

No. 93

New Delhi, the 11th April, 2001

**Tariff Authority for Major Ports**

**NOTIFICATION**

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal submitted by the Nhava Sheva International Container Terminal Limited (NSICT) relating to an Efficiency Linked Tariff Scheme (ELTS) at its Terminal, as in the Order appended hereto.

(S. Sathyam)

**Chairman**

**Case No. TAMP/130/2000-JNPT**

**Nhava Sheva International Container Terminal Limited (NSICT)**

..... **Applicant.**

**O R D E R**

**(Passed on this 28th day of March 2001)**

This case relates to a proposal submitted by the Nhava Sheva International Container Terminal Limited (NSICT) relating to an Efficiency Linked Tariff Scheme (ELTS) at its Container Terminal.

2.1. A proposal of the NSICT for revision of its container handling charges was considered by this Authority; and, an Order in that case was passed on 7 November 2000. Finding merit in the demand of users for fixing efficiency standards and the arguments of the NSICT for a premium over tariffs for performances achieved above the prescribed efficiency level, it was found appropriate to prescribe an ELTS at the NSICT. Such a prescription, however, could not be made along with the tariff revision, as the relevant operational data to formulate such a scheme were not readily available then. Pending formulation of a comprehensive ELT Scheme, this Authority prescribed 24 moves per hour as the interim cut-off limit based on the sustained average productivity level reported by the NSICT. Accordingly, the total handling charge divided by 24 was decided to be the unit charge; and, for every move above and below there was prescribed a premium or rebate respectively with reference to the unit charge.

2.2. Since the prescription made was an interim measure, the NSICT was advised to formulate an ELT Scheme within 3 months, in consultation with its users, providing for rewards for achieving container handling rates higher than the cut off limit and penalties for performance below the cut off limit.

2.3. In this backdrop, the NSICT has now submitted a proposal for an ELT Scheme.

3.1. The NSICT has argued that the interim ELTS is inequitable or impractical. Some of the reasons cited by it are as follows:

- (i). The TAMP Order has not provided any reason for using a cut off rate of 24 moves per hour, and thus the proposed imposition of this rate seems arbitrary. 24 moves per hour may have been considered, as this was the average net crane moves per hour that was achieved by the NSICT over the last year of operations. The average rate achieved was 24 net moves per hour. The TAMP proposal is to use this rate as a gross rate per hour.
- (ii). A yearly average rate achieved cannot be used as a cut off rate that must be achieved on each ship. This ignores the different types of ships and situations that have worked together in achieving the average.
- (iii). The NSICT operates as a Licensee terminal in Jawaharlal Nehru Port, where it is direct competition with the landlord container terminal, JNPT. The JNPT does not have any ELT Scheme in operation; and, for that matter, neither does Mumbai Port nor any of the container terminals anywhere in India. Singling out NSICT for application of an ELT scheme is discriminating against the terminal. If an ELT scheme is introduced at NSICT, it must be simultaneously introduced at all other container terminals in India.
- (iv). The proposed ELT Scheme does not factor in the age of equipment used in the terminal. As equipment gets older, efficiencies will drop in spite of the most aggressive maintenance schemes.
- (v). The terms of the tender inviting private participation at the JNPT required the NSICT to maintain an average of 20 moves per hour determined over a twelve month period. The proposed cut off rate of 24 moves per hour is an upward revision of this most fundamental tender term.
- (vi). The proposed ELT scheme may have the following inadequacies:
  - (a). The ELT Scheme does not measure the average productivity achieved; and, thus, is greatly skewed by isolated factors such as size/type of ship, cargo stowage, bunching, late runners, etc. which are not within the NSICT's control.
  - (b). The proposed ELT Scheme uses a very high cut off rate, which seems to have been arrived at arbitrarily.
  - (c). The proposed ELT Scheme inadvertently encourages less advanced and less productive ships to call at the NSICT, as they will naturally be eligible for a rebate in tariff.
  - (d). The proposed ELT Scheme will force the NSICT to discriminate against less efficient ships which is against the "common user, universal access" philosophy that is enshrined in the Concession Agreement.
  - (e). There is no concomitant guarantee on the efficiency of services that the NSICT receives from the J N Port. These services are essential for NSICT to deliver productivity norms being discussed.
  - (f). The term "Productivity" itself is a matter of serious debate and needs to be clearly defined before establishing the norms to avoid misinterpretation.
  - (g). Productivity has already been resolved by the Concession Agreement; and, there is a penalty for non-performance. The NSICT must not be required to pay for non-performance twice.

3.2. The NSICT has proposed two alternate models of ELTS. It has also clarified that its proposals are without prejudice to its stand on this issue; and, the proposals have been made since the TAMP has “asked” the NSICT to propose an efficient ELTS.

3.3. The proposals under Option 1 of the ELT Scheme are as follows:

- (i). TAMP will ensure that the NSICT and the shipping lines or vessel have between themselves an agreement or understanding in which (i). the NSICT undertakes to provide certain levels of productivity; and (ii). there is a premium for exceeding this productivity and a penalty for non-achievement.
- (ii). Once such an understanding is reached, the tariff increase can be implemented without any productivity reference.

In the case of long term agreement, the TAMP can advise both parties to have an understanding on productivity acceptable to them. In short-term agreement, the TAMP can prescribe a form that is filled in and signed by both parties before the vessel uses the terminal.

- (iii). This option is practicable and ensures that all the disadvantages of the present system are removed. This will provide different bench marks for different Customer’s priority.
- (iv). This scheme is simple to operate and administer. On the part of TAMP, all that is required is to ensure that such agreements are in place. There need not be any calculation or assessment of the ELT scheme in itself. On the part of the Customer and NSICT, the system will be easy to implement in terms of accounting/management systems, as there will not be a variable rate for each vessel as most such systems take into account a longer time horizon.
- (v). This option is not universal. The scheme for one Customer will be different from that of another. This, however, is not a disadvantage, as it will allow some flexibility in the scheme depending on the Customer’s requirements. Most importantly it will be a system that both participants accept.

3.4.1. The proposals under Option 2 of the ELT Scheme are as follows:

(i). This scheme is much more complicated that will require substantial monitoring and, perhaps, some refinement. It gives no benefits over Option 1.

(ii). A benchmark is established with which all productivity is then indexed. This may be called as the Productivity for the Next period (PNP).

(iii). This PNP is adjusted for previously achieved productivity levels. This will allow for automatic adjustments of equipment age, changes in trade, type of vessels, etc. The productivity benchmark is an active benchmark and varies with changing vessels, trade etc.

(iv). If actual productivity over the tariff period exceeds or is lower than the PNP, a premium or rebate is added to the next calculated tariff increase/decrease. The advantages are as follows:

- (a). As the productivity is averaged over a period, imperfections due to vessel type, cargo/trade type, factors outside the operator’s control, etc., are leveled out.
- (b). The premium or rebate is not paid directly to the vessel or line but is effected in the next period’s tariff. This has the effect of rewarding or punishing the service provider as well as providing a benefit to the Customer. At the same time it does not allow misuse of the ELT scheme to advantage, such as calling inefficient ships at the terminal.

- (v). (a). Base Productivity (BP) is the minimum productivity that the terminal and its equipment are designed for. In the NSICT's case, this is the minimum productivity as required by the Concession Agreement. Thus Base Productivity at the NSICT is a Net Crane Rate (NCR) of 20 moves.
- (b). PLP is the benchmark productivity that was set to be achieved in the immediately previous tariff period.
- (c). PCY is the actual NCR achieved for all vessels calling at the container terminal from 1st January to 31 December in any particular year.
- (d). PNP is the benchmark productivity that must be achieved in the next tariff period. It is calculated by adding or subtracting 50% of the difference between the PLP and the PCY to the BP.

$$PNP = BP + [0.5(PCY - PLP)]$$

- (vi). Financial Tariff (FT) is the tariff calculated by the TAMP after reviewing comprehensive information submitted by the terminal operator. This financial tariff is tariff that is calculated purely in accordance with financial parameters set by the TAMP from time to time. Productivity factors are not taken into account in arriving at Financial Tariff.
- (vii). Once Financial tariff is calculated, it will be enhanced or reduced by a Productivity Adjustment (PA). This adjusted tariff will then be the TAMP approved Tariff (TT) for the next tariff period.

The PA is calculated as follows:  $TT_{Y(x-1)}$

$$TT_{Yx} = FT_{Yx} + (PCY - PLP)x$$

$PLP$

3.4.2. The NSICT has also stated that the Option 2 will work with the following exclusions:

- (i). If both the Terminal Operator and the Customer agreed, certain vessel call or a certain period of the vessel call are not counted for the ELTS. When a vessel wants to wait for late runners, if agreed by both parties, that time will not count towards the ELTS.
- (ii). The tariff must include a cut off time. However, it is purely within the Terminal Operator's right to decide whether he will accept containers with the letter referred above, or not. Such a cut off time is essential to ensure that the Terminal Operator's productivity is not compromised by practices of the Customers themselves.
- (iii). TAMP shall allow rebates in royalty paid by the Terminal Operator if any of the back up infrastructure provided by the landlord facility is not in accordance with the representations made in the Concession Agreement. If these facilities are themselves deficient it is very difficult for the Terminal Operator to provide the same, promised levels of productivity. The TAMP must intervene in issues related to the Landlord honouring the Concession Agreement clauses and also providing the licensee with services for the royalty being paid.

4.1. When the proposal for revision of the NSICT container handling charges was taken up in a joint hearing in June 2000, the CSLA, which forcefully pleaded for linking tariffs with terminal's productivity, agreed to submit a note elaborating performance criteria for a container terminal of internal standard. The CSLA, however, did not submit such note, despite reminders, before the proposal was decided by this Authority in November 2000. Subsequently, it has forwarded a note containing the following suggestions:

(i). Gross Berth Productivity shall include the total productivity achieved on a container berth from ship arrival to ship departure. This is dependent upon vessel size and the following standards are to be met

<u>Vessel LOA</u>	<u>Moves Per Hour</u>
270 m	100 plus
220 – 270m	75 -100
150 – 220m	50 – 75

(ii). The minimum crane productivity shall be 20 moves per hour but 25 per hour should be achievable and should be aimed for.

(iii). The maximum time allowed for a terminal to handle a vehicle (Truck turnaround), from vehicle arrival to vehicle departure, shall be 30 minutes.

(iv). A terminal must commence despatch of imports to ICDs/CFS/railheads within 6 hours of receipt of instructions from Lines and complete this within 24 hrs. from receipt of instructions.

Terminals must be able to accept and load export containers up to 8 hrs. from receipt of instructions.

(v). Terminal must have the ability to communicate with Lines/Agents etc. by EDI, using internationally accepted communication standards. They must provide themselves and not through other service providers operating with them, all terminal services and be responsible for them, i.e. a single window service.

4.2. A copy of the CSLA letter was sent to the NSICT for its comments. No reply has, however, been received in this regard.

5. The CSLA vide its letter dated 2 January 2001 has changed its earlier suggestions. The following points have been made by the CSLA:

(i). It may not be appropriate to try and set standards to apply to the industry as a whole.

(ii). Performance criteria must be set by user or by group of users where vessel operators have chosen to work together in a consortium or slot sharing agreement.

(iii). Performance is affected by a multiplicity of factors, which vary widely by user. Larger and more modern vessel with large discharge and/or load volumes can achieve higher exchange rates, whereas smaller or older vessels may only be able to achieve lower exchange rates.

(iv). To set one standard to apply to all users and all vessels will almost certainly mean a standard which is the lowest common denominator. This will clearly not encourage the use of more modern tonnage and can place undue pressure upon terminals, slow down more efficient vessel and set standards that are inappropriate for less efficient vessels.

(v). Standards of productivity can be better set by user or users group. This will produce standards, which will more accurately reflect vessel and terminal capabilities and will actually apply more focused pressure upon terminals to perform.

(vi). In certain circumstances, the Lines may wish to set upper as well as lower productivity standards. For example, a user may not wish to find himself paying for a very high performance if the vessel can not then sail for other reasons.

(vii). Productivity linked pricing is essential but the criteria for such arrangements will have to be subjected to bilateral discussions between users or group of users and terminals.

6. The proposal of the NSICT was circulated to various users and representative bodies of users. Comments received from them are summarised below:

#### **Jawaharlal Nehru Port Trust (JNPT)**

- (i). The NSICT while submitting their proposal for increase in the tariff have indicated that they have achieved a sustained average level of performance of approximately 24 moves/hour. This covers bigger and smaller parcel size vessels and all type of feeder vessels. Basing on the submission made by the NSICT, the TAMP prescribed 24 moves per hour as the cut off point.
- (ii). The Concession Agreement between the JNPT & NSICT envisages the minimum performance level of 20 moves / hour. This crane productivity calculation is similar to that of the JNPT calculations. It is understood that the NSICT inflating the berth productivity & crane productivity by multiplying the hatch cover movements varying from 2 to 6 as against 2 (1lift off and 1 lift on) at the JNPT. This gives a distorted or inflated figure of crane productivity at the NSICT.
- (iii). According to the Concession Agreement, the licensee shall manage and operate the container terminal on a common user basis. Under clause 6.1.7 of the Agreement, the NSICT is supposed to reserve 33% of berth days for common user facilities and berths must be made available on "First-Come-First-Served Basis". The NSICT is neither following servicing the vessels on "First-Come-First-Served Basis" nor made available 1/3 berth days in a month for non-window vessels. It is obvious that the NSICT is giving preference only to bigger parcel size vessels preferring certain shipping lines to get better productivity and the small vessels though they come earlier than the bigger size vessels are kept waiting which is a gross violation of Concession Agreement.
- (iv). In the Agreement no time frame has been mentioned for handling vessel drawing laden draught up to 12.5 mt. depth. The channel had already been widened to 350 mt. from the first day of the first year of the NSICT operations and has since been widened to 400 mt. Now the NSICT is coming with various points for justifying lesser productivity for lesser parcel size vessels, geared vessels etc., which appear to be not reasonable. The JNPT has fulfilled all its obligations as agreed in the Agreement, which benefit the NSICT in berthing of bigger LOA vessel and 3rd and 4th generation vessels on regular basis. Night navigation is also carried out depending upon tidal condition.

However, Port has also plans to go for deepening of approach channel for accepting larger vessels with higher draft in near future. TAMP may define 3rd, 4th & 5th generation vessels with its characteristics like LOA, draught, beam and capacity in view of the changed scenario.

- (v). The royalty payment agreed in the Concession Agreement between the JNPT and the NSICT is based on certain agreed terms and conditions. As such, the question of approaching the TAMP for rebate in royalty payable to the JNPT cannot arise and cannot be linked up with the proposal of ELTS. As has been stated earlier, the NSICT is already reaping high profits because of advance actions by the JNPT. Since NSICT is the only beneficiary at present, there is a strong case for increasing the paltry royalty amount manifold.
- (vi). Some important points which directly affect the productivity which need to be taken into consideration while formulating ELTS are as follows:

- (a). Ship size, type of ships and the design of ships play an important role in the productivity of container handling. Smaller vessels normally cause stability problem also in addition to the other points raised.
- (b). Container mix, and On Deck/Under Deck stowage are also factors that may influence the productivity. However, the percentage of over dimension containers are normally very small. On Deck/Under Deck stowage is a standard practice of container stowage irrespective of the vessel type and size. Hence, the average productivity norms in terms of moves per hour/crane will not be adversely affected because of the above two factors.
- (c). Well stowage can affect the productivity and terminal operator doesn't have any control on it. In case of well stowage whether some penalizing factor on the shipping lines can be incorporated so that port alone doesn't suffer for lower productivity, needs to be examined.
- (d). Measuring the productivity in terms of gross moves needs to be defined and clarified again. According to the agreement, the NSICT has to follow the definition of gross crane moves as is done at the JNPT, which is total number of, moves i.e. import, export & hatch cover movements.
- (e). Equipment age must be taken into consideration while fixing up the cut-off rate in terms of gross moves per hour. It is suggested that the total economic life of 17 years may be divided into four blocks each of 5 years and cut off rate may be fixed as indicated below:

0	-	5 years	-	24 moves
6	-	10 years	-	22 moves
11	-	15 years	-	20 moves
16	-	20 years and onwards	-	18 moves_

### **The Container Shipping Lines Association (CSLA)**

- (i). The efficiency linked pricing must become the norm in all Indian Ports if they are to achieve the levels of productivity that are generally accepted internationally. While the Lines welcome this at the NSICT, the need is much greater elsewhere.
- (ii). One standard cannot apply across the industry. Efficiency linked pricing arrangements must be bilateral between ports and individual users (or group of users in a consortium) and the outcome of individual commercial negotiation between the parties.

While it is acknowledged that the principle of individual commercial arrangements between users and ports may present legislative issue, these issues will have to be addressed, if a fundamental shift in productivity levels is to be achieved.

- (iii). Notwithstanding the principle that standards of performance be set after bilateral negotiations, the TAMP must also prescribe minimum performance levels. This shall be subject to local conditions such as officially declared weather working days.
- (iv). Both of the options proposed by the NSICT have merit. Option 2 is very complex. In many cases high productivity will result in the Lines paying very high premium without deriving any or very little financial benefit i.e., vessels may not be able to sail due to

restrictions imposed by the JNPT and savings in berth hire, if any, will be relatively meager compared to the efficiency premiums paid to NSICT.

- (v). While gross moves may ultimately be a matter for bilateral discussion, the Lines believe that gross productivity is the best yardstick. Terminals have to take responsibility for their own commercial ventures and cannot arbitrarily exclude factors.
- (vi). The counting of moves within an overall gross figure will need debate as the inclusion of hatch covers with a weighting of 5 moves seems inappropriate.
- (vii). The interim ELTS ordered by the TAMP cannot be termed as arbitrary. The cut off rate was in fact what the NSICT had achieved.
- (viii). The TAMP's Order (on interim ELTS) may be somewhat simplistic. This may be because the CSLA's original proposal did not provide sufficient explanation of factors that need to be taken into account in determining productivity.
- (ix). Option 2 has the right objectives but its complexity is too great for practical application. Option 1 is, however, fundamentally correct. Consideration has also to be given to other constraints such as tides, which may nullify the perceived benefit of higher productivity. Furthermore, account must be taken of the values of increased productivity to the terminal which will benefit through better utilisation of the berth. Option 1 if selected, must be operated within the regulatory framework of TAMP.
- (x). Whatever option approved, it must be easy to implement and must incorporate an agreement upon the yardsticks to be used, in particular the definition of gross moves.
- (xi). A bilateral ELTS along the lines suggested by the NSICT under Option 1, and subject to the consideration set out above, is the correct way forward.

7.1. On the basis of a preliminary internal scrutiny of the proposal, further clarification/ comments/ information were called for from the NSICT. In reply, the NSICT has furnished detailed clarifications, which are summarised below:

- (i). Option 1:
  - (a). *Transparency* : Option 1 is operational between the Customer and the Service Provider and will be transparent to TAMP.
  - (b). *Universal Applicability* : Universal applicability of an ELTS is not possible because of the great variation in terms of types of ships, types of containers, types of weather, types of stowage, etc. Universal applicability of a single ELTS across all container handling operations is not possible.
  - (c). *Similar Treatment to similar users* : None of the NSICT Customers is similar in the sense that equipment, everything else being considered equal, cannot deliver exactly the same productivity on their ships. In fact, the NSICT can not be able to deliver the same productivity on the same ship on different calls; nor will any terminal in the world.
  - (d). *Determination of premium / rebate by the TAMP* : The NSICT is not aware of any statutory provision that requires premium or rebates to be paid. The ELTS as suggested (by the TAMP) will mean that a Terminal Operator can be penalised thrice for the same default. He is penalised once by the provision in the Concession Agreement whereby a productivity of less than 20 moves makes him liable for



termination. The second penalty is through the Service Agreement that the Operator has with his various Customers. The productivity threshold in these agreements is usually above that suggested by the Concession Agreement. The TAMP's ELTS is the third penalty.

- (e). *Concession Agreement* : The tariff set by TAMP for a private terminal such as NSICT is a ceiling only.
- (f). The rebate and premium will be determined by the Service Provider and the Customers after commercial negotiation. This rebate / premium will be enshrined in an Agreement and a confirmation to that effect will be lodged with TAMP if required.
- (ii). Option 2:
  - (a). It will be unfair to measure productivity and implement the ELTS on a per vessel basis. The very definition of productivity, even in the Concession Agreement, is that it is an annual average. On a per call basis (even if the same ship is used), this average is meaningless. Thus Option 2 endeavours to use an average measure to measure and implement an ELTS.
  - (b). The intention of Option 2 is that the Terminal Operator is rewarded in year 2 if he betters his productivity requirement in year 1. Similarly, the trade in general is given a rebate in year 2 if the Terminal Operator cannot meet productivity requirements in year1.
  - (iii). The use of Gross Moves per hour in the CA was a commercially negotiated issue. Gross crane rates include factors completely beyond the service provider's control (The NSICT has illustrated the matter with an example where stoppage due to power failure and custom delays were not included in the net time). Net crane rate is fair and appropriate measure to reward or punish operators for efficiency or inefficiencies within their control. The NSICT's reference of '24 moves per hour' is with reference to an annual average and net crane moves.
  - (iv). The TAMP's intention seems to be to link tariff with productivity achieved on each ship. Productivity by definition is an annual average. Nowhere in the world is productivity stated as per ship's measure. It is not humanly possible to achieve similar productivity on a per-ship basis.

As the punishment for non-achievement of productivity under the Concession Agreement is so stringent, there does not need to be any rebate provision.

- (v). It is not fair for the Terminal Operator to be shackled with an ELTS while the Port, who is also providing a service which is being paid for in a Major Port (and thus under the purview of the TAMP), does not have the same compulsions of productivity. The efficiency of NSICT is directly linked to the services it is getting from the Port. There must be a level playing field. If the NSICT is to deliver an ELTS, then all Major Ports should also have an ELTS.
- (vi).
  - (a). If the entire Port were run by one entity there may have been some merit in using turn around time as a measure of productivity. Berthing / unberthing services, pilots, tugs, mooring gangs, rail services, in / out access roads, electricity, water, communications, etc., are provided by the Port management (JNPT).
  - (b). Customs may delay clearance to vessels for various reasons – insufficient information supplied by Shipping Lines, stowaways, and other exigencies, which are all beyond the control of NSICT. Customs clearance is the Lines responsibility and thus vessel turn around cannot be used as a measure of NSICT's productivity.

(c). There are many occasions when containers are fed from the JNPT to a ship that is alongside at the NSICT or vice versa. Transshipment is an operation where both the NSICT and the JNPT are working the same vessel together. Both NSICT and JNPT directly contribute to the productivity of any transshipment operation, while the TAMP is proposing that only NSICT bears the consequences of any impact of the efficiencies achieved. This example highlights the NSICT view that productivity at a terminal is a team effort, where many agencies contribute to achieve the final result. It is best to allow the Terminal Operator and the customers to decide what levels of productivity will suit them. Setting an arbitrary level that will apply to all Customers in all types of operations in all seasons is not a workable solution.

7.2. With reference to our request to send information about the performance of the vessels since its commencements of operation, the NSICT has stated that it does not collect the information relating to GRT of vessel, mainline, feeder line, gearless, cellular, container etc., type of twist locks date and time of entry pre-berthing detention, date and time of berthing, departure etc., as these are marine activities and charges are being collected by the JNPT.

7.3. The NSICT has requested us to provide with the calculations and principles by which the TAMP had decided to implement a productivity of 24 gross moves per hour.

7.4. The NSICT has also stated that the TAMP has included cost of planning and cost of lashing / unlashings as part of the stevedoring tariff. It has added that they are separate cost items and are presently not included as a part of tariff, or claimed for in its tariff application; and, these costs are presently borne by them. The NSICT has maintained that this issue has not been discussed in the TAMP forum.

8.1. A joint hearing in this case was held on 30 January 2001 at the NSICT Terminal in Navi Mumbai. At the joint hearing the following submission were made:

#### **The Nhava Sheva International Container Terminal Limited (NSICT)**

The NSICT made a presentation of its proposal in detail. In addition, it made the following submissions:

- (i). The Concession Agreement (CA) and its parameters are for a different purpose. The ELTS is a different context. The conditions of the CA need not restrict the discussion here. The two calculations can be separately applied for different purposes.
- (ii). The MOPT cannot be compared. In MOPT the port and the operator are the same. They are fully in control. The NSICT is not in control of all the services.
- (iii). When we gave the figure of 24 moves per hour to the TAMP, we gave the 'net' figure. We never cited that as a 'gross' figure.
- (iv). Even if the time spent by vessels at berth – from 'start of operations' to 'end of operation' – is reckoned with for ELTS as cut off, it does not account for 'late runners'. We are forced to accept late cargo.
- (v). Terminal operator shall be held responsible only for factors within his control.
- (vi). In Option-I only bilateral agreements are to be finalised. No alteration tariffs is required, only operational issues are settled on commercial considerations through bilateral agreements.

#### **The Jawaharlal Nehru Port Trust (JNPT)**

- (i). Concession Agreement talks about gross crane productivity. There can be no change.
- (ii). NSICT has come up with a good proposal.
- (iii). Vessel specific; cargo mix; and, stowage planning are all relevant.
- (iv). Productivity with gross moves will need to be defined.
- (v). Option-I in the proposal of the NSICT lacks transparency.
- (vi). Hatch cover movement are also accounted by the NSICT for calculating productivity. There is, therefore, inflation of figures.
- (vii). What are the parameters to be considered to determine container terminal's productivity is not transparent anywhere.
- (viii). Age of equipment is a relevant factor to be reckoned with.
- (ix). 24 moves per hour was a "sustained average" figure given by the NSICT. There is no arbitrariness. The NSICT may claim it is net moves. Gross crane productivity is in no way dependent to sailing of vessels.
- (x). Common user facility in NSICT is discriminating against smaller vessels.
- (xi). We support continuing with the present order.
- (xii). 'Net' moves per hour will be a retrograde step. Only 'gross' figures are more reliable always. No Terminals adopt 'net' move figure.

#### **The Bombay Chamber of Commerce and Industry (BCCI)**

- (i). If difficulties are being cited, why not also take note of 'over-deck moves' and, 'bottom of deck moves'?
- (ii). We must look at 'gross moves'; 24 gross moves are easily possible. There is, however, a problem for crane to move in the case of geared vessels. This must be recognised.
- (iii). We are totally for ELTS. Option-I is preferable; and, in this case each Agreement must be ratified by the TAMP.

#### **The Container Shipping Lines Association (CSLA)**

- (i). NSICT Option-I is preferable.
- (ii). ELTS is necessary. The TAMP initiative is welcome. However, there cannot be one common norm for the whole industry. The TAMP must prescribe minimum performance levels keeping in mind local features and peculiarities.
- (iii). The TAMP model is simplistic. The CSLA may have contributed it by making simplistic recommendations. We regret it and wish to correct.
- (iv). In Option-I there is no role for the TAMP. In our view all of this must be TAMP's jurisdiction.

- (v). Productivity gains may or may not be reliable in the short run. But, in the long run it does make for sustained development.
- (vi). 'Gross moves per hour' is a better norm than 'net moves per hour'.

#### **Maersk India Limited**

- (i). We have a rigid schedule. There will be no benefit for us to speed up if the schedule provides for a longer stay.
- (ii). We have quite often to wait for favourable tide. In that case, we have to pay just for nothing. Lines that have to wait do not in any way benefit the terminal benefits. (MANSA opined that if they left earlier, they could sail at a better and optimum speed and save on fuel).

#### **Mumbai and Nhava-Sheva Ship-Intermodel Agents Association (MANSA)**

- (i). Option-I of the NSICT and the model of the TAMP can be merged and an acceptable alternative model can be developed.
- (ii). 24 moves per hour is an average of performance on all types of vessels. Such an average cannot become a benchmark.
- (iii). Categorise vessels into three types with reference to number of containers. There can be a different norm for less than 1500 TEU.

Categorisation of vessels with reference to gear is not relevant as modern cranes have a very high boom. Operating weather condition may also be factored in.

- (iv). 24 moves average prescribed would have taken into account the cargo mix, etc. No need to go into it in detail.
- (v). Size of vessels is important. It also has implication for night navigation.
- (vi). Other ports must also have ELTS.
- (vii). Some common definition of productivity for hatch cover movement is required.

#### **The Shipping Corporation of India (SCI) and Indian National Shipowners' Association (INSA)**

- (i). We appreciate the TAMP's efforts for increasing productivity / efficiency.
- (ii). There are limits for a ship speed. We cannot increase or decrease at will.
- (iii). Option-I is preferable. TAMP approval is, however, not required.
- (iv). Option-I is only about productivity. There is no question of premium or rebate over the notified tariffs. Therefore, TAMP does not come into the picture.
- (v). Uniform parameter for calculation of productivity is required. All container terminals must have a common parameter from first loading to last loading.
- (vi). To organise and operate a categorisation scheme is a Herculean task.

- (vii). For calculating crane productivity let the relevant time be from 'start of operations' to 'end of operations'.

#### **APL (India) Limited**

- (i). We have the same problem, as does Maersk.
- (ii). We endorse Maersk's observation.
- (iii). Crane productivity is misleading. If I need two cranes, and the port gives only one. I will pay premium to the one crane; and, penalty for overall slow operation.
- (iv). We endorse Option-I.

#### **The Bombay Custom House Agents' Association (BCHAA)**

- (i). There are too many diverse, complex factors to reckon with. Option-I is, therefore, preferable.
- (ii). The intention behind the TAMP order is good. But, in practice, it may not operate that way. There will be unintended aberrations.
- (iii). The basic principle is that if one gets a better service, he has to pay for it.
- (iv). All Port / Terminals must have ELTS.
- (v). The confusion between 'gross' and 'net' must be clearly resolved. TAMP must issue guidelines.
- (vi). Let there be bilateral agreements. Let TAMP be notified of them all. TAMP can intervene where necessary.  
  
CSLA, SCI and NSICT agreed to this proposition.
- (vii). There is no need for the categorisation proposed by the MANSA. The bilateral agreements will take care of that.
- (viii). Since the NSICT is governed by JNPT services, the relevant time must count from offloading of the first container to the offloading of the last container is to be taken as 'gross moves'.

#### **Indian Merchant Chamber (Mumbai)**

- (i). We endorse the views expressed by the MANSA and BCHAA.
- (ii). If there can be a convenient system of categorisation, it will be useful.

#### **Indian Merchant Chamber (New Mumbai)**

- (i). Productivity is good for all. How can it harm anyone?
- (ii). Option 1 is acceptable. In this case, however, the TAMP must be notified about the bilateral arrangement.

8.2. All the users who participated in the joint hearing unanimously opined that berth productivity as a bench mark for productivity might be considered in the second stage; but, first, the issues relating to crane productivity must be sorted out and it must be taken as the bench mark.

9. Since the NSICT had alleged that the cut off limit prescribed in the interim ELTS was arbitrary, it was advised to refer to its records submitted to this Authority at the time when its proposal for increase of tariffs of container handling was under consideration. The NSICT has subsequently furnished the following clarifications:

- (i). The NSICT had not specified that it operated at 24 gross moves per hour.
- (ii). In a letter to the TAMP query, it had been said that “average moves per hour achieved is approximately 24 moves”.
- (iii). This has always been meant to mean ‘Net’ moves.
- (iv). In fact, in that letter this statement has been qualified, albeit briefly, saying that this productivity, differs from vessel to vessel.

10. The CSLA has submitted a further written submission after the joint hearing. The following clarifications / points have been stressed:

- (i). The CSLA supports productivity linked pricing. Such arrangements must be made bilaterally. The Lines will not, however, pay a premium for improved rates of performance.
- (ii). Improved efficiency only has a value under certain circumstances. Liner vessels being employed in fixed schedules wherein early departure may not bring about financial benefits.
- (iii). The role of TAMP in this regard is of great importance and must be something akin to the Regulators that now exist in the United Kingdom and oversee the recently privatised utilities.
- (iv). The principle of productivity related pricing must be used in other ports where the need is even greater than in NSICT.
- (v). The principle of gross moves rather than net moves must be followed in such productivity linked pricing.

11. With reference to the totality of information collected during the processing of this case and based on the collective application of mind the following position emerges:

- (i). In the Scale of Rates of NSICT which was approved, when it commenced its operations, a minimum performance level of 20 moves per hour was prescribed as a conditionality based on the minimum performance level envisaged in the Concession Agreement between the JNPT and the NSICT. Even though this had been incorporated as a conditionality in the Scale of Rates, no penal provision for not satisfying this condition was prescribed. When the proposal for revision of the NSICT container handling charges was considered, the port users, mainly the CSLA, demanded prescription of a higher level of performance as a condition for increase in the tariff. In response, the NSICT agreed for an efficiency linked tariff but demanded premium for achieving a higher productivity. In this backdrop, Authority decided to prescribe an efficiency linked tariff scheme at the NSICT also. In the absence of relevant operational data required to formulate a final scheme, it was decided to prescribe an interim scheme based on the productivity information given by the NSICT and to advise the NSICT to formulate a more comprehensive scheme within three months in consultation with its users.

- (ii). This Authority is well aware of the drawbacks in the interim scheme. It is to be recognised that this scheme has been prescribed as an interim one because it requires a lot of refinement to make it a comprehensive scheme. The NSICT has been advised to suggest a better and comprehensive scheme, since its promoters have experience in port / terminal management in many countries in the world. The proposal now submitted by the NSICT is more of finding fault with the interim scheme. The NSICT has chosen to refer to the interim ELT Scheme prescribed by this Authority as 'TAMP's proposal', 'proposed scheme', 'proposed cut off rate', etc. The NSICT must realise that what has been prescribed by this Authority is a part of the tariff order; and, the tariff increase approved is subject to this condition. This Authority does not make any proposal for consideration of the Port Trust or Port Terminal Operators in the matters relating to tariffs. The Orders of this Authority are binding on the Major Port Trusts and Terminal Operators unless set aside by a higher judicial forum. This point was made clear to the NSICT by the Chairman of this Authority at the time of the joint hearing.
- (iii). The NSICT has termed the prescription of ELT Scheme in its terminal as discriminatory. It is true that an ELT Scheme for a container terminal has not been introduced in any other major ports. But, introduction of the concept of efficiency linked tariff scheme has not been done for the first time only at the NSICT. An efficiency linked berth hire scheme is in operation at the MOPT and extension of a similar scheme to the other major ports is under active consideration.

It is noteworthy that the Port Sector has been opened up for private participation not merely because of resource constraints for development of additional port capacity but equally because of a desire to bring in competition and productivity improvements with the help of latest technology and international practices. The NSICT is a container terminal of international standards. When an efficiency linked scheme is to be introduced for a container terminal, obviously the choice will be to try such scheme in a terminal equipped with the latest technology and international practices. This scheme, once refined and stabilized, will be considered for extension to other container terminals in the country with modifications warranted. This being the factual position, the allegation of the NSICT about the discriminatory treatment meted out to it by this Authority is totally baseless. It is relevant here to mention that this Authority has already advised the PSA SICAL, another Private Container Terminal, to formulate its proposals for revision of its Scale of Rates taking into consideration the introduction of an ELT Scheme for its Terminal, citing the NSICT example.

- (iv). In its proposal, the NSICT has very lightly chosen to call the cut off limit prescribed under the interim ELT Scheme as arbitrary. It has even gone to the extent of asking this Authority to provide the calculations and principles by which it has decided to prescribe that cut off limit. On being pointed out, it has traced its letter sent to this Authority wherein it had itself mentioned that the sustained average moves per hour achieved was approximately 24. While accepting this fact, the NSICT has pointed that it referred to 'net' and not 'gross' crane moves. Be that as it may, the cut off limit prescribed by this Authority in the interim ELT Scheme has some basis and not fixed arbitrarily as alleged by the NSICT.

In any productivity-linked scheme, the average performance achieved in the past will, in the normal course, form a cut off limit for the succeeding period. This accepted principle has been followed by this Authority. It is noteworthy that even the NSICT in the instant proposal, under Option 2, has chosen to take the average performance in the past as a benchmark for determining the future performance.

The NSICT argument about 'net' crane moves has been adequately dispelled by the JNPT. The JNPT has confirmed that the reference to productivity made in the Concession Agreement is in the context of gross crane moves. Our informal discussions with some other international container terminal operators reveal that container terminal productivity is always quoted in terms of 'gross moves per hour' and not 'net moves per hour'. Significantly, the CSLA has also categorically favoured the 'gross' figure as has the JNPT. This being the general practice, and in the absence of anything else to the contrary indicated by the NSICT, the average productivity figure reported by the NSICT was taken to be gross moves per hour. If the NSICT had deviated from the general practice, it must have explicitly mentioned the unit of productivity it was reporting.

- (v). The JNPT and all the port users who participated in these proceedings have unanimously suggested adoption of gross moves per hour to determine container terminal productivity. The benefit of productivity is to be reaped by the vessels at the first instance, which will then be expected to percolate down to the country's trade. Viewed from this perspective, gross moves per hour will be the true reflector of the productivity.

Nevertheless, this Authority's stand is very clear with respect to the yardstick of determining container terminal productivity. In our Order dated 7 Nov. 2000 relating to revision of container handling charges at the NSICT, it has already been indicated that a complete efficiency scheme, should encompass vessel's turn around time as the yardstick since it will call for optimum deployment of cranes and other equipment also. The NSICT's argument about certain marine activities carried out by the JNPT being beyond its control and hence vessels turn around time not being completely within its control deserves consideration. What is intended by the advice about using the vessels turn around time as a yardstick is in fact the average berth productivity. Wherever the marine activities are not carried out by the terminal operator, it will be reasonable to reckon with the time spent by the vessel at the terminal i.e. from the time she is berthed to the time the last handling operation is completed.

- (vi). The NSICT has raised several issues relating to the royalty payment and the JNPT's obligation under the Concession Agreement. These are all the issues to be settled between the JNPT and the NSICT and, if required, with the intervention of the Government. If the NSICT fails to achieve desired productivity norms on account of the failure of the JNPT to perform its obligations, the NSICT should seek the remedy available in the Concession Agreement. It is not possible for this Authority to intervene in the matter.

The NSICT has raised an issue relating to lashing / unlashings of operation which is not relevant to the proposal under consideration. In any case, the NSICT's claim of providing free lashing / unlashings service has been adequately dealt with in this Authority's Order dated 7 Nov. 2000.

Likewise, the NSICT's view that the productivity condition in the Concession Agreement is a sufficient measure to penalise it is, perhaps, due to a wrong understanding of the ELT concept. While the provision in the Concession Agreement sets only a minimum requirement, an ELT Scheme will be a dynamic one with 'premium' and 'rebate' on tariff with reference to productivity levels achieved. This Authority likes to clarify for the benefit of the NSICT that introduction of ELTS is not for penalising the Terminal Operator but for motivating productivity improvements.

Besides, it does not put the NSICT in a disadvantage over its competitors, as feared by the NSICT. The market generally prefers a service provider who assures productivity; and, if his service fees are linked to actual productivity achieved, it will be a customer's delight. In a limited competitive environment, if any, an ELT Scheme will undoubtedly place a terminal offering it ahead of its competitors, if the users look for faster services.

- (vii). As has been pointed out in the Order prescribing the interim ELT Scheme, it is not a comprehensive and final one. The intention was to set the proceedings in motion since efficiency linked tariff scheme is a novel idea in the Indian Port Sector. As has been pointed out by the NSICT, various factors like shipping size, shipping design, container stowage, bunching of vessels, weather factor, etc., have not been factored in the interim ELT Scheme. The interim scheme has been prescribed for a very short duration of a maximum of three months and it cannot continue for ever.
- (viii). It is to be recognised that the tariff notified by this Authority is only a ceiling in the case of private terminal operators functioning within the major ports. The private terminal operators have the freedom to operate at any rate within the ceiling prescribed by this

Authority. The interim ELT Scheme prescribed does somewhat alter this legal position. It makes the rate prescribed by the Authority as 'the rate' for the NSICT. The reduction or enhancement of the notified tariffs with reference to the achieved productivity will interfere with the flexibility available to the NSICT for negotiating any rate below the ceiling rate prescribed.



- (viii). Option 1 of the ELT Scheme proposed by the NSICT cannot be called as an ELT Scheme at all. At best, it can be seen as an attempt to get the commercial negotiations between the Terminal and the Lines formalised. As of now, this Authority has no intention of being a party to negotiations between Lines and the NSICT. That being so, Option 1 of the proposal cannot be accepted.

The Option 2 of the proposal is highly complicated and requires a lot of arithmetical and accounting adjustments. An ELT Scheme has to be simple, clearly understandable and easily implementable. Seen in this perspective, Option 2 of the proposed Scheme also cannot be approved. Significantly, all the port users are unequivocal in conveying that Option 2 is not a desirable scheme. Further, the NSICT itself has expressed its reservations about the working of this scheme. The Scheme proposed under Option 2 contains a lot of unacceptable propositions and assumptions. Since the Scheme itself is highly complicated and deserves to be rejected, the details of such individual items of the proposal are not discussed.

- (ix). The CSLA on behalf of Shipping Lines has made a categorical statement that it favours 'productivity based pricing' but it will not pay any premium for levels of productivity beyond the accepted cut off limit. Implied in this statement is that it only wants rebates to be allowed in tariffs when actual productivity falls below the cut off limit. This is not an acceptable proposition at all. If this is accepted, there will be no motivation for the terminal operators to improve productivity. Financial commitment in productivity based pricing must be a two way traffic with penalty and reward linked to actual performance.
- (x). Even at the cost of repetition, it is to be reiterated that, as desired by the Govt., the stated policy of this Authority has been to use the tariff leverage to effect improvements in operational efficiency and this Authority will strive to achieve this by prescribing efficiency linked tariffs. Notwithstanding the fact that this exercise in the context of the NSICT has not yielded any fruitful result in the form of an accepted efficiency linked tariff scheme, this Authority will attempt to develop an ELT Scheme for container terminals; and, after due consultation with the Port Trusts / Terminal Operators and port users, such an acceptable scheme may be prescribed for adoption in all container terminal. To assist this Authority in developing such a Scheme, a Working Group will be constituted shortly. The Working Group will comprise member drawn from Ports, Private Terminals, Lines and the Trade.
- (xi). In the light of what has been mentioned above, it becomes very clear that the interim ELT Scheme prescribed by the Authority in its Order dated 7 Nov. 2000 needs to be rescinded.

12. In the result, and for the reasons given above, and based on a collective application of mind, this Authority decides to reject the proposal of the NSICT. The interim ELT Scheme prescribed is rescinded. Accordingly, the existing general note 10 in the Scale of Rates of the NSICT is deleted. This will not, however, have any implication for the contractual obligations flowing from the NSICT's Concession Agreement with the JNPT.

**(S. Sathyam)**

**Chairman**