require power supply to maintain the desired temperature.
- 1.14. “**Port**” means Chennai Port Trust.
- 1.15. “**Shut Out Container**” means a container, which has entered the terminal for export for a vessel as indicated by VIAN and is not connected to the vessel for whatsoever reason.
- 1.16. “**Tonne**” means one metric Tonne of 1,000 kilograms or one cubic metre.

- 1.17. “**Transshipment container**” means a Container discharged from one vessel, stored in CCT and transported through another vessel.
- 1.18. “**VIAN**” means Vessel Identification Advise Number.

2. **GENERAL**

- 2.1. Containers less than and upto 20’ in length will be reckoned as one TEU for the purpose of tariff.
- 2.2. Containers other than that of standard size requiring special devices / slings / handling will be charged as per 3.5 below. Such containers will also include damaged containers and any other type requiring special devices.
- 2.3. Container-related charges denominated in US dollar terms shall be collected in equivalent Indian rupees. For this purpose, the market buying rate prevalent on the date of entry of the vessel into the Terminal (in case of import containers) and on the date of arrival of containers in the Terminal premises (in case of export containers) shall be applied for re-conversion of the dollar-denominated charges into Indian rupees.
- 2.4. All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.
- 2.5. All invoices are issued as due on presentation. Failure to pay may cause a lien to be placed on the goods handled at the Terminal and the responsible party may be denied further use of the Terminal until all outstanding charges have been paid.
- 2.6. (i). The user shall pay penal interest on delayed payments of any charge under this Scale of Rates. Likewise, the CCTL shall pay penal interest on delayed refunds.
- (ii). The rate of penal interest will be in the range between a minimum of 2% above the Prime Lending Rate of the State Bank of India and a maximum of 18% within which the CCTL can choose the rate convenient to their purpose. The penal rate chosen will apply to both the CCTL and the port-users equally.
- (iii). The delay in refunds will be counted only 20 days from the date of completion of services or on production of all the documents required from the users, whichever is later.
- (iv). The delay in payments by the users will be counted only 10 days after the date of raising the bills by the CCTL. This provision shall, however, not apply to the cases where payment is to be made before availing the services as stipulated in the Major Port Trusts Act and/or where payment of charges in advance is prescribed in this Scale of Rates.
- 2.7. (i). A foreign-going vessel of Indian flag having a General Trading Licence can convert to coastal run on the basis of a Customs Conversion Order.
- (ii). A foreign going vessel of foreign flag can convert to coastal run on the basis of a Coastal Voyage Licence issued by the Director General of Shipping.
- (iii). In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.
- (iv). In cases of such conversion coastal rates shall be chargeable only till the vessel completes coastal cargo discharging operations; immediately thereafter, foreign going rates shall be chargeable by the discharge ports.
- (v). For dedicated Indian coastal vessels having a Coastal licence from the Director General of Shipping, no other documents will be required to be entitled to coastal rates.
- 2.8. An LCL Container coming in and going out of the CCT as a unit load will be regarded as an FCL for the purpose of levying charges.

3. **CHARGES FOR CONTAINER OPERATIONS**

3.1. **Charges for handling FCL import and export containers and empty containers.**

3.1.1. **Handling by Quay Crane including lashing/unlashing charges.**

	Foreign-going Vessel US\$	Coastal Vessel Rs.
Per FCL Container		
- Not exceeding 20' in length	17.50	850
- Exceeding 20' and upto 40' in length	26.25	1275
- Over 40' in length	35.00	1700
Per empty Container		
- Not exceeding 20' in length	17.50	850
- Exceeding 20' and upto 40' in length	26.25	1275
- Over 40' in length	35.00	1700

Services include handling by quay crane and lashing/unlashing.

3.1.2. **Handling at Container Yard including lift on/off, transport and delivery / receipt to and from customers.**

	Rs.
Per FCL Container	
- Not exceeding 20' in length	1050
- Exceeding 20' and upto 40' in length	1575
- Over 40' in length	2100
Per empty Container	
- Not exceeding 20' in length	520
- Exceeding 20' and upto 40' in length	780
- Over 40' in length	1040

Services include transport to and from the quayside, lifts at CY for storage and for landing or loading the container from or to customer's vehicle.

3.2. **Charges for handling LCL import and export container.**

3.2.1. **Handling by Quay Crane including lashing/unlashing, charges.**

	Foreign-going Vessel US\$	Coastal Vessel Rs.
Per LCL Container		
- Not exceeding 20' in length	17.50	850
- Exceeding 20' and upto 40' in length	26.25	1275
- Over 40' in length	35.00	1700

Services include handling by quay crane and lashing/unlashing.

3.2.2. Handling at Container Yard including lift on/off and transportation to and from CFS

	Rs.
Per LCL Container	
- Not exceeding 20' in length	1850
- Exceeding 20' and upto 40' in length	2775
- Over 40' in length	3700

Services include transport, to CY, CFS, lifts at CY for storage and for landing or loading the container from or to customer's vehicle, stowage planning on vessel and yard, data handling, processing and transfer of data between vessel, CCT and shipping line.

3.2.3. Stuffing / destuffing of cargo at the CCT

	Foreign-going Vessel US \$	Coastal Vessel Rs.
Destuffing/stuffing per container		
- Not exceeding 20' in length	8.50	413
- Exceeding 20' and upto 40' in length	12.75	620
- Over 40' in length	17.00	826

- Note:**
1. Services include stuffing or destuffing of LCL containers.
 2. For stuffing/destuffing half-a-container, 50% of the above-mentioned rates will be levied. For this purpose, part stuffing / destuffing of 50% or less than 50% of a container will be treated as half-a-container. If a container is, however to be topped up or stuffed/ destuffed more than 50%, it will be treated as a full container.

3.3. Charges for handling ICD import and export container.

3.3.1. Handling by Quay Crane including lashing/unlashing charges.

	Foreign-going Vessel US\$	Coastal Vessel Rs.
Per loaded Container		
- Not exceeding 20' in length	17.50	850
- Exceeding 20' and upto 40' in length	26.25	1275
- Over 40' in length	35.00	1700
Per empty Container		
- Not exceeding 20' in length	17.50	850
- Exceeding 20' and upto 40' in length	26.25	1275
- Over 40' in length	35.00	1700

Services include handling by quay crane and lashing/unlashing.

3.3.2. Handling at Container Yard including lift on/off and transport to Rail Yard

	Rs.
Per loaded Container	
- Not exceeding 20' in length	1050
- Exceeding 20' and upto 40' in length	1575
- Over 40' in length	2100
Per empty Container	
- Not exceeding 20' in length	520
- Exceeding 20' and upto 40' in length	780
- Over 40' in length	1040

Services include transport to yard, lifts at yard, transport to rail yard, stowage planning on vessel and yard, data handling, processing and transfer between vessel, CCT and shipping line.

3.4. Charges for handling Transshipment Containers including handling by on board stevedoring labour at Quay side, lashing/unlashing charges

	Foreign-going Vessel US\$	Coastal Vessel Rs.
Per loaded Container		
- Not exceeding 20' in length	19.00	923
- Exceeding 20' and upto 40' in length	28.50	1385
- Over 40' in length	38.00	1847
Per empty Container		
- Not exceeding 20' in length	19.00	923
- Exceeding 20' and upto 40' in length	28.50	1385
- Over 40' in length	38.00	1847

Services include handling by quay crane (discharge and loading), transport and, lifts, stowage planning on vessel and yard, data handling, processing and transfer between vessel, CCT and shipping line.

- Note:**
1. A transshipment container sent to CFS, ICD or taken delivery locally shall be charged the local container rate
 2. A Shut out charge as per 3.10 shall apply if -
 - The vessel nomination is changed after berthing of the originally nominated vessel; or
 - If the vessel nomination is changed from a later vessel to an earlier vessel after the earlier vessel is berthed.

3.5. Charges for Hazardous Cargo Containers / Over-dimensional Cargo Containers.

A premium of 25% will be levied over the applicable handling charges prescribed above for respective categories of containers.

3.6. Charges for Wharfage

	Foreign-going Vessel US\$	Coastal Vessel Rs.
Per Container (box only)		
- Not exceeding 20' in length	1.00	49
- Exceeding 20' and upto 40' in length	1.50	73
- Over 40' in length	2.00	97
Per Containerised Cargo	Rs.	
- Not exceeding 20' in length	550	550
- Exceeding 20' and upto 40' in length	825	825
- Over 40' in length	1100	1100

- Note:**
1. The charge for containerised cargo in all cases will be in Rupee terms.
 2. The charge for containers in cases of 'foreign arrival' and 'foreign departure' will be in Dollar terms.
 3. The charges for containers in cases of 'coastal arrival' and 'coastal departure' will be in Rupee terms.
 4. Wharfage will be charged on all containers including ICDs, transshipment, LCL and FCL and empty containers.

3.7. Charges for handling hatch covers for one operation (both opening and closing).

	Foreign-going Vessel US\$	Coastal Vessel Rs.
Without landing hatch cover on quay	14.00	680
With landing hatch cover on quay	35.00	1701

- Note:** Half the rate shall be charged if there is only one activity, i.e. either an opening or closing operation.

3.8. Charges for shifting containers within vessel (Restows).

	Foreign-going Vessel US\$	Coastal Vessel Rs.
Within hatch (without landing and reshipping) per container		
- Not exceeding 20' in length	8.50	413
- Exceeding 20' and upto 40' in length	12.75	620
- Over 40' in length	17.00	826
Via Quay (shifted by landing on Quay & reshipping) per container		
- Not exceeding 20' in length	25.00	1,215
- Exceeding 20' and upto 40' in length	37.50	1,823
- Over 40' in length	50.00	2,430

- Note:** No wharfage will be levied on the restow containers and containerised cargo.

3.9. Additional Charges for Reefer Container

	Foreign-going Vessel US\$	Coastal Vessel Rs.
Per container per 8 hours or part thereof		
- Not exceeding 20' in length	5.50	267
- Exceeding 20' and upto 40' in length	8.25	401
- Over 40' in length	11.00	535

Services include plug/unplug and monitoring of the temperature. No maintenance will be performed on malfunctioning reefers. These charges will be applicable for restow reefer containers also.

3.10 Charges for a shut out container

	Foreign-going vessel US \$	Coastal Vessel Rs.
Per Container		
- Not exceeding 20' in length	19.00	923
- Exceeding 20' and upto 40' in length	28.50	1385
- Over 40' in length	38.00	1847

Note: Above charge shall apply where -

- (a) an export container or a transshipment container or a re-export container is shut out and subsequently delivered out of CCT
- (b) a container is shut out by one vessel and subsequently shipped on another vessel, in addition to the charges for handling by quay crane charges. In this case, the free storage period will be given to the Container in accordance with section 3.11 from the time the container is first received. If the free storage period is exceeded, storage charges shall be calculated after the expiry of the free period up to the time of lift on.

3.11. Charges for Container storage

Sl. No.	Particulars	Rate per container per day or part thereof (in US \$)		
		Upto 20' in length	Above 20' and upto 40' in length	Above 40' in length
1.	Import-FCL, LCL & empty			
	First 3 days	Free	Free	Free
	4-15 days	2.50	5.00	7.50
	16-30 days	5.00	10.00	15.00
	Beyond 30 days	10.00	20.00	30.00
2.	Export – FCL, LCL & empty			
	First 7 days	Free	Free	Free
	8-15 days	2.50	5.00	7.50
	16-30 days	5.00	10.00	15.00
	Beyond 30 days	10.00	20.00	30.00
3.	ICD – Import & Export – Loaded & empty			
	First 15 days	Free	Free	Free
	16-30 days	2.50	5.00	7.50
	31-45 days	5.00	10.00	15.00
	Thereafter	10.00	20.00	30.00

Sl. No.	Particulars	Rate per container per day or part thereof (in US \$)		
		Upto 20' in length	Above 20' and upto 40' in length	Above 40' in length
4.	Transshipment – Loaded & empty First 30 days 31-45 days 46-60 days Thereafter	Free 2.50 5.00 10.00	Free 5.00 10.00 20.00	Free 7.50 15.00 30.00
5.	Shutout – Loaded & empty First 15 days 16-30 days Beyond 30 days	2.50 5.00 10.00	5.00 10.00 20.00	7.50 15.00 30.00
6.	Change of status to local delivery First 3 days 4—15 days 16-30 days Beyond 30 days	Free 2.50 5.00 10.00	Free 5.00 10.00 20.00	Free 7.50 15.00 30.00

- 3.12.1.** Storage period for a container shall be reckoned from the day following the day of landing upto the day of loading / delivery / removal of container.
- 3.12.2.** For purposes of calculation of free time, Sundays, Customs notified holidays, and the Terminal's non-operating days shall be excluded.
- 3.12.3.** Transshipment containers whose status is subsequently changed to local FCL/LCL/ICD shall loose the concessional storage charges. The storage charges for such containers shall be recovered at par with the relevant import containers storage tariff.
- 3.12.4.** Normal import containers subsequently changing the mode to either LCL or ICD containers will enjoy the free period applicable to local FCL containers.
- 3.12.5.** Total storage period for a shut out container shall be calculated from the day following the day when the container has become shut out till the day of shipment/delivery.
- 3.12.6.** The storage charges on abandoned FCL containers/shipper owned containers shall be levied upto the date of receipt of intimation of abandonment in writing or 75 days from the date of landing of container, whichever is earlier subject to the following conditions:
- (i). The consignee can issue a letter of abandonment at any time.
 - (ii). If the consignee chooses not to issue such letter of abandonment, the container Agent/MLO can also issue abandonment letter subject to the condition that,
 - (a). the Line shall resume custody of container along with cargo and either take back it or remove it from the port premises; and
 - (b). the Line shall pay all port charges accrued on the cargo and container before resuming custody of the container.
 - (iii). The container Agent/MLO shall observe the necessary formalities and bear the cost of transportation and destuffing. In case of their failure to take such action within the stipulated period, the storage charge on container shall be continued to be levied till such time all necessary actions are taken by the shipping lines for destuffing the cargo.

- (iv). Where the container is seized/confiscated by the Custom Authorities and the same cannot be destuffed within the prescribed time limit of 75 days, the storage charges will cease to apply from the date the Customs order release of the cargo subject to lines observing the necessary formalities and bearing the cost of transportation and destuffing. Otherwise, seized/confiscated containers should be removed by the Lines/consignee from the port premises to the Customs bonded area and in that case the storage charge shall cease to apply from the date of such removal.

3.12.7. Miscellaneous Charges

S. No.	Particulars	Rate per Container (in Rs.)	
		Not exceeding 20' in length	Exceeding 20' in length and upto 40' in length
(i).	Fixing of seal	200	200
(ii).	Lift on/lift off in the CY	550	825
(iii).	Charges for shifting within the Terminal	750	1125
(iv).	POD Change	750	1125
(v).	Additional movement – Terminal to Rail or Rail to Terminal / Charges for extra movement/ transportation	750	1125
(vi).	Change of status of Container from Rail to Road or vice-versa	750	1125

3.13. Charges for supply of Fresh Water to shipping alongside the container berths.

	Foreign-going US\$.	Coastal Rs.
Per 1000 Liters or part thereof	5.8	200

3.14. Charges for clearance of Garbage on-board

	Rs.
Per 1/2 cubic meter bag	200

4. CHARGES LEVIABLE AT THE CFS

4.1. Storage charges

Period	Rate per ton or part thereof per day or part thereof (Rs.)
First 3 days	Free
Next 7 days	50
Thereafter	100

Note: For purposes of calculation of free time, Sundays, Customs notified Holidays, and the Terminal's non-operating days shall be excluded.

4.2. Charges for Landing from / Loading to vehicle.

Rs.50/- per ton or part thereof.