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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. : 140 **New Delhi, 15 September, 2006**

NOTIFICATION

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

(A.L. Bongirwar)
Chairman

TARIFF AUTHORITY FOR MAJOR PORTS

Case No. TAMP/52/2005 – PSA SICAL

PSA SICAL Terminals Limited - - - - - Applicant

O R D E R

(Passed on this 23rd day of August 2006)

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

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

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

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

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

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

(i). The PSA SICAL will continue to charge the 1999 tariff till a new tariff is gazetted.

(ii). The PSA SICAL's proposal dated 8 August 2005 for fixation of tariff will be disposed of according to law and a tariff will be formulated and gazetted and such tariff will be applicable prospectively 30 days after the date on which it is published in the Gazette of India.

(iii). The PSA SICAL will make a proposal to the MSRTH in the matter of fixation of quantum of royalty that may be permitted to be allowed as a "pass through" as a revenue expenditure for tariff fixation prior to 31 March 2005. The Central Government may consider the same and pass appropriate orders and issue a directive under Section 111 of the Major Port Trust Act. For the period after 31 March 2005, the new guidelines provide the manner and mode in which this has to be done.

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

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

(v). In arriving at the quantum of gains, TAMP will bear in mind that the 2002 tariff did not permit pass through of royalty and adjustment from the same will be made as per the directive of the Government of India as stated above. To the extent that the 2002 tariff has been arrived at on the basis of estimates, appropriate adjustments in the quantum of gains will be made if the actual figures, which are now available for the relevant periods are different.

(vi). Before determining the advantage / gains for adjustment / set off, the TAMP shall give an opportunity to the PSA SICAL to be personally heard.

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

4.2. The PSA SICAL in its proposal has emphasised efficiency gains / productivity improvement achieved by its terminal. It has requested to consider this aspect alongwith other issues while fixing the tariff. Highlights of the proposal are as follows:

(i). Efficiency Gains.

- Its ‘efficiency driven terminal cost’ (including both fixed and variable cost) was Rs.1670/- per TEU even in the first year of operation. This will reach as low as Rs.1000/- per TEU during the next 5 years as a result of its continuous efforts towards improvement in performance efficiency.

- The capital employed was only Rs.5480/- per TEU in the first year of operation which has come down to Rs.2100/- per TEU (less than US $ 50 per TEU) even after capacity addition as against international norm for investment at US$ 150 per TEU. Even if the initial cost of building the 7th berth by TPT is considered, its capital employed will not exceed US$ 65 to 70 per TEU.

- It has developed a theoretical capability to handle nearly 2 lakh TEUs / crane / year which is nearly 2 to 3 times the national norms. Consequently, the fixed cost has reduced to around Rs.750/- per TEU.

- Running, repairs and maintenance cost reduced to Rs.230/- per TEU and stock of spares is around Rs.100/- per TEU on account of efficient spares and vendor management, efficient yard planning, etc.

- More than 3000 TEU is handled per employee resulting in reduction in staff cost at the level of Rs.130/- per TEU.

- Term loan is limited to Rs.65.29 crores and equity to the level of Rs.15 crores. 20% of capital expenditure is met out of internal generation. The interest which was Rs.674/- per TEU in last year has come down to Rs.81/- per TEU.

(ii). Productivity / efficiency improvement achieved.

- Achieved Gross Crane Rate (GCR) of 25 moves in 2000 and upgraded to 28 moves in the year 2004.

- Average vessel turn-around time (despite increasing parcel size) increased from 10 days in the year 2002 to 12 in 2003 and 15 days in 2004.

- Berth occupancy is around 30% at its terminal which is the lowest in the country.

- Nearly 90% of the trucks are serviced within one hour inside the yard. The gate performance is also the best.

- International bench-mark has been set in terms of terminal cost through optimum financial gearing, high resource utilisation, high productivity, efficient operation, etc.

(iii). Other points.

- Container tariff in Tuticorin is based on diverted / shared cargo. Only quality of service and competitive tariff can influence traffic. It has achieved target growth in container traffic during 2004-05 which proves its efficiency. Reasonable assumptions were made at the time of bidding as regards the total terminal cost, throughput and tariff. It was assumed that competitive tariff will be allowed so that the royalty can be managed out of efficiency gains. Whilst total terminal cost is fully under the control of the private operators, the throughput is partly under its control and the tariff is totally regulated.

- Its tariff is lowest in the country, perhaps lowest in the region and the most competitive in the entire world. Its revenue is less than Rs.2100/- per TEU, compared to per TEU revenue of around Rs.3100/- of NSICT, Rs.2700/- of JNPT and Rs.3100/- of CCTL.

- It has contributed in achieving the TAMP objective of safeguarding the interest of shippers / users, economic use of resources, optimum investment and efficient performance.

- Moderate increase in tariff within the competitive range need to be approved else it will not be in a position to discharge the LA obligation.

(iv). Cost statement

- Traffic is assumed to increase by 10% on a year-to-year basis. Since commencement of 2nd terminal by the TPT is not officially / exactly known, the impact thereof on the container traffic has not been factored in the cost statement.

- Designed capacity of the terminal is assessed at 3,39,300 TEUs per annum based on the capacity indicated by the National Working Group on Normative Cost for container related charges (constituted by the TAMP) in their Draft Report of July 2005.

- The Government of India has formed a Committee to recommend treatment of royalty in its tariff fixing exercise. Pending this recommendation, the actual royalty paid / payable has been considered in this tariff revision exercise. It agrees to modify the same based on the recommendations of the Committee or alternatively to discuss with TAMP to arrive at the allowable royalty figure in its case.

- Additions to the gross block is estimated at Rs.782 lakhs during the current year (2005) and Rs.720.86 lakhs in the ensuing year (i.e. 2006).

- Net surplus / deficit reflected by the cost statement before setting off the gains accrued in the past period and after considering full royalty and maximum ROCE for the three years i.e. 2006 to 2008 is as follows:

Years	Net surplus / deficit (Rs. in lakhs)	Net surplus / deficit as a % of operating income (estimated at 1999 tariff)
2006	(+) 597	8%
2007	(-) 257	(-) 3%
2008	(-) 1057	(-) 11%

(v). Indicative Estimation of Efficiency gains

- For the purpose of estimating efficiency gains, employee cost is considered at Rs.3 lakhs per employee per year assuming that even a reasonably efficient terminal will achieve labour productivity of 1000 TEUs / employee. This translates

to 100 employees per quay crane and hence for 3 quay cranes it will work out to 300 employees. Number of employees have been increased in the year 2003 and subsequent year with increase in additional equipment deployed. Escalation in per employee cost is considered at 5% per annum. The total employee cost arrived based on this assumption is compared with the actual employee cost for years 2002 to 2004 and estimates for 2005 and 2008.

- Equipment, Repairs Running and Maintenance (RRM) cost is considered at Rs.350/- per TEU in 1999 and escalated by 5% per annum to derive at the cost and compared with its actuals / estimates (from 2005 to 2008) to estimate the efficiency gains in RRM cost.

- Efficiency gains due to resource utilisation and optimum investment has also been estimated based on such assumption.

- In view of the various submissions made, it has requested to consider efficiency gains achieved by it for tariff fixing purpose. Accordingly, the estimated efficiency gains of Rs.5038 lakhs, Rs.5542 lakhs, Rs.6669 lakhs and Rs.7340 lakhs for the year 2005 to 2008 has been reduced from the net surplus position and net deficit is indicated in a separate statement (Table 7.4. as follows)

Year	Net deficit after considering efficiency gains (Rs in lakhs)
2005	(-) 3976
2006	(-) 4288
2007	(-) 5451
2008	(-) 5663

(vi). **Major modifications in the proposed SOR.**

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

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

- Likewise, while arriving at the proposed tariff for shifting of containers within vessels, the lashing / unlashing charges has been clubbed with the shifting charge and then proposed to be increased by 30%.

- Tariff for certain miscellaneous services like direct loading, trucking and reshuffling charge in container status, etc., are proposed to be introduced.

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

5.1. The PSA SICAL in its proposal had not adjusted the advantage / gains accrued on account of non-implementation of the 2002 Order over the next three years as per the terms of the MOC. The PSA SICAL was, therefore, requested to furnish revised cost statement in line with the terms of MOC and also submit the draft proposed SOR.

5.2. The PSA SICAL in response has furnished a statement relating to gain / loss due to non-implementation of 2002 TAMP Order alongwith proposed draft SOR. The gain / loss statement furnished by the PSA SICAL depicts net loss as follows for the years 2002 to 2004:

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

It has not adjusted the income and expenditure estimated by the TAMP in its Order with reference to the actuals.

6. The PSA SICAL stated that all the information required for tariff fixing are commercially sensitive. It, however, agrees to circulate the traffic projections, consolidated cost statement with Income and Expenses, assumptions, and efficiency gain statement in view of the specific clause (3.2.4) of the revised tariff guidelines. The PSA SICAL has not explained any reasons for classifying its other documents as confidential as required by revised tariff guidelines. In view of specific request of the PSA SICAL, its letter dated 8 August 2005 alongwith Table 7.4 relating to efficiency gains, Highlights of the proposal and Form Nos. 2A, 2B, 3A and 4A relating to traffic / income projections, consolidated cost statement, capital employed statement and comparative statement of existing vis-à-vis proposed tariff alongwith proposed terms and conditions were forwarded to the TPT and other concerned user organisations seeking their comments.

7. Some of the user organisations like the Tuticorin Steamer Agents Association, Tuticorin Custom House Agents Association and Tuticorin Port Handling Agents Association had in their initial comments stated that the proposal of the PSA SICAL was unfair and unlawful since Writ Petitions filed by the PSA SICAL was still pending and the matter was sub-judice. They had also stated that it was not appropriate for the PSA SICAL to collect the charges based on the Order passed prior to September 2002 in view of the dismissal of the Writ Petition by the Hon'ble High Court. They argued that the September 2002 Order of the TAMP was valid and effective and differential levied by PSA SICAL must be refunded. From the initial feedback from the user organisations it appeared that they were not fully aware of the Order passed by the Hon'ble High Court on 17 August 2005 dismissing the writ Petition filed by the PSA SICAL and the MOC drawn between the concerned parties on various issues. All the user organisations were, therefore, informed about the Order passed by the Hon'ble High Court on 17 August 2005 alongwith the salient points of the MOC.

8. The TPT and the various user organisations have furnished their comments on PSA SICAL proposal. The comments received from various users / user organisations were forwarded to PSA SICAL as feedback information / comments. The PSA SICAL has responded to the comments of the TPT and other user organisations.

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

Sl. No.	Queries raised by us	Response of the PSA SICAL
(i).	Para 8 of the Memorandum of Compromise stipulates appropriate adjustments to be made in the estimates considered while approving TAMP Order of 2002 to the extent the actual figures for the relevant period are different from estimates for the purpose of arriving at gain / loss due to non-implementation of TAMP 2002 Order. In this regard, assessment of gain for the years 2003 and 2004 has been prepared by us and sent to PSA SICAL for illustrative purpose. PSA SICAL has been requested to prepare a complete statement on these lines for the entire period starting from October 2002 to December 2005 reckoning the following	It has furnished revised statement of gain and losses due to non-implementation of Order. (It has however, not considered appropriate adjustments in the actuals which were considered while approving 2002 Order for arriving at the gain / loss due to non-implementation of this Authority's Order.) It has made the following submissions:

	points decided in TAMP Order of 2002. ➢ Annual License fee for CITOS was not admitted as cost during the last general revision Order. With reference to its submissions it was clarified that the revised tariff guidelines have been notified from 31 March 2005 and hence cannot be applied for the period prior to that. Even for admitting CITOS expense as item of cost for the period subsequent to 31 March 2005, the operator is required to establish arms length relationship of this transaction. In this regard, furnish a copy of the Income Tax Assessment Orders of previous years admitting this expense.	<u>Annual license fee for CITOS</u> (a). Annual License Fee for an Application software is an accepted industry practice and this is not similar to Technical Services Fee. (b). As per the revised guidelines, technical fee (which was the foremost reason for disallowing this item of cost) is an allowable expense now. The only condition is that it must be reasonable by applying yardstick of 'arms length relationship'. In our case, arms length price is supplied in the quotation. (c). TAMP had admitted that some capital cost would have been incurred if it had been procured from elsewhere. If this is the case, then the same system must have annual charges also, as this is an accepted industry practice. This is evident from cost statements of other terminals where TAMP has allowed such cost. (d). It is, therefore, not just and fair to disallow the cost. As per the revised guideline, the reasons for disallowing the cost do not exist anymore. (e). It is agreed that the revised guidelines cannot be applied for the prior period. But, at the same time it is also true that these guidelines are revised based on the experience gained after the application of previous guidelines and have focused on the areas which were slightly ambiguous in the previous guidelines. CITOS fee is one of such issues. While operators were claiming these expenses as an allowable expense, the TAMP was denying such allowance in case of some operators. In the revised guidelines intent is clear about this expense. Although these guidelines are applicable from period on or after April 1st, 2005 these can very well provide the direction to settle some of the old issues. (f). The Income Tax proceedings are in progress and have not yet attained finality and hence IT Assessment Order cannot be furnished. It has, however, clarified that the Income Tax department has not asked for any clarification regarding annual licence fee pertaining to CITOS.
	➢ Deferred revenue expenditure of Rs.686.98 lakhs reported as on 31 December 2001 may be spread over the remaining project period. Furnish the breakup of other deferred revenue expenditure considered under the head Deferred Revenue expenditure. In case the total expenditure and explain the basis of phasing this expenditure.	<u>Deferred Revenue expenditure</u> (a). "Guidance Note on Treatment of Expenditure during Construction Period" issued by Institute of Chartered Accountants of India (ICAI) recommends writing-off these expense in 3 to 5 years. It has taken higher side ceiling of 5 years in case of preliminary expenses. In case of Royalty payment it is amortised over period of 10 years. ICAI is the Supreme body in India for accounting pronouncements. Treatment recommended by the Institute not only forms the basis of accounting but, also ensures the treatment of expenses in a uniform way.

		(b). Unless there is concrete basis for deviations, this Authority should follow the Generally Accepted Accounting Principles (GAAP) for treatment of cost. (c). It is agreed that the preliminary expenses are related with project hence only are allowed as a cost (but the same argument cannot be a basis for treatment taken) and if allowed then burden on tariff in initial period, certainly, cannot be the basis for spreading it over entire license period against Generally Accepted Accounting Principles for such expenses. (d). It is principle of natural justice that order passed must be a speaking order. It should give the grounds for taking decision in either way. (e). Further, TAMP has suo-motu allowed preliminary expenses to be written-off over five years period in case of an operator who has not co-operated in this whole exercise of tariff review.
	➢ Foreign exchange loss incurred in repayment of foreign currency loans, if any, can only be admitted as an expense. Please clarify whether the foreign exchange loss reported under the head 'other expenses' in the Annual Accounts for the years 2002, 2004 and 2005 relates to repayment of foreign currency loss.	There are several foreign currency transactions which are incurred as legitimate business expenditure. Its practice is to book the expenditure at the prevailing exchange rate at the time of passing the entry in books of accounts. The foreign currency transaction actually takes place subsequently and the actual 'Indian Rs.' exchanged is informed by the bank. The difference is again booked in the accounts as "Foreign Exchange Gain / Loss". Hence, only the combination of both the entries will give the exact expenditure incurred. Thus in this case, the specific entry in the accounts relates to the actual transaction and is part of the actual expenditure. The details of such transaction during 2003, 2004 & 2005 are furnished which include transaction pertaining to purchase of spares, payment of lease rentals of RTG's, etc. apart from Annual License fee for CITOS.
	➢ As stated in para 15 (xiii) of our last Order, only the funds from reserves invested in admissible assets will qualify for return. In view of the modification suggested in the treatment of deferred revenue expenses in line with the principle followed in the last tariff Order, suitable adjustment may be done in computation of share holders fund and return thereon. Return on Equity should be adjusted for capacity utilisation.	Computation of Capital Employed. (a). Para 2.9.4. of the revised guidelines states that working capital means current assets (excluding of cash / deposit balances of funds) less current liabilities. It is clear from above that cash balance and deposit balances of funds will not be considered under current assets. This cash and deposit balances are not those which are required for smooth functioning of any business, but, represent those balances in specific funds created out of free reserves. Cash balance considered by it under working capital is totally different form the cash balance referred in clause 2.9.4 of the revised tariff guidelines. Same is the case with deposit balances also. (b). Unlike cash balance, guidelines do not contain any specific limit for deposit balance while considering it as an item of working

		capital. Hence, admissibility of such balances would be governed by the justification of keeping such balances and its reasonableness. (c). Cash in bank is part of the total capital employed in its business for strategic purposes. This current asset is required to get the best terms for the financial facilities availed, viz., favourable interest rate, Bank Guarantee to TPT, etc. Periodically this is also used to fund our capital additions and replacement requirements of IT products which have high obsolescence rate. (d). PSA SICAL is a typical case with low operating cost and very low net fixed assets. Therefore, such a buffer is required to maintain competitive tariff with increasing royalty commitment, thus facilitating us to discharge our legally binding obligations. Even with this, its capital employed is very small in comparision to other private terminal operators and the return is inadequate to cover the difference between the first and the second highest royalty quote.
	➢ The revised gain / loss statement by PSA SICAL on 20 December 2005 is drawn up for the full year of 2002. The PSA SICAL was, therefore, again advised to separately indicate the net gain / loss for the year 2002 from the date of implementation of the Order. Also, furnish separate calculation for the period upto 31 March 2005 based on the approach adopted in the last Order prior to issue of the revised tariff guidelines. For the period 1 April 2005 to 31 December 2005, the revised tariff guidelines may be followed particularly with reference to computation of return on capital employed.	(a). The Gain / Loss statement is prepared for the full year because the TAMP 2002 order specified the costs for the whole year while arriving at the tariff. (b). The TAMP costs for the entire year is taken as benchmark for comparison, while it has adjusted the revenue for November and December 2002 based on 2002 TAMP Order. This is the most realistic way of recognizing gain / loss. It is coupled with the fact that it is difficult for the private operator to assume what TAMP would have allowed as cost. (c). As far as 2005 is concerned, it is clarified that because TAMP did not have 2005 estimates in the 2002 Order, there is no base figure for 2005 to compare with actual figures for PSA SICAL. In this case actual surplus / (loss) of 2005 (Rs.7.09 crores) is compared with average of estimated surplus / (loss) for 2002 to 2004 (Rs.12.67 crores i.e. Rs.38.02/3) if TAMP 2002 order is applied. This comparison has further established the fact that if the 2005 figures is taken into account, the total loss would be more.
(ii).	The capacity of the terminal was assessed by PSA SICAL at 2 lakh TEUs per annum while processing the last tariff revision proposal. Even the License Agreement stipulated minimum guaranteed throughput of 3 lakhs TEUs per annum from 2003 onwards. Explain how the assessed capacity for the year 2003 to 2004 (at 2,26,200) be lower than the MGT prescribed in the LA. The quay capacity indicated by the National Working Group constituted by TAMP for study of normative cost in their Report is a general assessment based on various assumptions. The designed capacity of	(a). It did not assess the terminal capacity as 3,00,000 TEUs while processing the 2002 tariff proposal. In fact, it had proposed additional investment in 2003 to augment capacity. (This investment actually started by mid 2004). (b). MGT of 3,00,000 TEUs is not the bid document condition; but is part of the quote by PSA SICAL. It is a commercial figure which will vary from bidder to bidder. Hence, MGT cannot be the assessed capacity. (c). The assessed terminal capacity is a function of the physical resources employed in the berth / yard. No terminal in this country has handled 3,00,000 TEUs with 2 QCs and 4 RTGs. TAMP has allowed much lower terminal capacity norm

<table>
<tr><td></td><td>the terminal for the years 2003 to 2008 may be assessed taking into consideration the factors relevant to the PSA SICAL based on equipment deployed / proposed to be deployed and the actual productivity level achieved / to be achieved.</td><td>for other private terminals.
(d). 2 QCs and 4 RTGs is not a sustainable minimum fleet strength from the point of view of maintenance. (50% erosion in capacity if one QC is down.) That is why TPT has specified 3 QCs and 9 RTGs for the 8th berth and an assessed terminal capacity of 4,00,000 TEUs. (This translates to a terminal capacity of less than 2,66,666 TEUs based on the equipment deployed by PSA SICAL in 2002 to 2004.)
(e). It is the accepted international practice to plan the capacity 30% above the projected traffic. Even the draft Maritime Sector policy of the Government endorses this fact and appropriate change has been brought in the revised tariff guidelines.
(f). The Study Group for the "Normative Cost" was constituted by TAMP with experts in the field and they evolved a professional assessment using physical assets. In the absence of any other objective assessment, it is only fair that TAMP admits this benchmark.
Accordingly, the designed capacity of the terminal for the years 2002 to 2008 is given below:
<table><tr><th>Year</th><th>Capacity in TEUs</th></tr><tr><td>2002</td><td>226,200</td></tr><tr><td>2003</td><td>226,200</td></tr><tr><td>2004</td><td>226,200</td></tr><tr><td>2005</td><td>339,300</td></tr><tr><td>2006</td><td>339,300</td></tr><tr><td>2007</td><td>339,300</td></tr><tr><td>2008</td><td>339,300</td></tr></table></td></tr>
<tr><td>(iii).</td><td>Furnish the actual income and expenditure for the year 2005 upto 30 November 2005 as certified by the Charted Accountant and estimate for the month December 2005. Estimates for the years 2006 to 2008 may be revised based on the revised position.</td><td>The actual 11 months financial statement and estimates for December 2005 as duly certified by Charted Accountant has been furnished. It has clarified that estimates for the years 2006, 2007 and 2008 need not be revised since there is no significant variation between the projection and actuals.</td></tr>
<tr><td>(iv).</td><td>Furnish detailed computation of income projections for the years 2006 to 2008 indicating the per container rate with reference to each tariff item prescribed in its Scale of Rates approved in 1999 and the rate approved in 2002 Order.</td><td>The detailed income computations for 2006 to 2008 based on both 1999 & 2002 orders are furnished. (This, however, does not indicate the tariff for each category of items and no. of containers to verify the computation.)</td></tr>
<tr><td>(v).</td><td>(a). Justify the reasons for anticipating 32% increase in number of employees from 115 in 2004 to 152 in 2005 and also furnish the present employee position.</td><td>(a). The estimates for operating and direct labour cost for the years 2006, 2007 and 2008 indicate an increase of only 17.7% in 2006, 6% in 2007 and 6% in 2008. During the years 2004 and 2005, PSA SICAL added 1 more QC (to the existing 2 QCs), 4 more RTGs (to the existing 4 RTGs), 4 more Prime movers & Trailers (to the existing 8 PMs & trailers), 5 more yard blocks (to the existing 5 yard blocks) and associated civil & electrical additions. This 50% capacity addition is the reason for increase in the number of employees. The actual employee strength is 161 (as against 152 projected in our proposal) including the fresh recruits of trainees to be</td></tr>
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	(b). Clarify whether the said wage revision has been effected during the year 2006. Further, furnish detailed computation explaining the basis for estimating wage revision to the extent of 28%.	confirmed during 2006. In addition, PSA SICAL has announced a salary revision of approximately 28% for all the non-management staff with effect from 1 January 2006. The combined effects of all these are reflected in the estimated figure. The estimated figures (based on past actuals) are very reasonable considering the staff strength increase of 40% and normal annual salary increase prevalent across the industry. (b). It is confirmed that the salary revision has been implemented and that the average salary increase for the non-management staff is about 28%. It has furnished the detailed computation of average salary prior to December 2005 and subsequent to the wage revision. Though the increase in the salary is in the range to 20% to 50% for most of the scales, the revised salaries of all the employees have been adjusted to 28%.
(vi).	➢ Justify steep hike in estimation of equipment running cost by 58% (i.e. from Rs.640 lakhs in 2004 to Rs.1016 lakhs in the current year 2005) and 24% further escalation in the year 2007 over the previous year's estimates. Also, furnish the actual equipment running cost incurred from the period January 2005 to November 2005 alongwith breakup of the various cost elements included therein. ➢ With reference to the submissions made by PSA SICAL justifying an increase of 37% in the year 2005 over the previous years, actuals, it was clarified the actuals for the year 2005 already takes into account the effect of additional equipment i.e. 1	(a). The 50% increase in the number of equipment as mentioned above will result in increased equipment running cost. (b). Electricity cost has actually gone up by 8% and fuel cost by 14% annually (on a CAGR basis) during the last six years in addition to 10% increase in cost due to volume increase. It has assumed 8% increase in unit cost of electricity which is less than 10% increase in per unit cost of diesel. (c). There was absolutely a low base of repairs and maintenance cost in 2003. Rs.1.13 crores for 2 QCs, 4RTGs, 8 PMs & Trailers, fork lift, service truck, etc is a very low efficiency driven repairs & maintenance cost. From this very low base, the annual percentage increase will appear very big. Applying percentage increase in its case will be misleading. (d). The QC fleet has gone up by 50%, the RTG fleet by 100% & PM & Trailer fleet by 50% in 2005. Great emphasis is laid on preventive and predictive maintenance. Therefore, a great proportion of the cost will increase proportionate to the fleet irrespective of the growth in volume. This will lead to at least 50% jump in RRM cost in 2006. (e). In addition, to this, major mechanical, electrical and electronic refurbishment of the 'used' QC & RTGs are planned in a phased manner during 2006 and 2007. This will cost about Rs.1.5 crores. All these are reflected in the estimated RRM cost. The 2008 estimate of Rs.5.03 crores is equivalent to Rs.117/- per TEU perhaps one of the lowest in the country. This is a very realistic estimate. ➢ The 4 RTGs were fully commissioned by 8 Jan 2005 and they were under warranty till 7 Jan 2006. Similarly, 1 QC was fully commissioned by 9 June 2005 and will be under warranty till 8 June 2006. The RRM expenditure of 2005 does not take into account the effect of additional equipment.

	QC, 4 RTG's, 4 prime movers and other equipment deployed during the year.	The increase in percentage appears to be exorbitant since it is from a very low base. The actual quantum is more relevant than the actual % of increase; both due to fleet increase & low base. The actual quantum of increase in repairs & maintenance is only Rs.1.25 crores in 2006, Rs.0.85 crores in 2007 and Rs.0.2 crores in 2008. In view of our submissions, TAMP is requested to look at the reasonableness of an efficiently maintained terminal rather than escalation level allowed as per the guidelines.
(vii).	➢ Justify annual escalation of 8% in unit cost of electricity for the years 2006 to 2008 over the respective previous years, and 10% to 16% increase in 'others' for the years 2006 to 2008 over the respective previous and 9% hike in general overheads for the year 2006 over 2005 estimates in the light of the fact that the revised tariff guidelines clearly prescribe that the estimation of expenditure must be based on the current movement in wholesale price index. Justify the estimated increase of 35% and 25% in the fuel and power cost for the years 2006 and 2007 which is beyond the escalation level allowed as per the revised tariff guidelines.	(a). From the beginning of its commercial operation there has been three major revisions in the electricity tariff, viz, 13.3% increase in unit cost and 17.65 % in fixed cost in January 2000, 10.52% increase in unit cost and 50% increase in fixed cost in 2002 and 19.05% increase in unit cost in March 2003. Effectively the cost of electricity which was Rs.5.24 per unit in our case in the beginning of January 2000 is now Rs.7.66 per unit now; an increase of nearly 46%. The next revision is imminent. Similarly, the price of diesel was Rs.15.62 per litre in January 2000 and the same is Rs.34.15 per litre now; an increase of nearly 120%. This justifies its projection for fuel and electricity. (b). Business expenditure does not remain stagnant. If it were so an inflationary adjustment alone is sufficient. However, changes in business environment & competitive landscape will result in increasing customer demands & requirements. With increasing competition, marketing and market development expenses will also increase more than proportion to the inflation. Hence, there has to be a more than inflationary adjustment in its projection for "other" expenses. Its projection is thus, justified.
	➢ It is not clear why the per TEU power consumption should increase by 12% per annum for each of the years 2006, 2007 and 2008.	➢ It is the actual quantity of power / fuel consumed and not per TEU power / fuel consumption.
	➢ Refurbishment cost of around Rs.1.5 crores of mechanical / electrical and electronic equipment proposed during the years 2006 and 2007 is stated to be included in the repairs and maintenance cost. It may be explained why this expenditure should not be excluded from repairs and maintenance cost and added to the cost of equipment since refurbishment of equipment is likely to extend the life of the asset / capacity and the benefit of the same is available beyond the year in which this expenditure is incurred.	➢ 1QC & 4RTGs require replacement due to obsolescence / difficulties in availability of electronic cards. (This is done to improve maintainability). The break system of 1QC hoist is being replaced to improve safety in operation. Improvements to trolley / cabin system of 1QC is being done to attain the required trolley speed which was lost due aging. These are some of the major overhaul jobs being undertaken at an approximate cost of Rs.1.5 crores. These repair works do not increase the original useful life or increase the capacity; rather they are undertaken, as mentioned earlier to reach the desired level of maintainability; operational efficiency and safety. As per the standard accounting practice and sound business practice they are treated as 'Repairs & Maintenance' expenditure in

<table>
<tr><td></td><td></td><td>2006 and 2007.</td></tr>
<tr><td>(viii).</td><td>(a). Indicate the likely loss if royalty is not included as a cost for tariff fixation for the years 2005 (from April to December), 2006, 2007 and 2008.

(b). The admissibility of royalty / revenue share as an item of cost for the period subsequent to 31 March 2005 will be as per the revised tariff guidelines</td><td>The projected capital employed, the resultant ROCE and the royalty to be paid to TPT for 2005 to 2008 is tabulated below.
(Rs. in crores)
<table>
<tr><th></th><th>2005</th><th>2006</th><th>2007</th><th>2008</th></tr>
<tr><td>Total Capital Employed</td><td>68.56</td><td>68.87</td><td>67.72</td><td>67.24</td></tr>
<tr><td>ROCE</td><td>10.28</td><td>10.33</td><td>10.16</td><td>10.09</td></tr>
<tr><td>Royalty to be paid to TPT</td><td>15.00</td><td>22.43</td><td>33.52</td><td>49.60</td></tr>
</table>

(b). ROCE for the years 2006, 2007 and 2008 is only around Rs.11 crores per annum whereas the actual royalty for the same period varies from Rs.22.43 crores to Rs.49.6 crores. Hence, ROCE alone is not sufficient to cover 100% of the Royalty paid as legitimate business expenditure. Even if TAMP allows 100% of the royalty, its tariff will still be competitive. When viewed in the background of our most efficient service, this will be in the best interest of the trade and the investors. Hence, TAMP is requested that 100% of the royalty paid to Tuticorin Port Trust be allowed as legitimate business expenditure for the period beginning after 31 March 2005.</td></tr>
<tr><td>(ix).</td><td>(a). Indicate additional equipment, if any, taken on hire and substantiate the estimates furnishing copies of the equipment hire contracts.

(b). With reference to the lease agreement entered with Dacca PTE Ltd., for lease of QC and RTG on payment of lease rental, please clarify whether the firm was selected based on competitive bidding and also certify the arms length relationship of this transaction for admitting this expense as an item of cost.</td><td>(a). The civil and electrical works, yard expansion and purchase of 4 new Prime Movers and Trailers were done using its own funds. The addition of 1 used QC and 4 used RTGs was done through an operating lease arrangement for five years with a Singapore based company, viz., Dacca Pte. Ltd. The monthly lease pay out is USD 58,800 for QC and USD 44,800 for RTGs. Copies of the lease agreement has been furnished to substantiate this estimate.
(b). The lease agreement with Dacca PTE Ltd. for lease of QC and RTG is based on competitive bidding. Prices are reasonable and are based on arms length relationship of the transaction. A copy of transfer pricing report from KPMG is also furnished for determining reasonableness of the prices.</td></tr>
<tr><td>(x).</td><td>(a). Please clarify under which head the annual license fee paid / payable for CITOS is considered.

(b). Furnish Income tax Assessment Order for the previous years showing admissibility of license fee for Terminal Operating System (TOS) to establish the</td><td>(a). The annual cost of the Terminal Operating System (TOS) is included under “General Overheads”. The license for the originally purchased CITOS will expire by January 2006. Since this system requires upgradation due to technological & business concept advancement, it is tendering for a new and more advanced TOS among four short-listed bidders. Orders are to be finalised shortly. The projected cost for 2006 to 2008 is for a new TOS and the same is included under General Overheads.
(b). The Income Tax proceedings are in progress and have not yet attained finality. The Income Tax department has not asked for any clarification regarding CITOS annual licence</td></tr>
</table>

	arms length relationship of this transaction. The original license for CITOS is stated to expire by January 2006. In case a new License Agreement is signed in this regard, furnish a copy of the same may. Please clarify whether the firm was selected based on competitive bidding and also certify the arms length relationship of this transaction for admitting this expense as an item of cost.	fee. The new arrangement for license agreement is still under tender stage.
(xi).	Any expenditure which is akin to Technical Service fee, may be considered in the estimates subject to substantiating arms length relationship of such transaction by furnishing Income Tax Assessment Orders for the previous years showing admissibility of such items.	It has confirmed that there is no expenditure akin to technical services fee.
(xii).	Confirm that the depreciation has been computed on straight-line method, with life norms adopted as per the Companies Act or based on the life norms prescribed in the Concession Agreement whichever is higher.	Depreciation is calculated on a straight-line method with the life norms adopted as per the Companies Act.
(xiii).	The increase in estimation of insurance cost from Rs.39 lakhs in 2004 to Rs.57 lakhs in 2005 under the head 'other expenses' may be substantiated with documentary support. Explain the reasons for estimating the insurance cost to increase during 2007 and 2008 though no addition is proposed to the gross block. In fact the value of the assets for which insurance cover is taken will depreciate year after year and hence the insurance cost should also reduce.	As per clause 10.6.2 of the License Agreement insurance will have to be based on "replacement value" of assets. This is also good commercial prudence and an accepted business practice. Hence the insurance cost will marginally go up and not come down. It has furnished documentary support to justify these estimates.
(xiv).	Indicate addition to the capacity of the terminal in view of addition to the gross block i.e. (Rs.259 lakhs in Plant and Machinery and Rs.462 lakhs in IT) during the year 2006. Also, indicate reduction in the unit operating cost, if any, additional traffic / business projected or any improvement in the operational efficiency on account of the proposed additions to the gross block.	The break up of the proposed addition to gross block in the year 2006 has been furnished. Rs.259 lakhs addition in the Plant & Machinery consists of mainly Rs.143 lakhs for reach stacker and Rs.80 lakhs for alternate power supply. Similarly, the major addition in IT is Rs.315 lakhs for advanced Terminal Operating System and Rs.64 lakhs for web based solution. The proposed addition to gross block is extremely small compared to capital employed. The additions are more in the nature replacement of IT products due to technological obsolescence & business sophistication and an addition of balancing equipment to sustain gate performance in line with improvements in customs procedures. The addition of alternative power supply source will improve the reliability of operation from about 98% to 100%. It does not envisage any addition to the capacity on account of the proposed additions to the gross block.
(xv).	(a). The revised tariff guidelines limit sundry debtor to two month's estate	(a). The revised guidelines limits sundry debtors to two month's estate income (such as store

	income and terminal handling charges while computing the working capital. These two items may not be relevant for PSA SICAL. In view of this position, and also recognising that all the charges are collected in advance by the private operator, justify the estimation of sundry debtors at 10 days of revenue. (b). The cash and bank balance has been considered at almost six to eight months cash expense as against norm of one month cash expense prescribed in Clause 2.9.9 of the revised tariff guideline. The estimation of cash and bank balance in the working capital may be modified in line with the tariff guidelines.	rent in our case) & terminal handling charges. These expenses are very much relevant to PSA SICAL. Also, these charges are not collected in advance; but they are collected after the services are rendered. That being so, PSA SICAL has estimated the working capital @ 10 days of the billing to take care of exigencies. This is much less than what TAMP normally allows i.e. equal to 2 months revenue. (b). With reference to estimation of cash, it is submitted that cash & bank balance includes cash in hand as well as bank balance. While cash in hand is as per the limit provided in the guidelines, the balance in bank, in absence of any specific limit, is governed by the justification of keeping such balances and its reasonableness. The bank balance is the part of the total capital employed in PSA SICAL's terminal business for strategic purposes. This current asset is required to get the best terms for the financial facilities availed, viz., favourable interest rate, furnishing non-funded facilities like Bank Guarantee to TPT, relaxation in corporate guarantee requirement, etc. Periodically this is also used to fund capital additions and replacement requirements of IT products which have high obsolescence rate. The financial leverage available helps us in reducing costs in many other areas. PSA SICAL is a typical case with low operating cost and very low net fixed assets. Therefore, such a buffer is required to maintain a competitive tariff with increasing royalty commitment, thus facilitating us to discharge our legally binding obligations. Even with this bank balance, PSA SICAL's capital employed is very small and the return is inadequate to cover the difference between the first and the second highest royalty quote.
(xvi).	As per the revised tariff guidelines, benchmark to measure efficiency improvement is the average performance of the same terminal achieved in the preceding cycle. Reference to performance of other terminals and also the tariff levied thereat are not relevant. PSA SICAL is advised to quantify cost reduction, if any, achieved during the past period and establish that the cost reduction is due to efficiency improvement of its terminal and claim its share in the relevant estimates of expenditure for fixing tariff for the tariff validity period under consideration as per the relevant clause of the revised tariff guidelines.	Ever since the commencement of commercial operation, PSA SICAL has worked very hard to achieve efficiency leadership and cost leadership. The data (both past and projected) submitted to TAMP reflect this achievement. It has, therefore, to consider its request as a test case for competitive tariff based on normative cost approach. While noble intention of law is to provide for incentives for better performance and disincentives for performance below the benchmark but the literal interpretations of the guidelines does not translate this noble intention into the actions. This is because of the fact that these provisions for incentives are introduced in between and that too without any transitional provisions to provide for a situation where all operators are not at equilibrium in terms of performance level. The Authority is requested to consider the intent of policy and establish the scope wherein the Authority can apply its discretion to serve the objective of the newly introduced provisions in

		favour of an operator whose tariff is lowest in the country despite meeting the best performance benchmarks.
(xvii).	The proposed condition about reckoning the date of Actual Time of Berthing (ATB) of the vessel into the terminal for the purpose of conversion of dollar denominated tariff into rupee terms is not found to be in line with clause 2.19.1. and 2.19.2. of the revised tariff guidelines. In case of storage charge on export containers, the conversion will not be from the date of arrival of containers in the port premises but from the date of arrival of container into the terminal.	TAMP is requested to give us the flexibility of using Actual Time of Berthing (ATB) for conversion of dollar rates into rupees rates, since this will result in uniform exchange rate for all the export boxes going into a particular vessel and make the billing process simpler. Generally, the export boxes are all received just 2 to 3 days prior to ATB and hence the differences will be insignificant. Since both TPT and PSA SICAL are involved in storing and collecting storage charges, the proposed provision is right.
(xviii)	Incorporate clause 2.19.3. of the revised tariff guidelines prescribing regular review of exchange rate.	Vessels are turned around in around 14 to 18 hours, hence the said clause of 2.19.3 of revised guidelines is not applicable.
(xix).	The proposed provisions about collecting deposit from users in case where transactions are not routed through Electric Data Interface (EDI) are not found to be in line with clauses 2.18.2 and 2.18.3 of the revised tariff guidelines. The proposed provision at 2.6. may ,therefore, be modified in line with the clause 2.18.2. to 2.18.3. of revised tariff guidelines. Update the exact rate of penal interest for delayed payment by users / delayed refund by the operator at 2% above the prime lending rate of the State Bank of India as stated in tariff guidelines.	The EDI route for transactions with customers has been stabilised with proper tripartite arrangements. Therefore, there will be no deposits. This is similar to the EDI arrangement of TPT and has been well accepted by all our customers. It has not proposed any provision for levy of penal interest for delay in payment by users / delay in refund by terminal. It has proposed a provision to state that all transactions to its Custom are only through Electronic Data Interface (EDI) with proper tripartite agreement.
(xx).	Explain the reasons for introducing the proposed note number 10 about shifting of import laden container to Off dock CFS for disposal under Section 48 of Customs Act if such cargo is not cleared within 25 days from the date of landing. Furnish a copy of the relevant order of the Customs in this regard. The Major Port Trust Act 1963, specifically prescribes the provisions under Sections 61 and 62 for disposal of goods not removed from the premises within the stipulated time limit or in case rates or rent are not paid.	It has amended the provision in accordance with the revised Customs notification. A copy of the same has been submitted.
(xxi).	Explain the reasons for not proposing a composite box rate with discounts for services not offered.	Composite box rate is not possible due to involvement of CHAs & MLOs while invoicing and due to USD component for some of the tariff items.
(xxii).	This Authority vide its Order dated 20 September 2002 (which has been stayed) had deleted the lashing / unlashing charge of US $ 8.04 per container for reasons elaborately explained the said Order. The proposed rate for stevedorage charge of normal container / transhipment container and charges for shifting of	The MOC provides for PSA SICAL to continue to collect charges based on 1999 tariff till a new tariff is notified. Hence it is logical to apply the upward revision of 30% based on 1999 tariff.

	container are arrived at by clubbing the existing lashing / unlashing charge with the stevedorage charge and proposing hike of 30% thereof. This works out to almost 100% to 124% increase from the tariff level approved in the Order of September 2002 for these items. Justify the proposed rate with reference to the cost of services provided.	
(xxiii).	Furnish detailed cost sheet for each equipment or service center for which tariff has been proposed to determine the reasonableness of individual tariff items with reference to the actual cost of providing the service.	A container terminal offers comprehensive service of receiving export boxes & loading on to ship and vice-versa for import boxes. This is different from a major port which offers variety of services like loading / unloading, handling varieties of cargo, covered & uncovered storage, land use allotment, etc. In the case of a container operation, cross subsidisation is not relevant. The different rates, conventionally proposed is for flexibility in billing and due to presence of dollar denominated tariff. It is not possible to split the cost under each equipment or service center. The overall rate increase is justified only through total revenue and total cost position.
(xxiv).	Prescribe concessional tariff for coastal containers at Schedule 1.1, 1.2, 1.3, 1.4, 1.5 and 1.9 at the level not exceeding 60% of tariff proposed for normal containers in line with our Order number TAMP/4/2004-Genl dated 7 January 2005.	Tariff for coastal vessels is prescribed at level the concession envisaged by TAMP.
(xxv).	Indicate the benchmark levels of productivity as stipulated under clause 6.8. of the tariff guidelines. Propose incentive for better performance of the terminal and disincentives for performance below the benchmark levels. Also, explain the basis for proposing such benchmark levels and the incentives / dis-incentives.	It has been the most efficient terminal in the country from day one in terms of both productivity and reliability. It never had any monitory incentive for its superior performance so far. Earlier exercises in the past, like, "Efficiency-linked Tariff Scheme" and "Normative cost based on container handling charges with bench marks" have not yielded the desired results.
(xxvi).	Flowing from the principle prescribed in clause 2.15 of the revised tariff guidelines, incorporate a conditionality of allowing refund equivalent to berth hire charges for the period when the vessels idle at its terminal when operations cannot take place due to failure / breakdown of the shore based facilities of the PSA SICAL.	On several occasions, it has turned around the vessel faster due to our superior productivity and have provided "catch-up" services for delayed vessels. Vessels / MLOs do not pay extra for this reduced berth usage. Also, this clause will only result in more disputes rather than helping the cause of the port customers.
(xxvii).	Incorporate a provision clarifying the rates applicable on a container from foreign port landing at PSA SICAL for subsequent transhipment to an Indian Port on coastal voyage or vice versa.	It has incorporated a necessary provision based on this observations.
(xxviii).	Justify the proposed increased of around 53% in lift off / lift on, Hatch cover handling, Extra movement, Reefer related charges, Shut out and Wharfage over the rate approved in TAMP Order of September 2002 with reference to the cost of services provided.	The MOC allows PSA SICAL to continue to collect charges based on 1999 tariff till a new tariff is notified. Hence it logical to apply the upward revision of 30% based on 1999 tariff.
(xxix).	The unit of levy of charges for supply of	It has modified the unit of levy of supply of

	electricity to reefer container may be prescribed on 4 hourly basis in line with clause 5.7.1. of the tariff guidelines. While doing so, corresponding adjustment may be done in the rates proposed. Also, justify the proposed increase in the charges for the supply of electricity with reference to the present tariff of the power supply and the average consumption of electricity per shift.	electricity to reefer containers on 4 hourly basis. The electricity charges have gone up by 46% from the time it commenced the operation where as its proposal envisages only 30% increase from the 1999 rates.
(xxx).	Modify the proposed note about commencement of free storage period for import loaded and empty container in terms of clause 5.8.2. of the revised tariff guidelines.	The proposed note is amended to comply with clause 5.8.2 of revised guidelines.
(xxxi).	The proposed note number 5 about time limit for levy of storage charge in case of abandoned containers is found to be incomplete. Modify the said note to include various provisions prescribed in Clause 5.8.3. of the tariff guidelines.	It has revised the provision in line with the new Customs notification to state that where the container is seized / confiscated by the Custom Authorities and the same cannot be destuffed within the prescribed time, the storage charges will cease to apply from the day the Custom order release the cargo subject to lines observing the necessary formalities and bearing the cost of transportation and destuffing. Otherwise, seized / confiscated containers should be removed by the line / consignee from the port premises to the Customs bonded area and in that case the storage charge shall cease to apply from the day of such removal.
(xxxii).	Incorporate a conditionality to state that the storage charges shall not accrue for the period during which the PSA SICAL is not in a position to deliver / ship the containers, when requested by the user.	The wordings of this conditionality should be unambiguous. It should not result in subjective interpretations resulting in disputes than helping customers' cause. There should be a national consensus and all the terminals should follow this.
(xxxiii).	Explain the basis of the proposed tariff of Rs.1000/- per transaction / report under Schedule 2.3 for specialised system service and also state explicitly the specialised services proposed to be offered for levy of this tariff. Such services must not be those arising in the ordinary course of terminal operation.	This relates to generation of any special reports / information from its system which is not routine in nature, but based on customer's request. The revised proposed Scale of Rates explains the services for which the proposed tariff will be levied.

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

Sl.No.	Queries raised by us	Reply furnished by TPT
(i).	Furnish specific comments on the reasonableness of traffic projections made by the PSA SICAL for the years 2006, 2007 and 2008.	The minimum guaranteed traffic to be achieved by the BOT operator is 3,00,000 TEU for 2006, 2007 and 2008. The traffic projections made by the PSA SICAL in the TAMP proposal for the year 2006 is 356100 TEU and for the year 2008 at 430881 TEU with an increase of 10% per annum. This is in line with the traffic projections made by the port.
(ii).	Furnish on NPV analysis of the bids of all the bidders made in term of Clause 5.6 (b & c) and 4.9.2 of the Tender to select the successful bidder.	It has furnished the requisite information. The net present value of the amount quoted by the second highest bidder is Rs.6521.18 lakhs as against Rs.13,914.88 lakhs quoted by PSA SICAL.

(iii).	Furnish comments on the reasonableness of the proposed investments of PSA SICAL to the tune of Rs.259 lakhs in plant and machinery and Rs.462 lakhs in IT during the year 2006 and also confirm whether it is as per the terms of the CLA.	It has not made any specific comments. The TPT has stated that as per CLA Clause No.6.1.5. the licensee shall use best effort to promote and develop the commerce at the Licensed Premises and / or the Container Terminal in order to achieve its maximum utilisation and shall at all times, give foremost consideration to this objective consistent with sound business practices in its manner of operation. As per Article 6, Clause No.6.1.1. of the LA, the licensee has to make available all necessary resources including capital investment for operation, maintenance and repair of the Container Terminal.
(iv).	Comment on the designed capacity of the PSA SICAL Terminal for the years 2003 to 2008 taking into consideration the equipment deployed / proposed to be deployed.	Terminal capacity mentioned in the BOT concession agreement is 300,000 TEUs per annum with its modern handling equipment and information system support. The length of the berth is 370 meters and draught is 10.7 mtrs. The berth was initially provided with 4 Rubber tyred gantry cranes, 2 Rail mounted quay cranes and supporting facilities such as tractors and trailers etc. as stipulated in the BOT agreement. An area measuring 10ha (1,00,000 sq.m.) of land has been provided for handling and stacking of containers. The area is sufficient to handle 4,00,000 TEUs of containers. However, to handle these containers, the equipment provided were not sufficient and the operator was requested to provide additional equipment to facilitate handling of more traffic. In compliance with the port's request, the terminal operator installed one more RMQC, four RTGC and required prime movers, besides yard expansion. The additional infrastructure was in place by end of March 2005. Hence the projections made by the Terminal Operator at 356100 TEUs, 391710 TEUs and 430881 TEUs for the year 2006-2007 and 2008 respectively are in order.

11.1 A joint hearing in this case was held on 09 December 2005. At the joint hearing, the PSA SICAL, TPT and the concerned users made their submissions.

11.2. At the joint hearing, Indian Chamber of Commerce and Industry (ICCI), Tuticorin Custom House Agents' Association (TCHAA), Tuticorin Steamer Agents' Association (TSAA) and Tuticorin Port Handling Agents Association have filed further written submissions reiterating the points made by them earlier. Subsequently, the TCHAA have made further submission and the same has been reiterated verbatim by the TSAA. The further submissions received from the above user organisations were forwarded to PSA SICAL for their information / comments. In response, the PSA SICAL has also furnished its comments.

12.1 As decided in the joint hearing the PSA SICAL was requested to intimate its decision to this Authority by 19 December 2005 as regards circulation of atleast the summary of its financial position to the concerned users.

12.2. In the response the PSA SICAL has clarified that its proposal including Annexure upto Table 7.4.0 which includes summary of the Audited Profit and Loss statement and Balance Sheet, have been circulated to users by TAMP and hence it may not be necessary to circulate the information once again to the users.

13. Considering the request made by PSA SICAL and following the consultation envisaged in Section 111 of the MPT Act, the Ministry of Shipping Road Transport and Highway (MSRTH) has issued the following direction under Section 111 of the MPT Act, 1963, as required under Clause 4 of the MOC of 17 August 2005:

"After considering the proposal of PSA SICAL and the submissions made at the meeting held on 27.10.05 as also further submissions made in their letter dated 10.11.05 and the comments furnished by the TPT, it clearly emerges that the pre-condition of incurring loss for claiming at least part of royalty as pass through has not been satisfied in this case. Further, the decision taken in the CCTL case has been given prospective effect. No extraordinary circumstance has been brought out in this case warranting an exceptional treatment. Therefore, it emerges that the request made by PSA SICAL for allowing royalty as pass through for the period up to 31st March, 2005 is devoid of merit and cannot be accepted. TAMP is directed under Section 111 of MPT Act, 1963 to consider the tariff fixation case of PSA SICAL accordingly. The TAMP will be guided by the provisions of the revised tariff guidelines in the matter."

14.1. In compliance with the policy direction issued by the Central Government and also taking into consideration the terms of the MOC, the gain / loss statement for the past period (i.e. 2002 to 2005) furnished by the PSA SICAL Terminals Limited was modified and forwarded to PSA SICAL. In addition the cost position as assessed by this Authority for the future period was also made available to PSA SICAL for its comments, if any.

14.2. As per this statement, the net gain accrued to PSA SICAL due to non-implementation of the 2002 Order of this Authority is assessed at Rs.66 crores from the effective date of implementation of Order, 2002 till 30 June 2006. Some additional information / clarification are also sought from PSA SICAL to the extent of gaps found in the information earlier furnished.

15.1. Clause 8 of the MOC requires an opportunity to be afforded to PSA SICAL to express its views on advantage / gain quantified. Accordingly, the PSA SICAL was requested to furnish its views on the advantage / gain accrued to PSA SICAL due to non-implementation of 2002 orders as quantified by us by 9 June 2006. This was subsequently extended till 15 July 2006 at the request of the PSA SICAL. The information requisitioned and the reply furnished by the PSA SICAL are given in the table hereinunder:

Sl. No.	Information sought by TAMP	Information Furnished by the PSA SICAL
(i).	Since the Order dated 20 September 2002 was implemented in November 2002, the gain / loss also needs to be considered only for the relevant period from the date of implementation of the Order. However, the PSA SICAL has drawn up the gain / loss for the full year of 2002. In the absence of the PSA SICAL furnishing the requisite details, the net surplus / gain for the year 2002 is considered on pro rata basis for two months. It is again requested to separately indicate the net gain / loss for the year 2002 from the date of implementation of the Order.	The most practical way to arrive at the net gain / loss for the period 2002 is to adjust the revenue for the period for November and December based on the tariff in 2002 TAMP order.
(ii).	Since the year 2005 is already drawn to a close, update the 2005 figures with actuals for the full year duly certified by your Chartered Accountant and furnish a copy of the Audited Annual Accounts for the year 2005. For the year 2005, separate calculation may be shown for the period upto 31 March 2005 based on the approach adopted in the last Order prior to issue of the revised tariff guidelines. For the period 1 April 2005 to 31 December 2005, the revised tariff guidelines may be followed particularly with reference to computation of return on capital employed. For the purpose of this analysis, the	A copy of audited accounts for 2005, as indicated by TAMP is furnished.

<table>
<tr><td></td><td>actuals as reported by the PSA SICAL for the year 2005 is considered proportionately for three months (from January 2005 to March 2005) based on the approach adopted in the last Order prior to issue of the revised tariff guidelines and for nine months (i.e. from April 2005 to Dec 2005) the figures are considered proportionately in terms with the revised tariff guidelines</td><td></td></tr>
<tr><td>(iii).</td><td>The first five months of 2006 are also almost over and hence the estimated cost for 2006 may be updated with actuals upto May 2006 (duly certified by its CA) and estimates for the remaining period. A copy of the Accounts upto May 2006 duly certified by its CA may also be furnished.</td><td>A statement showing the actuals for the first 5 months of 2006 as against the projections for the year 2006 is furnished.</td></tr>
<tr><td>(iv).</td><td>Almost half of the year 2006 will be over by the time this case is finalised. This means a total net gain from the date of implementation of our Order till June 2006 has to be spread over approximately two and half years (i.e. from July 2006 to December 2008). Estimates for the year 2009, may be furnished so that the gain for the past period can be spread over three years.</td><td>The estimates for the year 2009 is furnished with estimated throughput at 300,000 TEUs since second container terminal is certain in the year 2009.</td></tr>
<tr><td>(v).</td><td>The PSA SICAL has stated that the wage revision has already been effected from 1 January 2006. In this connection furnish the actual direct labour incurred till May 2006 to justify the estimates. Furnish the break up of the labour cost pertaining to managerial and non-managerial staff prior to wage revision and indicate the impact of wage revision.</td><td>The break up of labour cost pertaining to managerial and non-managerial position indicating the impact of the wage revision is furnished as tabulated below:
<table>
<tr><th>Category</th><th>Jan-May 2005</th><th>Jan-May 2006</th><th>% Y-O-Y incre-ase</th></tr>
<tr><td>Managerial</td><td>8893480</td><td>9026761</td><td>1.5%</td></tr>
<tr><td>Non-Managerial</td><td>8462103</td><td>12179827</td><td>43.9%</td></tr>
<tr><td>Total</td><td>17355583</td><td>21206588</td><td>22.2%</td></tr>
</table></td></tr>
<tr><td>(vi).</td><td>As per clause 2.4.1. of revised tariff guidelines, benchmark to measure efficiency improvement is the average performance of the same terminal achieved in the preceding cycle. Reference to performance of other terminals and also the tariff levied thereat are not relevant. As stated earlier, PSA SICAL may quantify cost reduction, if any, achieved during the past period and establish that the cost reduction is due to efficiency improvement of its terminal and claim its share in the relevant estimates of expenditure for fixing tariff for the tariff validity period under consideration as per the relevant clause of the revised tariff guidelines.</td><td>It is to bring to the attention of TAMP that the small and the reducing nature of the capital employed does not provide enough return to cover the disallowed royalty. Hence, it is absolutely important that efficiency gains are factored in for the sustainable and efficient operation of PSA SICAL with reasonable / competitive tariff. TAMP is once requested to favourably consider the justifications given in Annexure E to our letter dated 16 January 2006.</td></tr>
</table>

15.2. The comments of the PSA SICAL on gain / loss statement for the past period and the consolidated cost statement as against our remarks are summarised below:

A. Gain / Loss Statement.

Sl. No.	Our Remarks	Comments of the PSA SICAL
(i).	**Para III: Revenue.** Actuals as reported by the PSA SICAL is considered. For the year 2005, since no estimates were available, for the purpose of arriving at gain / loss due to non implementation of our Order, the income reported by the PSA SICAL (i.e. Actuals upto November 2005 and the estimates for December 2005 duly certified by its CA) is considered.	Revenue as per Annexure 1B of 2002 TAMP order (after deducting lashing / unlashing income) is shown under the estimates considered. This will facilitate easy calculation by deducting 15% of the income from the surpluses. The revenue for 2003 and 2004 reported in our statement is Rs.4895.65 lakhs and Rs.5542.08 lakhs. This is adjusted by deducting the lashing / unlashing income of Rs.659.71 lakhs and Rs.761.97 lakhs respectively estimated in the Annex 1(b) to the Order of September 2002.
(ii).	**Para IV (ii): Royalty.** As per the terms of the Memorandum of Compromise drawn on 17 August 2005, the treatment of royalty for the period prior to 31 March 2005 has to be done as per the policy directions of the Central Govt. The Ministry of Shipping under the Central Government has issued a policy direction vide letter number PR-14019/6/2002-PG (Vol-I) dated 17 April 2006 to this Authority u/s 111 of the MPT Act 1963, directing not to admit royalty as a pass through for the period prior to 31 March 2005. In compliance with this direction, the royalty amount paid by the PSA SICAL for the period prior to 31 March 2005 is not admitted as a cost in this statement. For the period subsequent to 31 March 2005, the royalty is admitted as cost to the extent quoted by the next bidder in terms with the revised tariff guidelines. In the absence of actual royalty amount furnished for this specific period, pro-rata adjustment has been done for nine months in this analysis for the period subsequent to 31 March 2005.	Full royalty paid is shown under actuals allowable. We have appealed to the Government for review of their decision. Even in the Government's decision dated 17 April 2006, TAMP is permitted to be guided by the provisions of the revised tariff guidelines in this matter. Since the calculations shown in TAMP letter dated 24 May 2006 result in an immediate loss making situation, TAMP is requested to consider the second highest royalty as a cost. However, since the allowed return does not cover the disallowed portion of the royalty, we once again appeal to TAMP / Government to allow full royalty as pass through.
(iii).	**Para IV (iii): Annual Licensee Fee (CITOS).** Annual license fee for CITOS is excluded from the operating expenditure in line with the treatment given in our earlier Order of September 2002 for the years 2002 to 31 March 2005. As per the revised tariff guidelines, technical service fee cannot be admitted as item of cost unless the operator establishes 'arms length relationship' of the transaction. The PSA SICAL has not furnished the Income Tax Assessment	Annual application fee for application software is an accepted industry practice. Fees for terminal operating system is not akin to technical services fees. This is a charge paid for tangible services provided and similar charges have been allowed for other operators even in the past. As per the revised tariff guidelines technical fee is an allowable expense provided an arms length relationship exists with its promoters or their associate entity. In support of the arms

	Order since it is pending for the past years. It has, however, furnished the certificate of the CA establishing arms length relationship of this transaction as per the IT Act. That being so, relying on the certificate issued by the CA in this regard, this expenditure is admitted as cost for the period subsequent to 31 March 2005 on prorata basis.	length relationship, supply quotation is furnished. Further as admitted by TAMP, capital cost has to be incurred to acquire it, annual charges are to be paid as per the industry practice. In view of this and earlier submissions made in this regard it has requested TAMP to accept this as legitimate business expenditure for the period prior to 31 March 2005 also.
(iv).	**Para IV (vi): Exchange Loss.** During the last revision, the PSA SICAL had not reported any foreign currency debt but had estimated substantial amount as loss on account of foreign currency transaction. The stated policy of this Authority is that loss on foreign currency transaction for the actual repayment of loan / debt is allowed as item of cost. In the absence of any details relating to foreign currency debt during the last revision, these estimates were moderated. The PSA SICAL has now reported the actual loss on account of foreign exchange transaction and has furnished detailed break up of the same. On detailed scrutiny it is found that this loss on account of foreign currency transaction pertains to purchase of spare, installation of software, lease rentals of RTG's during the year 2005, etc., apart from the payment of annual license fee towards CITOS. The PSA SICAL has clarified that the expenditure is booked at the prevailing exchange rate and then subsequently the Bank informs the actual exchange rate and the difference between the two is booked under this head. Based on the clarification furnished by the PSA SICAL, this item is allowed as cost except for exchange gain / loss incurred for CITOS payment. Since annual license fee for CITOS for the period prior upto 31 March 2005 is not allowed as item of cost, the exchange loss on account of the same also cannot be allowed. That being so, the exchange loss is admitted to the extent it is not related to annual license fee for CITOS. For the year 2005, the adjustment is done proportionately and this loss is also allowed for the period subsequent to 31 March 2005.	Since CITOS license fee is legitimate business expenditure due above reasons, the exchange loss is calculated at Rs.1.63 lakhs, Rs.1.35 lakhs and Rs.2.7 lakhs for the year 2002, 2004 and 2005 respectively. We had calculated the loss excluding the CITOS license fee.
(v).	**Para IV (vii): Deferred Expenditure Written Off.** The PSA SICAL has amortised the upfront fee over 10 years period and other deferred revenue expenditure over 5 years period. Since this expense relates to the entire project life, Rs.686.98 lakhs reported as on 31 December 2001 is spread over the	According to the Guidance Note of Expenditure during construction period issued by the ICAI the deferred revenue expenditure needs to be written off over a period of 3 to 5 years. We have written it off over 5 years. The royalty payment is amortised over a period of 10 years. The burden on tariff in the initial

	remaining license period of 28 years in line with the treatment given at the time of the last Order. This is also in line with the general principle followed in case of other private operators while fixing / reviewing their tariff	period cannot be the reason for spreading it over the entire license period. This expenditure was spread evenly over the years 2002, 2003, 2004 and 2005 @ of Rs.24.54 lakhs. However, the PSA SICAL has proposed to spread it over 2002, 2003, 2004 and 2005 @ Rs.242.90 lakhs, Rs.110.40 lakhs, Rs.110.02lakhs and Rs.45 lakhs respectively.
(vi).	**Para VIII: Adjusted Owners Capital.** Actual net block plus working capital as reported by PSA SICAL is considered for the year 2002 to 31 March 2005. Further, the deferred revenue expenditure to the extent not written off is also added while arriving at the capital employed in line with the treatment given at the other private terminals. The capital employed is assumed to be funded by the debt as reported by the PSA SICAL and the balance is considered to be the owners fund for computation of return on equity upto 31 March 2005. For computation of Capital employed for the years 2005, the net fixed assets as estimated by PSA SICAL is considered. The Working capital is computed as per the revised tariff guidelines for the period subsequent to 31 March 2005.	According to clause 2.4.1.of the revised tariff guidelines current assets excludes cash / deposit balances of funds. However, the cash in bank is part of capital employed in the business of the PSA SICAL as this helps in getting the best financial facilities like favourable interest rates, bank guarantee, etc. These balances are also used to fund capital additions and replacements. Since the guidelines permits TAMP to recognize the reasonableness of the items going into tariff computation as well as the MOC permits TAMP to consider appropriate “adjustments”, this Authority is requested to consider our request.
(vii).	**Para XIII:** Average Surplus allowed to be retained unadjusted as per the last tariff Order after effecting tariff reduction and deleting the lashing and unlashing charges is 11.2% of the operating income. (For the year 2002, computed on pro-rata basis for two months.) With reference to actuals for the year 2003 and 2004, the surplus allowed to be retained by PSA SICAL is considered at 11.20% of the actual operating income based on the average position obtained as per the last tariff Order.	15% of the income estimates considered in Annexure 1B of 2002 order is calculated for downward adjustments. TAMP allows advantage to be retained by operator if the estimates are not higher by more than 20%. The additional volume handled in our case is less than 20% and hence the additional income generated, calculated on the basis of 2002 order is shown as surplus allowed to be retained. There is no TAMP estimate for 2005 in the 2002 order. Therefore, the surplus allowed under the estimates is taken as the average surplus allowed for the years 2002, 2003 and 2004 i.e. (Rs.1644.92 + Rs.630.76 + Rs.1526.15)/3, equals to Rs.1267.28 lakhs. Therefore, the net loss during 2005 is (1267.28 – 818.24), equal to Rs.449.04 lakhs. Hence, the net loss due to the non-implementation of this Authority’s 2002 order is Rs.602.7 Lakhs

B. Consolidated Cost Statement:

Sl.No.	Our Remarks	Comments of the PSA SICAL
(i).	**Para II (i): Operating and Direct Labour.** Employee cost in 2006 is estimated to increase by 16%. The PSA SICAL has clarified that this is on account of 28% increase in the salary of non-management staff and has confirmed that it has already	The direct labour cost projected is justified in view of the actual expenditure incurred during January to May 2006 as tabulated earlier. The operating and direct labour cost for the year 2006, 2007,and 2008 indicate an increase of

	been implemented from January 2006. It has not furnished the actual salaries and wages for the first five months till May 2006. Furnish the actual salaries and wages upto May 2006 duly certified by its CA to justify the estimates. This Authority has recently allowed 15% wage revision impact on the total salaries and wage bill in case of two major ports also. In the absence of actuals information furnished by the operator to justify the estimates, the impact of wage revision is restricted to 15% as done for other major ports. In the absence of availability of information of managerial staff and non-managerial staff, around 60% of its employee cost is assumed to pertain to non-managerial staff. PSA SICAL is required to furnish the information relating to the wage cost pertaining to managerial / non-managerial staff. For the years 2007 and 2008 the escalation in cost may be allowed at 4.5% per annum as per the revised tariff guidelines.	17.70%, 6% and 6% respectively. In the year 2006 a steep increase is due to salary revision from 1 January 2006. The average increase in the non-management staff is 28%.
(ii).	**Para II (ii) (a): Power and Fuel Cost.** Increase in power cost for the year 2006 is within the admissible limit after adjustment for traffic growth. The per unit cost for the year 2006 is also found to be comparable with the estimation of other private operators who have filed the proposal and hence may be accepted. However, for the years 2007 and 2008, the escalation in power cost is estimated at 7% to 8% over the previous years. As per the revised tariff guidelines, the expenditure should be estimated based on the current WPI (i.e. 4.5%) and adjusted for traffic growth. It may be relevant to mention that the escalation in per unit cost estimated by some of the other private terminal operator is less than 6%. The estimates are therefore partially moderated restricting the escalation at 6% for the purpose of this analysis. The PSA SICAL should, however, justify the escalation in this cost beyond the stated level.	It has reiterated that all costs do not vary in tune with WPI. In the case of electricity and fuel it has furnished the actual percentage increase encountered in Tamil Nadu and hence the projections are justified.
(iii).	**Para II (ii) (c): Repairs and Maintenance.** Repairs and maintenance cost increases from 2.72 crores in 2005 to Rs.3.98 crores in 2006 which is almost 44% increase. The PSA SICAL has justified that this is on account of addition to the equipment in 2005 and some of the equipment for which the warranty has expired. It may be relevant to mention that the repairs and maintenance cost at other private terminal operator like NSICT is allowed at 1.15% on opening gross block and 0.5% on the additions, at the	The TAMP has not taken into account Rs.29.27 crores of investment consisting of a RTG's at Rs.13.13 crores in 2004 and Rs.16.14 crores towards purchase of 1 QC in 2005 as these have come in as leased assets and financed through separate agreement and are not represented in the capital employed.

	CCTL it is estimated at around 2% of the gross block of assets, and the VSPL and SWPL at 3% of the gross block of assets. Recognising that some of its equipment are old and warranty has expired, this Authority may consider the maximum rate allowed for the VSPL and SWPL at 3% on the opening gross block of assets for the year 2006 and at 2% on the additions since it will be covered by guarantee / warranty. Incidentally, the repairs and maintenance reported for the year 2005 is also around 3% of the gross block of assets. For the subsequent years, there is no addition to the gross block and hence it is allowed to escalate by 4.5% to take care of increase in the repairs and maintenance cost on account of ageing of some of the equipment.	
(iv).	**Para II (ii) (d): Others.** Escalation in other cost elements is restricted to 4.5% at the current WPI as per the revised tariff guidelines.	TAMP is again requested to appreciate the changes in the competitive landscape and also the business environment. This being the case, a simple escalation based on WPI will not allow us to cover the actual expenditure. It has referred to its earlier submissions made in this regard.
(v).	**Para (IV) (i): Management and Administration Overheads.** PSA SICAL has estimated this cost to escalate by 9% for the year 2006 and by 5% for each of the subsequent years by the PSA SICAL. Since this cost elements are of fixed nature, escalation is restricted at the stated level in terms with the revised tariff guidelines.	
(vi).	**Para (IV) (ii): General Overhead.** Escalation in estimates for the year 2006 are found to be significant at 81% over 2005 actuals / estimates. The PSA SICAL has not furnished any justification for such an exorbitant hike. Detailed break for these estimations are also not furnished. These estimates are allowed to escalate by 4.5% in line with the modications done for the other cost elements.	
(vii).	**Para (IV) (iii): Preliminary and Upfront Payment Written Off.** The PSA SICAL has amortised the deferred revenue expenditure over 5 years period and upfront fee over 10 years. Since this expense relates to the entire project life, Rs.686.98 lakhs reported as on 31 December 2001 is spread over the remaining licence period of 28 years in line with the treatment given at the time of the last Order. This is also in line with the general principle followed in case of other private operators while fixing / reviewing their tariff.	It has requested to accept the detailed explanation furnished by it earlier.

(viii).	**Para VII: Capital Employed.** Net fixed assets as projected by PSA SICAL plus working capital as per the revised tariff norms is considered.	The capital employed projected is very reasonable and even this capital does not give sufficient return to cover the disallowed royalty. It has, therefore, requested to consider the submissions made by it earlier in this regard.
(ix).	**Para IX: Deficit Efficiency Gains.** As per clause 2.4.1. of revised tariff guidelines, benchmark to measure efficiency improvement is the average performance of the same terminal achieved in the preceding cycle. Reference to performance of other terminals and also the tariff levied thereat are not relevant. PSA SICAL may quantify cost reduction, if any, achieved during the past period and establish that the cost reduction is due to efficiency improvement of its terminal and claim its share in the relevant estimates of expenditure for fixing tariff for the tariff validity period under consideration as per the relevant clause of the revised tariff guidelines.	It has referred to the detailed explanation furnished earlier in this regard and submitted that unless the efficiency gains projected are factored in, PSA SICAL will be pushed into an unviable situation since the allowed returns do not cover the disallowed royalty. It has again requested TAMP's support for its sustained efficient operation on most of the reasonable / competitive tariff.
(x).	**Para XII and XIII.** Past accruals for the period 2002 to 2005 and upto June 2006 are spread over two and half years from July 2006 onwards.	It has referred to the gain / loss statement prepared by it which indicate a loss of Rs.602.70 crores upto 2005 due to non-implementation of the Order passed in 2002.

15.3. The year-wise surplus / gain as assessed by us and as claimed by PSA SICAL is tabulated below:

(Rs. in lakhs)

Year	As assessed by TAMP	Claimed by PSA SICAL
2002	241.53	(729.40)
2003	1492.32	(468.57) *[should be + 468.57 based on its statement]*
2004	1792.71	(107.17)
2005	1995.28	(449.04)
2006 (for 6 months)	1129.20	-
Total	**6651.00**	**(602.70)***

(* Contains some arithmetical errors. If corrected it will be a net loss of Rs.817.04 lakhs).

16.1. As required by MOC, PSA SICAL was also given an opportunity of hearing on the gain / loss quantified by this Authority on 20 July 2006 at the office of this Authority to express its views.

16.2. PSA SICAL has made further submissions regarding the equipment taken on lease as summarised below:

(i). Till now it followed "operating lease" method for finalising the accounts till 2004-05 tax-audit account. The Statutory Auditors recommended to treat it as "finance lease" method in January 2006 for 2005 statutory account to reflect the changes in the new international accounting standards.

(ii). It has indicated the fair value of Assets, depreciation and Finance charges for the "finance lease" method as worked by its statutory auditors and has given the impact of change in accounting method from "operating lease" to "finance lease" as tabulated below:

Particulars	2006	2007	2008	2009
A. Under Finance Lease method				
(i) Depreciation for 1 Qc & 4 RTGCs	52,461,568	52,461,568	52,461,568	52,251,225
(ii) Net fixed asset	169,067,750	116,606,182	64,144,614	11,893,390
(iii) ROCE at 15%	25,360,162	17,490,927	9,621,692	1,784,008
(iv) Total of (i) & (iii)	**77,821,730**	**69,952,495**	**62,083,260**	**54,035,233**
B. Operating lease method Actual Equipment hire charges	**57,284,066**	**57,856,907**	**58,435,476**	**59,019,831**

(iii). The actual lease rental paid / payable has a lower impact on tariff as compared to the figures from "finance lease" method accounting followed beyond 2005.

(iv). In order to be consistent and also to ensure that it does not derive any undue advantage by change in the accounting, the earlier submissions were based on the audit practice prevalent in August 2005.

16.3. As agreed at the hearing given to PSA SICAL on 20 July 2006, the PSA SICAL has furnished the Annual Accounts for the year 2005 and Annual Accounts for the year 2006 for six months upto June 2006 duly certified by the Chartered Accountant. In this Annual Accounts, it has considered the accounting treatment of equipment taken on lease based on finance lease method as explained above.

17. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details are also available at our website http://tariffauthority.gov.in

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

(i). The Scale of Rates of the PSA SICAL was last revised by this Authority in September 2002 effecting an across-the-board reduction of 15% over the Scale of Rates of 1999. Besides, the tariff item for lashing / unlashing, stowage planning and supervision charges was deleted. The revised Scale of Rates of 2002 was, however, not implemented in view of the interim stay Order passed by the Honourable High Court at Madras on a petition filed by PSA SICAL.

The Writ Petitions filed by the PSA SICAL were finally heard on 16 and 17 August 2005 in the Hon'ble High Court at Madras. A Memorandum of Compromise was drawn by the concerned parties on 17 August 2005. The Hon'ble High Court of Madras took the Memorandum of Compromise (MOC) on record and passed an Order on 17 August 2005 closing the writ petition as withdrawn. Incidentally, the PSA SICAL had filed a proposal for revision of its tariff just couple of days before this case came up for final hearing in the Hon'ble High Court.

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

The PSA SICAL proposal dated 8 August 2005 alongwith the subsequent submission made by them is analysed in accordance with the provisions of the MOC and the revised tariff guidelines 2005, for the period to which such guidelines are applicable.

(ii). The PSA SICAL had requested that some of the information contained in the proposal are commercially sensitive and agreed only for circulation of the traffic projections, consolidated cost statement with details of income and expenses, assumptions, and efficiency gain statement (Table 7.4.). The PSA SICAL did not

explain any specific reasons for classifying its other documents as confidential as required by the revised tariff guidelines. The documents agreed to be circulated by PSA SICAL along with the statement relating to capital employed and Annexes upto Table 7.4. were circulated to the TPT and other concerned user organisations seeking their comments. Reacting to the request of some of the users made during the joint hearing in this case, the PSA SICAL has correctly pointed out that the annexes upto table 7.4. circulated earlier also contained the summary of Audited Profit and Loss Statement and the Balance Sheet and, therefore, it was found not necessary to circulate once again the summary of financial position to users.

(iii). The MOC allows the PSA SICAL to continue to levy at the pre-revised tariff of 1999 under other conditions set in MOC and till revised Scale of Rates is notified. The following two clauses of the MOC are significant in analysing the proposal of PSA SICAL:

(a). The PSA SICAL has to make a proposal to the Ministry of Shipping, Road Transport & Highways (MSRTH) in the matter of fixation of quantum of royalty that may be permitted to be allowed as a ‘‘pass through” for the period prior to 31 March 2005. The Central Government has to consider the same and pass appropriate orders and issue a directive to this Authority under Section 111 of the Major Port Trust Act. [Para 4 of the MOC].

(b). The TAMP has to quantify any advantage / gains, that the PSA SICAL has enjoyed by virtue of non-implementation of the 2002 tariff in view of the stay granted by the Hon’ble High Court and adjust / set it off in the proposed new tariff over a period of three years. [Para 7 of the MOC].

(iv). With reference to (iii) (a) above, the PSA SICAL had filed a proposal to the Government with a request to permit the actual royalty paid to the TPT as pass through for the period prior to 31 March 2005.
The Ministry of Shipping Road Transport and Highway (MSRTH) after considering the proposal of PSA SICAL and the submissions made by the operator, TPT and this Authority, issued a policy direction on 17 April 2006 in compliance with the clause 4 of the MOC. The MSRTH has stated that the pre-condition of incurring loss for claiming at least part of royalty as pass through has not been satisfied in this case. Further, the decision taken in the CCTL case has been given prospective effect. No extraordinary circumstance has been brought out in this case warranting an exceptional treatment. Therefore, the request made by PSA SICAL for allowing royalty as pass through for the period up to 31st March 2005 is devoid of merit and cannot be accepted. The MSRTH under Section 111 of the Major Port Trusts, Act 1963 has directed this Authority to consider the tariff fixation case of PSA SICAL accordingly.

In compliance with this policy direction, the gain / advantage statement prepared by the PSA SICAL for the past period has been modified, inter alia, by excluding royalty as a revenue expenditure for the period upto 31 March 2005. For the period subsequent to 31 March 2005, the relevant provision in the revised tariff guidelines is applied. As mentioned earlier, PSA SICAL was consulted in the matter regarding quantification of past gain by furnishing our analysis to them. The analysis shared with PSA SICAL was based on the revised tariff guidelines. It is significant here to note that the PSA SICAL has not objected to application of revised tariff guidelines for quantification of surplus till September 2006.

(v). With reference to (iii) (b), the gain / loss accrued to the PSA SICAL due to non-implementation of the Order passed in September 2002 was quantified in terms of the MOC and forwarded to the PSA SICAL for their comments. The PSA SICAL was also given an opportunity of hearing on the gain / loss statement prepared by us as per the terms of the MOC.

The PSA SICAL has reported a net loss of Rs.602.70 lakhs for the years 2002 to 2005 due to non-implementation of the Order passed in the year 2002 in its revised statement furnished on 15 July 2006.

It is relevant to mention that in the gain / loss statement prepared and sent by us to PSA SICAL, the figures relating to the year 2005 were based on the audited actuals upto November 2005 and estimates for December 2005. PSA SICAL was requested to update it with the Actuals for the year 2005 since the year had already closed to a draw. The PSA SICAL, however, has not updated the gain / loss statement with the actuals for the full year. The PSA SICAL has, however, subsequently submitted Audited Annual Accounts for the year 2005 duly certified by its Chartered Accountant. The format in which the actuals is presented is different from that of the items considered in the gain / loss statement and hence an item-to-item comparison is not possible. The PSA SICAL has also admitted that the classification of expenditure furnished in the cost statement is different from the classification considered by the Statutory Auditors for preparing the Annual Accounts.

Due to difficulties arising in comparison on account of different classification of heads of expenditure, the audited actuals reported for the first eleven months of the year 2005 and estimates for the December 2005 is taken as the base for quantification of gain for this particular year.

The gain / loss statement prepared by the PSA SICAL is not found to be as per the terms of the MOC and does not conform to the directions issued by the MSRTH as regards the treatment of royalty. Further, certain arithmetical errors are also noted in its computation. The main areas where the computation of the PSA SICAL does not match with the figures considered by this Authority for quantification of gain / loss due to non-implementation of the Order passed in 2002 are analysed hereunder:

(a). *The PSA SICAL has prepared the gain / loss statement prepared for the full year of 2002 on the grounds that the Order passed by this Authority in 2002 specified the costs for the whole year while arriving at the tariff.*

Analysis:
The quantification of gain / loss arises in the context of non-implementation of the Order passed in 2002 and, therefore, it has to be assessed from the date on which the Order would have become effective till the revised tariff approved by this Authority is implemented as per the terms of the MOC. Accordingly, the period from 3 November 2002 to 31 December 2002 is only relevant for the year 2002. PSA SICAL has not modified its statement despite a specific advice rendered in this regard. Since the actual figures for this period is not made available, the net surplus position as estimated in (our) last order and the actuals for the year 2002 is considered on prorata basis for two months to arrive at the gain accrued during this year.

(b). *The PSA SICAL has considered the actuals for the years 2002, 2003, 2004 and 2005, but, has not excluded the items which were not allowed in the last tariff revision Order.*

Analysis:
Para 8 of the Memorandum of Compromise specifically stipulates that appropriate adjustments must be made in the estimates considered while approving TAMP Order of 2002 to the extent the actual figures for the relevant period are different from estimates for the purpose of arriving at gain / loss due to non-implementation of this Order. The intention is not to review the tariff Order 2002 by examining whether some of the items of expenditure disallowed should be included again. The only deviation to

this general position is admissibility of royalty payment for which the MOC requires PSA SICAL to approach the Government.

For the purpose of this analysis, the Actuals as reported in the Annual Accounts of PSA SICAL for the respective years are considered only in respect of those items allowed in the Tariff Order of 2002.

(c). *The PSA SICAL has included the Annual License fee for Computer Integrated Terminal Operating System (CITOS) for quantification of gain / loss due to non-implementation of the Order passed in 2002 for the past period.*

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

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

For the period subsequent to 31 March 2005, clause 2.8.2. of the revised tariff guidelines disallows technical service fee if its reasonableness is not established by applying the yardstick of arms length relationship. PSA SICAL has not furnished any Income Tax (IT) Assessment Order to support the admittance of this expense by the IT department on the ground that assessment of its Income Tax is still pending for the past period. Since Income Tax Assessment Order is not available, the Certificate issued by the Auditors of PSA SICAL certifying the arms length relationship of this transaction is relied upon for admitting this item as cost for the period subsequent to 31 March 2005 as per the revised tariff guidelines subject to the condition that PSA SICAL should file the IT assessment orders at the time of the next review to prove that this expenditure was allowed by the IT Authorities. In case IT order is not produced, this item would be disallowed and accordingly will be taken into consideration for next tariff fixation exercise.

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

Analysis:
As per the terms of the MOC, this Authority has to follow the direction issued by the Government with reference to royalty treatment in this case for the period prior to 31 March 2005. The Government has issued a policy direction under Section 111 of the MPT Act directing this Authority not to admit royalty payment as pass through for the period prior to 31 March 2005 in this case. In compliance with the policy directions issued by the Central Government in this regard, royalty payment for the past period upto 31 March 2005 is not considered in the quantification of gain / loss statement.

Clause 4 of the MOC clarifies that for the period after 31 March 2005, the new guidelines provide the manner and mode in which the royalty has to be treated. As per the revised guidelines for tariff fixation, in case of bids finalised before 29 July 2003, the tariff computation must take into account royalty / revenue share payable by the private operators to the landlord port as cost for tariff fixation so as to avoid the likely loss on account of this item not being taken into account, subject to maximum of the amount quoted by the next lowest bidder. The L.A. was signed by the PSA SICAL on 15 July 1998.

While implementing the revised tariff guidelines for allowing (part of) royalty as pass through, in the case of the CCTL and the NSICT, the loss in this context was taken to be the revenue deficit after considering admissible cost elements and permissible return. Since the additional surplus for the past period is fully adjusted as per MOC, if the royalty to the maximum extent quoted by the second bidder is not allowed, as per the revised tariff guidelines it will result in reduction in the return on capital employed and to that extent there will be a 'loss'. Therefore, the maximum permissible level of royalty as stipulated in clause 2.8.1. of the revised tariff guidelines is allowed as pass through for the period after 31 March 2005.

In the royalty model, the successful bidder was selected based on the NPV assessment. It is, therefore, not correct to consider only the yearwise royalty values in isolation and admit it to the extent quoted by the second highest bidder. Applying the same principle of allowing second highest bid value of revenue share, the royalty model should recognise only the portion of royalty equivalent to the proportion of NPV relevant to the second highest bid.

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

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

Analysis:
During the last revision, the PSA SICAL had not reported any foreign currency debt but had estimated substantial loss on account of foreign currency transactions. The approach followed then was to allow loss on foreign currency transaction as an item of cost only for the actual repayment of loan / debt. In the absence of PSA SICAL furnishing any details relating to repayment for its foreign currency debt, the loss on account of foreign currency transaction was not allowed at item of cost during the last revision.

The PSA SICAL has clarified that this item is shown separately in its books only in view of its accounting policy. The entry under foreign exchange gain / loss relates to the actual transaction and is part of the

actual expenditure but is shown under a separate head. Based on the clarification furnished by the PSA SICAL, this item is admitted as cost while quantifying the gain / loss accrued for the past period. The PSA SICAL has subsequently confirmed that foreign exchange loss indicated by it excludes the CITOS license fee and hence the actuals as reported under this head is admitted as cost in the actual scenario.

(f). *The PSA SICAL has amortised the upfront fee over 10 years period and other deferred revenue expenditure over 5 years period.*

Analysis:
This Authority has already held in various Orders relating to Private Terminal Operators that the preliminary expense and upfront fee are relevant for the entire project and hence it is reasonable to spread such expenditure over the entire period. The approach followed for accounting purpose may not be the sole guiding factor for tariff fixation purpose.

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

Consequent to this adjustment, the un-amortised portion of upfront fee and deferred revenue expenditure to the extent not written off is added to capital base and reckoned for allowing return.

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

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

(h). PSA SICAL had earlier considered the interest payment for entire year of 2005 as cost while quantifying the gain / loss for the past period. As per the revised tariff guidelines, return on the capital employed is to be allowed with effect from 31 March 2005. Since the capital employed includes both equity and debt component, interest cost is not considered separately as an item of expenditure under the revised tariff guidelines. The PSA SICAL has accordingly revised its computation. For the past period, the actual interest cost as reported by the PSA SICAL is considered.

(i). *The capacity of the terminal was considered at 3 lakh TEUs per annum as assessed by the PSA SICAL during the last revision. The PSA SICAL has submitted that it had not assessed the capacity as 3 lakhs TEUs per annum. The additional investment proposed to augment its capacity in the year 2003 got delayed and was in place only in March 2005. It has considered the capacity based on the norms indicated in the draft report*

submitted by the National Working Group constituted by the TAMP for normative costing.

Analysis:
It is relevant to mention that that the report of the normative cost Committee is a general assessment based on various assumptions and hence may not be completely relevant in its case.

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

In view of the submissions made by the PSA SICAL, the capacity of the terminal as indicated by the PSA SICAL at 226000 TEUS per annum for the years 2002 to 2004 and 339300 TEUS per annum from 2005 onwards is considered for the purpose of this analysis.

(j). For capital employed and arriving at the share holders fund, the actual net block plus working capital as reported by PSA SICAL is considered for the period from 2002 to 31 March 2005. Capital employed for the year 2005 is considered as the net fixed assets as estimated by PSA SICAL and the Working capital as moderated in line with the norms prescribed in the revised tariff guidelines.

The upfront fee and the deferred revenue expenditure to the extent not written off at the end of each of the year are also added to the net block while arriving at the capital employed.

The debt position reported by PSA SICAL is deducted from the capital employed and the balance is considered to be the owners fund for computation of return on equity upto 31 March 2005.

Return on equity share holders fund is allowed @ 20% upto 31 March 2005 and is linked to the capacity utilisation in line with the return allowed during the last tariff revision.

The capacity utilisation of the terminal with reference to the actual traffic handled and the capacity assessed by PSA SICAL is 94.7% for the year 2002, 98.8% for the year 2003 and above 100% in the year 2004. Return on Equity (share holder's fund) is adjusted for capacity utilisation in line with the last tariff Order, which is, in fact, the general principle adopted in case of other private terminals and port trusts.

(k). The PSA SICAL has furnished the actuals for first five months of 2006 and estimates for the remaining period. By the time this Order is implementable only about three months will be left in the year 2006. Since PSA SICAL will continue to operate at 1999 tariff levels till the revised tariff is notified, the net gain accrued to PSA SICAL for the nine months of the year 2006 is also required to be assessed.

The estimates for the balance period of the year 2006 are moderated based on the actuals reported for the five months and in accordance with the revised tariff guidelines. The details in this regard are explained elsewhere in this analysis.

(vi). This Authority in the last tariff Order of 2002 had observed that irrespective of the fact that some cost elements were not allowed in the tariff computation, the actual transactions will be governed by the provisions in the agreement, relevant statues. Since the return on equity allowed was not found adequate to cover such outflows, PSA SICAL was allowed to retain a part of its surplus to meet these liabilities.

In view of this, though the cost statement relied upon in the last tariff revision reflected an average net surplus of 37.64% for the two years 2003 and 2004, this Authority had effected 15% reduction in its then prevailing tariff and deleted the charges towards lashing / unlashing at US$8.04 per container. The net effect of this decision was a reduction of about 26.58% in the estimated revenue for the corresponding years. In the absence of any other rider attached to the reduction effected, the balance of surplus to the extent of about 11.2% of the average revenue for the relevant years covered by that order, is allowed in favour of the PSA SICAL while quantifying the net gain for the past period.

The exercise in hand is not for review of the earlier Order 2002 but only to quantify the effect of non-implementation of the Order of 2002. The additional surplus allowed to PSA SICAL in the last Order for the period upto 2004 is, therefore, recognised in this analysis and for a like-to-like comparison this amount is excluded from the surplus for the relevant period.

(vii). The Order of 2002 was based on the estimated position upto the year 2004 and did not consider estimates for the year 2005. Therefore, no base figure is available for comparison with actual figures for 2005. The PSA SICAL has compared the actual loss of 2005 with average estimated surplus / (loss) for the years 2002 to 2004.

The approach adopted by the PSA SICAL is not found to be correct since the volumes, revenue, expenditure and capital employed are different for the past period and cannot be compared with the actuals for the year 2005. The assessment for the year 2005 is based on the actuals of the volume, revenue, admissible cost and capital expenditure. A similar approach is adopted for the year 2006 (9 months).

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

Year	Gain accrued to PSA SICAL due to non-implementation of the 2002 Order (Rs. in lakhs)
2002 (for two months on prorata basis)	241.40
2003	1492.32
2004	1791.49
2005	1994.70
2006 (for nine months on prorata basis)	1742.82
Total gain accrued to PSA SICAL due to non implementation of 2002 tariff Order	**7262.73**

(ix). Clause 2.13. of the revised tariff guidelines states that if the variation between the actual physical and financial performance with reference to the projections relied upon at time of fixing the prevailing tariff is more than + or – 20%, tariff will be adjusted prospectively by setting of 50 % of such benefit / loss accrued while revising the tariff.

The PSA SICAL has claimed that since the variation in the volumes is less than 20%, the additional income generated may be allowed to be retained as surplus.

The claim made by the PSA SICAL is not found to be in line with the terms of the MOC governing the fixation of tariff in its case. As per the terms of the MOC, the gain accrued due to non implementation of the tariff Order approved in the year 2002 has to be quantified and set off in the three year tariff validity period. The gain accrued to PSA SICAL is not a result of only variation in the estimates relied upon in the last tariff review of 2002. Accordingly, the gain for the past period is adjusted in the next tariff validity cycle of 3 years at Rs.605 lakhs in the year 2006, Rs.2421 lakhs in each of the years 2007 and 2008 and Rs.1816 lakhs in the year 2009.

(x). The throughput handled by the PSA SICAL during the year 2005 is reported at 3,13,317 TEUs. As against this, the traffic for the years 2006, 2007, 2008 and 2009 is projected at 3,56,100 TEUs, 3,91,710 TEUs, 4,30,881 TEUs and 3,00,000 TEUs respectively. The traffic growth is estimated at 13.7% for the year 2006 and 10% per annum for the years 2007 and 2008. For the year 2009, it has estimated a drop of 30% in its throughput due to the commissioning of second terminal in this year.

It is relevant to mention that the PSA SICAL has not adjusted the estimated traffic for the year 2006 based on the actuals for the first five months.

The TPT finds the traffic projections made by the PSA SICAL for the years 2006, 2007 and 2008 in line with the projections made by the port. The users have also not contradicted the traffic estimations for these years. In the absence of anything available on the contrary, the traffic projections made by the PSA SICAL for the years 2006, 2007 and 2008 is accepted. However, if any undue advantage is found to have accrued to the PSA SICAL due to wrong estimation, adjustment will be made in the tariff at the time of next review of tariff in line with the revised tariff guidelines.

As regards the apprehension of the PSA SICAL about reduction in the traffic during the year 2009 in view of commissioning of a new container terminal, the TPT has clarified that the LA entered with the PSA SICAL specifically provides a clause for future expansion of container berths by the TPT. PSA SICAL is also allowed to participate in the competitive bidding as per the terms of the existing LA. The TPT is of the opinion that the PSA SCIAL have the advantage of eight years experience in the field with lowest tariff. This is likely to lead to better consolidation and in fact the revenue may go up.

The commissioning of the new container terminal at berth No. VII is still in an infant stage as reported by the PSA SICAL. There is no reasonable basis furnished by the PSA SICAL for apprehending a fall in the traffic projections for the year 2009. The estimated traffic for the year 2009 is, therefore, presumed to continue at the level estimated by the PSA SICAL for the preceding year.

The PSA SICAL is, however, allowed an option to propose ahead-of-schedule review of tariff as per the revised tariff guidelines in case of any significant reduction in the traffic for the year 2009 due to commissioning of the new terminal which adversely affects the finance / cost model considered in this analysis.

(xi). As stated earlier, the PSA SICAL is levying the tariff approved in the year 1999 in view of the stay it had obtained against the Order passed by this Authority in September 2002. The MOC drawn on 17 August 2005 also allows the PSA SICAL to continue with the levy of this tariff till finalisation of the revised tariff. The PSA SICAL, has accordingly, estimated its income at the existing level of tariff levied by it over the throughput projected. While estimating the income, it has also considered a discount of 3% in most of the tariff items except on wharfage, reefer container charges, shut out charges, storage rent, lift on / lift off charges, hatch cover charges and extra movement charges. This tariff review exercise is based on the income estimations done at the existing tariff level. Since no such discount on common basis is prescribed in the Scale of Rates, revenue estimation cannot factor the effect of such discount.

Subject to this modification, the income estimated by the PSA SICAL is relied upon and considered for this analysis. For the year 2009, the income is maintained at the level of 2008 since traffic volume is taken to be maintained at the level of 2008.

(xii). As decided in the hearing held on 20 July 2006, the PSA SICAL has submitted the six monthly Annual Accounts for the year 2006 duly certified by its Chartered Accountant. The format in which the actuals is presented is different from that of

the cost statement and hence item to item comparison is not possible. The PSA SICAL has also admitted that the classification of expenditure furnished in the cost statement is different from the classification considered by the Statutory Auditors for preparing the Annual Accounts. In the actuals for the first five months of the year 2006 furnished earlier, the classification of expenditure was maintained as per the cost statements. It is found that the estimates for 2006 constructed by extrapolating the actuals for the first 5 months are higher than a similar estimate prepared based on the actuals for the first six months.

Because of the difficulties in comparison due to different classification of heads of expenditure, the actuals reported for the first five months of the year 2006 is taken as the base for assessing the reasonableness of the estimates for the year 2006.

(xiii). The operating and direct labour cost is estimated to increase by 16% in the year 2006 and at 6% per annum for the subsequent years. The PSA SICAL has clarified that the significant increase in the labour cost during the year 2006 is on account of 28% increase in the salary of non-managerial staff implemented from January 2006 onwards. It has furnished the actuals salaries and wages for the first five months till May 2006 at Rs.212 lakhs to justify its estimates. Relying upon the actual position for the first five months of 2006, the labour cost for the full year of 2006 will work out to Rs.509 lakhs as against Rs.512 lakhs estimated by the PSA SICAL. The cost statement is modified to that extent.

With reference to the escalation in the cost estimated for the subsequent years, it is relevant to mention that the revised guidelines for tariff fixation requires the expenditure to be projected in line with traffic projections and adjust it for price fluctuation with respect to the current movement of Wholesale Price Index (WPI) for all commodities announced by the Government of India. The WPI for the year 2005-06 is reported at 4.5%.

The direct labour cost is generally a fixed expenditure and will not vary significantly in proportion with the growth in the traffic. Further, PSA SICAL has also not estimated any additions to the workforce during the years 2007 to 2009. That being so, the escalation in this cost element is restricted to 4.5% per annum for the years 2007, 2008 and 2009 in terms of the revised tariff guidelines.

(xiv). (a). The unit cost of power is estimated to increase by 8% per annum and the unit cost of fuel is estimated to increase by 5% for the year 2006 and by 17% in the year 2007.

The actual break up of fuel, power and repairs and maintenance cost for the first five months of the year 2006 is not furnished but a consolidated expenditure of Rs.426 lakhs towards equipment running cost which consists of power, fuel, repairs and maintenance and others is reported.

The PSA SICAL has justified its estimates on the grounds that during the last six years, the electricity cost has actually gone up by 8% and fuel cost by 14% annually on a Compounded Annual Growth Rate (CAGR) basis. Similarly, the price of diesel which was Rs.15.62 per litre in January 2000 is presently at Rs.34.15 per litre; an increase of nearly 120%.

In this regard, it is relevant to mention that this Authority is guided by the revised tariff guidelines which require the expenditure to be estimated based on the current WPI (for all commodities) reported at 4.5% and adjusted for traffic growth. WPI is a weighted average movement of prices of the identified groups. It is not that all groups in the basket of WPI had suffered the same quantum of escalation. It is, therefore, not found necessary to allow escalation in the unit rate of power and fuel beyond the current WPI of 4.5% per annum as per the terms of the revised tariff guidelines. It is noteworthy that the unit base rates considered for this purpose are the actuals for 2005 reported by PSA SICAL. The estimated power and fuel cost are, however, adjusted for

growth in the traffic anticipated during each of the years under projection in line with the revised tariff guidelines.

The impact of volume increase on consumption of fuel is considered at 10% for the year 2006 even though volume growth is estimated to be 13.7%. The fuel cost estimate is modified by adjusting the consumption of the fuel for 13.7% growth in the traffic for the year 2006 and also allowing an annual escalation of 4.5% in the unit rate. The modified estimated fuel cost is Rs.433 lakhs which is marginally higher than Rs.422 lakhs considered by PSA SICAL for the year 2006.

(b). Repairs and maintenance cost is estimated to increase from Rs.2.72 crores incurred in 2005 to Rs.3.98 crores in 2006 which is almost an increase of 46%. The PSA SICAL has justified that 1QC and 4RTGs which were commissioned in the year 2005 were under warranty till January 2006 and June 2006 respectively and hence the actual repairs and maintenance expenditure reported for the year 2005 does not consider the repairs and maintenance cost with reference to these equipment.

The Lease Agreement entered by the PSA SICAL with Dacca PTE Ltd., indicates that the warranty of these equipment will expire within 12 months from the date of commissioning and, therefore, repair and maintenance cost is to be borne by PSA SICAL. The repairs and maintenance on the equipment taken on lease is, therefore, allowed.

In case of equipment proposed to be added during the year 2006 and also in respect of the leased equipment whose warranty has expired in the year 2006, repairs and maintenance cost is allowed at 2% of gross block for the year 2006.

For the existing equipment, an annual escalation of 4.5% is allowed on the repairs and maintenance cost reported during the year 2005.

The repairs and maintenance cost estimated by the PSA SICAL includes the cost of proposed refurbishment of equipment to the tune of Rs.150 lakhs during the years 2006 and 2007. It has clarified that this refurbishment cost is not likely to increase the original useful life of the asset or increase the capacity of he terminal. They are rather undertaken to reach the desired level of maintainability operational efficiency and safety.

Ideally, such refurbishment cost should be capitalised since the benefit of the refurbishment is likely to accrue beyond the relevant year in which the expenditure is incurred. In the cases of Chennai Container Terminal Limited and India Gateway Terminal Private Limited, refurbishment cost incurred on the equipment taken over from their respective landlord ports was capitalised. It is therefore, difficult to accept the argument of the PSA SICAL that benefit of such refurbishment will not be available to the operator beyond the particular year in which the expenditure is incurred. More than half of the year 2006 is over, but the PSA SICAL has not incurred any expenditure on this account so far. In the absence of availability of actual refurbishment cost incurred by the PSA SICAL till now for the year 2006, the estimated cost of Rs.150 lakhs is added to the gross block of assets during the year 2007 and depreciated at the average rate applied by the PSA SICAL for other equipment.

The PSA SICAL has not projected any addition to the gross block of assets for the year 2007 to 2009. The estimate of repairs and maintenance cost for these years are moderated by allowing 4.5% annual escalation in the estimates for the respective previous years. The

estimates for 2007, however, take into account the effect of capitalisation of the refurbishment cost.

(c). The equipment running cost is an aggregation of power, fuel, repairs and maintenance cost and others. The total equipment running subject to the above modification works out to Rs.1055 lakhs for the 2006 as against Rs.1095 lakhs estimated by the PSA SICAL under this head.

(xv). The management and general overheads for the first five months of the year 2006 is reported at Rs.52 lakhs. Based on this position, the expenditure for the full year of 2006 may be around Rs.125 lakhs. The estimate of Rs.126 lakhs made by PSA SICAL is, therefore, considered unaltered.

The general overheads is estimated to increase by 81% in the year 2006 i.e. from actual expenditure of Rs.190 lakhs in the year 2005 to Rs.345 lakhs in the year 2006. PSA SICAL has not explained any specific reasons for a steep hike in the estimation of general overheads in the second half of the year 2006.

The estimates for the year 2006 based on the actuals reported for first the five months may be around Rs.144 lakhs which is, infact, lower than the actuals for the year 2005 (Rs.190 lakhs). The estimates of general overheads for the year 2006 does not appear to be fully in tune with the actuals furnished by the operator for the first five months of this year and also with the actuals reported for the immediate previous year.

Recognising that the estimation of expenditure under this head based on the actuals for first five months of 2006 works out to be lower than the actuals reported during the year 2005, this item is moderated by allowing 4.5% escalation over the 2005 actuals. Accordingly, the modified estimates for the year 2006 will be Rs.199 lakhs as against Rs.345 lakhs estimated by PSA SICAL.

The management and general overheads for the subsequent years is estimated to increase by 5% per annum and the general overheads for the subsequent years estimated to increase by 7% to 8% per annum.

The management and general overheads and all other relevant cost elements are allowed the annual escalation as admissible in terms with the revised tariff guidelines.

(xvi). The PSA SICAL has furnished the estimates for the year 2009 at our request so that the adjustment of gains accrued during the past period can be spread over three years. In the estimates of 2009, some of the cost elements are scaled down mainly perhaps on account of 30% reduction in the traffic estimated in view of new container terminal expected to be commissioned. In our analysis, traffic and income for the year 2009 is presumed at the level of 2008 as explained earlier. That being so, the estimates of operating cost for the year 2009 is considered by allowing suitable escalation as done for the previous years.

(xvii). The PSA SICAL has requested to consider the full royalty as admissible expenditure for the period subsequent to 31 March 2005 on the grounds that the return on capital employed is not sufficient to cover 100% royalty. In this context, it is relevant the treatment of royalty for the period subsequent to 31 March 2005 has been done in terms with the revised tariff guidelines. The same approach is to be followed for the years 2006 to 2009 in line with the revised tariff guidelines. Accordingly, the royalty payment to the extent of the second bid i.e. 46.86% of the estimates given by the PSA SICAL is allowed for period beyond 31 March 2005 in terms with the revised tariff guidelines.

(xviii). The PSA SICAL has confirmed that the depreciation is calculated on a straight-line method with the life norms adopted as per the Companies Act. The depreciation estimated by the PSA SICAL is accepted subject to adjustment on

account of inclusion of refurbishment cost in the gross block of asset during the year 2007.

(xix). The PSA SICAL has taken some equipment on lease in the year 2004 and 2005 and has also furnished copies of the agreement to substantiate the estimates. The PSA SICAL has also furnished a certificate from its Chartered Accountant establishing arms length relationship of these transactions and a copy of transfer pricing report from KPMG for determining the reasonableness of the price. These estimates are accepted relying on the documentary support furnished by the PSA SICAL.

When this case was in an advance stage of finalisation, the PSA SICAL proposed to change the accounting treatment of lease of these equipment and consider it as finance lease instead of operating lease from the year 2006 onwards. This approach proposed is a change in the stand of PSA SICAL which initially proposed to consider only the lease rentals as cost in the respective years.

It is relevant to mention that in case of other private terminals like the CCTL and the IGTPL the lease rentals is admitted as cost in case of equipment taken on lease.

In fact, even the PSA SICAL had also admitted that in order to be consistent and to ensure that it does not derive any undue advantage due to the change in the accounting practice, it had considered the lease rentals in the cost statement in line with the practice prevalent in August 2005.

The lease rental estimated by the PSA SICAL for the equipment taken on lease in its earlier submissions and also the repairs and maintenance cost thereon are admitted as item of cost.

(xx). As per clause 2.8.2. of the revised guidelines for tariff fixation, Technical Service Fee payable by the private terminal to their promoters or to their 'associated entity' will not be admitted as an item of cost for tariff fixation purpose, if its reasonableness is not established applying the yardstick of 'arms-length relationship'.

As explained earlier, this item has been admitted as cost for the period subsequent to 31 March 2005 relying on the certificate issued by its Chartered Accountant establishing the arms length relationship of this transaction while quantifying the gain accrued to the operator during the past.

The PSA SICAL has reported that the license for CITOS originally purchased has expired in January 2006 and it is in the process of tendering for a new and more advanced TOS.

The license fee towards this new TOS is estimated marginally higher for the years 2006 to 2009 than the actuals incurred during the year 2005. The PSA SICAL has, however, not furnished copies of the new license agreement to justify this estimate since it is yet to be finalised. It is, therefore, difficult to assess the reasonableness of this estimate. The license fee likely to be quoted is not known and it is also not clear at this stage whether the yardstick of arms length relationship of the transaction will be maintained for admitting this expense as an item of cost. It is relevant to mention that if the actual license fee for the first five months of the year 2006 is extrapolated for the full year, the derived estimates are found to be lower than the actuals incurred during the previous year.

Nevertheless, based on the certificate issued by the Auditors of PSA SICAL for the past period establishing the 'arms length relationship' of the transaction of the annual license fee paid by the PSA SICAL to its associate entity, this item of expenditure is allowed to escalate by 4.5% per annum on the actuals / estimates of the respective previous subject to the conditions that PSAICAL will produce at the time of next review, documentary evidence of the Agreement and IT

assessment orders to show that the Income Tax Authorities have allowed this expenditure. If such evidences are not produced, the estimated expenditure allowed now will be fully adjusted in the next tariff review.

(xxi). The deferred revenue expenditure and the upfront fee are spread over the remaining period of the project in line with the treatment given for the past period and based on the approach followed in case of the other private terminals.

(xxii). (a). An addition of Rs.721 lakhs to the gross block is proposed in the year 2006 which includes capital expenditure of Rs.259 lakhs on plant and equipment and Rs.462 lakhs on IT. No addition to the capital assets during the years 2007 to 2009 is proposed. It has been clarified that the additions to the gross block in the year 2006 are more in the nature replacement of IT products due to technological obsolescence and business sophistication. The PSA SICAL does not envisage any addition to the capacity of the terminal or cost reduction on account of the proposed additions to the gross block. The proposed capital expenditure is recognised for allowing ROCE, subject to review based on actuals at the time of the next general review of tariff.

The balance of deferred revenue expenditure and unamortised upfront fee at the end of each of years are added to the capital employed. Likewise, the cost of refurbishment of Rs.150 lakhs is also added to the gross block of the year 2007 as already explained earlier.

(b). The working capital is estimated at Rs.21 crores for the year 2006, Rs.31 crores in the year 2007 and Rs.39 crores in the year 2008 on the ground that this level of working capital is required to get the best terms for availing the financial facilities, relaxation in corporate guarantee requirement, to fund capital additions and replacement requirements of IT products which have high obsolescence rate, etc.

The estimation of the working capital is not found to be in line with the working capital norms prescribed in the revised tariff guidelines. It has estimated substantial cash and bank balance of almost six to eight months' cash operating expense as against one month cash operating expense recommended in the revised guidelines. It is noteworthy that cash balance includes both cash and bank and not only cash as construed by PSA SICAL.

Likewise, stores are also estimated at the level consumed annually instead of six months consumption.

The estimation of current assets is modified in line with the norms prescribed in the revised tariff guidelines. The current liabilities are estimated at the level reported for the year 2005 as against increasing trend projected by the PSA SICAL. The modified working capital is estimated at Rs.241 lakhs, Rs.383 lakhs and Rs.571 lakhs, Rs.571 lakhs for the years 2006 to 2009 in the revised cost statement.

(c). The capital employed subject to the modifications explained in the foregoing paragraphs works out to Rs.59.44 crores for the year 2006 and Rs.53.43 crores for the year 2007, Rs.46.40 crores for the year 2008 and Rs.37.83 crores for the year 2009.

(d). The revised tariff guidelines for tariff fixation prescribes a 15% return on capital employed in case of business assets. The return is linked to the capacity utilisation factor of the terminal. In the instant case since there is no underutilisation of the capacity based on the assessment of the capacity by PSA SICAL, full return @ 15% is allowed on the modified capital employed.

(xxiii). The PSA SICAL has on many occasions highlighted the efficiency improvements achieved in its terminal. In the revised cost statement it has reduced the net surplus by Rs.38.15 crores for each of the years 2006 to 2008 towards the adjustment for efficiency improvement.

It is relevant to mention that the revised tariff guidelines encourages to reward the port / operator for improvement in the efficiency / productivity. But the benchmark to measure this efficiency improvement has to be the average performance of the same terminal achieved in the preceding cycle. It may not be appropriate to compare the tariff with the other private terminals. As rightly stated by the TPT, reference to performance and tariff of other terminals and also the tariff levied thereat are not fully relevant for fixing tariff at PSA SICAL.

The Working Group constituted by this Authority for normative cost of container related tariff after detailed study of various private terminals has also concluded that it is neither feasible no practical to mandate uniform norms given the diversity in physical and equipment infrastructure and dynamics in the traffic profile. It has also recommended that the terminal specific approach is only the workable solution to analyse the efficiency improvement.

Despite a specific advice rendered, PSA SICAL has not quantified the cost reduction, if any, achieved during the past period and establish that such cost reduction is due to efficiency improvement of its terminal with reference to its own performance in the past cycle and claim its share in the relevant estimates of expenditure for fixing tariff for the tariff validity period under consideration as per the relevant clause of the revised tariff guidelines. The claim therefore is not accepted.

(xxiv). Subject to the discussion above, the cost statement has been modified. The modified cost statement is attached as **Annex–II**. The result disclosed by this statement is summarised as shown in the table given here under:

Surplus 2006 (for three months)		**Surplus 2007**		**Surplus 2008**		**Surplus 2009 (from Jan. to Sept)**		**Total Surplus**
(Rs. in lakhs	As % of operating income	(Rs. in lakhs)	As % of operating income	(Rs. in lakhs)	As % of operating income	(Rs. in lakhs)	As % of operating income	Rs in lakhs and average % of operating income
1186	**63.01%**	**4856**	**58.36%**	**4973**	**54.07%**	**3273**	**47.46%**	**14288.11** **54.3%**

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

In the revised proposed Scale of Rates, the PSA SICAL has merged the lashing / unlashing charge with stevedoring charge for normal containers, transhipment containers / restow containers, and then proposed a 30% tariff increase which effectively means around 90% increase on the tariff approved in 2002. Most of the users like the Tuticorin Steamer Agents Association, Tuticorin Custom House

Agents Association and Tuticorin Port Handling Agents Association have requested that this tariff item should be rejected. As correctly pointed out by the user organisations, this matter was already dealt with in the last tariff Order and hence there is no justification either for levy of this tariff by way of merging it with the stevedoring charges or even separately. That being so, the income and net surplus position is analysed excluding the lashing / unlashing income and the results are shown below:

(Rs. in lakhs)

Particulars	2006 (for three months)	2007	2008	2009 (for 9 months)	Total
(i). Net Surplus as per the cost statement	1186	4856	4973	3273	14288
(ii) Less: Income from Lashing / unlashing as estimated by PSA SICAL	234	1042	1158	868	3302
(iii). Net surplus after excluding income from lashing / unlashing, stowage planning and supervision charges (i-ii)	952	3814	3815	2405	10986
(iv). Income as considered in the cost statement at 1999 tariff	1882	8321	9196	6897	26296
(v). Income after excluding the income receivable from lashing / unlashing charges {(iv)-(ii)}	1648	7279	8083	6029	22994
Net Surplus as a percentage of operating income (iii / v)	57.75%	52.40%	47.46%	39.89%	49.4% (Avg.)

It is significant here to note that the only income pertaining to lashing/ unlashing, etc., is excluded from the computation since this tariff item is to be fully deleted. The corresponding expenditure is not, however, excluded which means the relevant cost of providing this service is met by other tariff items like stevedoring charges

Thus based on the cost position, the tariff levied based on the Order passed in 1999 needs to be reduced and lashing/unlashing charges will have to be deleted. In view of this position, there is no merit in the proposal of PSA SICAL seeking an upward revision of 30% over the 1999 tariff. The PSA SICAL has repeatedly made a mention about 'competitive tariff' without attempting to define and justify it. While prevalence of competitive forces in the market for provision of port services itself is a debatable point, this Authority does not believe that higher tariff levied at some other terminals will justify similar tariff elsewhere or make such tariff as the market driven tariff. This Authority is bound by the revised tariff guidelines, and the MOC in this case, to determine the admissible tariff.

(xxvi). Based on the cost position explained in paras (xxiv) and (xxv) above, this Authority decided to reduce the tariff prescribed vide the Order dated 8 December 1999 by 50% besides deleting the tariff item for lashing/unlashing, stowage charges, etc., and fix the revised Scale of Rates of PSA SICAL accordingly, subject to the further discussions made in the succeeding paragraphs.

(xxvii). If one looks at the revised tariff decided now without going into the history of the case and the substantive issues involved in it, it may appear to be too drastic a reduction effected. It has to be borne in mind that the analysis made by this Authority is totally based on the revised tariff guidelines of 2005, the policy direction issued by the Government and the Memorandum of Compromise dated 17 August 2005 to which not only this Authority and the Government but also the PSA SICAL is the signatory.

The reduction ordered now is over the tariff of 1999 which is prevailing CHPT tariff allowed to be adopted by PSA SICAL. As explained in paragraph (vi) above, the cost based tariff determination exercise made in 2002 resulted in fixing tariff at a level to reduce the revenue by about 26%. The cost estimates drawn up now for the period from October 2006 to September 2009 also reveals a revenue surplus of around 26.7% **(Annex–II).**

This means, in the normal course, the tariff fixed now would have been more or less at the same level as that of 2002. As against this, a different position emerges mainly because of non-implementation of the 2002 tariff by PSA SICAL and the requirement to adjust the consequent surplus earned as per the MOC. In effect, the adjustment made towards past surplus denotes the advance collection of tariff for the period from October 2006 to September 2009 made by PSA SICAL, even though the user profile may not be the same. Thus, the tariff determined now represents the difference between the tariff otherwise admissible and the advance collection of that already made by PSA SICAL.

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

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

The PSA SICAL has not prescribed the concessional tariff applicable for coastal container separately in its revised proposed Scale of Rates. Instead, it has incorporated a general conditionality in the relevant schedules. It is found appropriate to prescribe the separate rate for coastal container in line with the prescription at other ports / private terminals. That being so, concessional tariff for coastal containers are prescribed at 60% of the tariff prescribed for the foreign–going container in terms with the revised tariff guidelines.

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

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

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

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

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

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

(xxxii). Some of the provisions proposed, relating to the change of agency, etc., are more of procedural issues and not directly relating to the tariff. Such conditionalities are deleted from the revised SOR.

(xxxiii). Most of its transactions are reported to be through Electronic Data Transfer system except in some exceptional cases. PSA SICAL had earlier proposed a condition requiring the users to deposit 3% of their annual turnover and such customers are required to remit the amount within 10 days without any penal interest. Beyond this period, penal interest at 2% above the Prime Lending Rate of the State Bank of India and maximum of 18% is proposed to be levied.

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

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

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

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

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

The proposed provision is not found to have been prescribed in the SOR of any other major ports / private terminals. That being so, it is not included in the SOR of the PSA SICAL.

Since the issue appears to be common for all the container terminals, this Authority may take up this issue with the Government for a uniform decision at all ports / terminals.

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

In case of the CCTL, the premium on hazardous containers is prescribed at 25% on the handling charge and in case of VCTPL it is prescribed on both handling charge and storage charge only. Based on the position obtained at these

terminals and also in compliance with the revised tariff guidelines, the premium on hazardous container is prescribed at 25% on handling charge and storage charge.

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

(xxxvi). Even though the PSA SICAL was requested to furnish activity-wise costing to assess the reasonableness of each tariff item, it could not furnish such details since it does not have the system to split the cost under each equipment and services. Therefore, the tariff has to be fixed based on overall cost position. It has to be recognised that the overall cost position considered for the terminal as a whole takes into account all admissible operating expenditure estimated by the PSA SICAL. This means, cost deficit, if any, under one of the components of services, is made good by surplus available in some other components since the tariff are not exactly with reference to the cost of rendering individual services.

(xxxvii). The PSA SICAL has proposed to continue with the itemised tariff structure instead of composite box rate. It is relevant to mention that at many other private terminals, a composite box rate is prescribed. In fact the revised tariff guidelines also encourages prescribing composite box rate for various operations including wharfage and to offer rebate if any of the services included in the composite box rate are not provided. The PSA SICAL is, therefore, advised to consider proposing composite box rate at the time of the next tariff review.

(xxxviii). The PSA SICAL at our request has incorporated a suitable conditionality in its SOR to state that in respect of container from foreign port landing at the terminal for subsequent transhipment to an Indian Port for coastal voyages or vice-versa, 50% of the transhipment rate prescribed for foreign-going vessels and 50% of that prescribed for coastal category shall be levied. The proposed modification is in line with the relevant policy decision of the Government and hence is accepted.

(xxxix). The revised tariff guidelines states that the users will not pay for delays beyond the reasonable level attributable to port. In view of this, it was suggested to incorporate a provision stating that storage charge shall not accrue for the period during which the PSA SICAL is not in a position to deliver / shift the empty container when requested by the users. The PSA SICAL has argued that there should be national consensus and all terminals should follow this. It is relevant to mention that this Authority has already prescribed this conditionality in the Scale of Rates of those private terminals and Port Trusts such as India Gateway Terminal Private Limited (IGTPL), Visakha Container Terminal Private Limited (VCTPL), New Mangalore Port Trust (NMPT), Chennai Port Trust (CHPT), Visakhapatnam Port Trust (VPT) and Gateway Terminal India Private Limited (GTIPL) which were decided after notification of the revised tariff guidelines. The relevant provision is, therefore, incorporated in the Scale of Rates of the PSA SICAL.

Since the berth hire charges for vessels handled by PSA SICAL will be collected by the TPT as per the terms of the LA, this Authority advised the PSA SICAL to incorporate a conditionality to refund berth hire charges to the vessels for the period when the vessels idle at its terminal when operations cannot take place due to failure / break down of the shore based facility. This also flows from the principle of not requiring user to pay for delays beyond the reasonable level attributable to port / operators. The PSA SICAL has, however, argued that on several occasions its turn around has been faster due to superior productivity for which the vessels / MLOs do not pay anything extra for the reduced berth usage.

It has, therefore, requested not to incorporate this conditionality since it will result in disputes.

In this context, it is relevant to mention that this conditionality is already prescribed in the SOR of the India Gateway Terminal Private Limited, South West Port Limited, Vizag Sea Port Limited, Gateway Terminal India Private Limited (GTIPL) and Visakha Container Terminal Private Limited. Even in case of some of the ports which have come for revision after the revised tariff guidelines like Chennai Port Trust, Visakhapatnam Port Trust, New Mangalore Port Trust a condition is prescribed to the effect that berth hire charge shall not be levied for the period of idling of vessels for reasons attributable to the port.

There is no reason why the provision prescribed in case of other terminal in this regard should not be made to apply to PSA SICAL particularly when such provision is based on the principles set out in the tariff policy guidelines issued by the Government. A suitable conditionality requiring PSA SICAL to allow rebate equivalent to berth hire accrued during the period of idling of vessels on account of reasons attributable to the terminal is included in the SOR of PSA SICAL.

(xL). The differential tariff between 20' and 40' containers in case of handling charges for transhipment containers, charges for shutout container, storage charges etc., are not found to be as per the revised tariff guidelines. The differential in tariff for these items are modified in terms with the revised tariff guidelines.

(xLi). The PSA SICAL has proposed to remove the distinction in Lift On / Lift off charges and extra movements by transfer crane and by other cranes prescribed in Scale of Rates of 1999 and has proposed a rationalised tariff after clubbing these two items. This rationalisation was also proposed during the last tariff revision of 2002 to discourage choice by the users of type of equipment to be used. This was found to be reasonable and accepted during the last tariff revision and hence this modification in the instant proposal is also accepted.

(xLii). The unit of levy of charges for supply of electricity to reefer containers is proposed to be modified from existing 8 hour basis to 4 hour basis in terms with the revised tariff guidelines.

(xLiii). The proposed note prescribing the time limit for levy of storage charge in case of abandoned containers is not found to be complete in line with the clause 5.8.3. of the tariff guidelines. It has prescribed only the last conditionality of this clause and argued that it is as per new Customs notification.

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

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

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

In case of change of container status it has proposed a dollar denominated rate. There is no sufficient reason for denominating this item in dollar terms. This

Authority, therefore, allows the Rupee denominated tariff already approved for this item in the 2002 Order.

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

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

(xLvi). As per the revised tariff guidelines, the private operators are required to propose incentive for better performance of the terminal and disincentive for performance below the benchmark level. Despite its claim that it is the most efficient terminal in terms of productivity and tariff, it has not proposed any tariff linked to the efficiency. It is relevant to mention that an ELT scheme has been prescribed in the Scale of Rates of the Mormugao Port Trust for mechanical iron ore handing and is being implemented for more than four years. The PSA SICAL is advised to explore the possibilities of introducing a suitable Efficiency Linked Tariff Scheme (ELT) at its terminal.

(xLvii). Some of proposed provisions which are not in line with the common prescription at other major ports / private terminals and the provisions of the revised tariff guidelines have been modified.

(xLviii). The revised tariff guidelines prescribe tariff validity cycle of three years. The revised Scale of Rates will be valid for 3 years from its effective date of implementation, after which the approval given to it will automatically expire unless a specific extension is granted by this Authority.

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

19.2. The revised Scale of Rates will come into effect after expiry of 30 days from the date of notification of this Order in the Gazette of India and will remain valid for three years from its effective date of implementation.

(A.L. Bongirwar)
Chairman

																	Annex- I
Gain / Loss statement of the PSA SICAL																	
																Rs. in lakhs	
		2002 by PSA SICAL		**2002 modified**		**2003 by PSA SICAL**		**2003 modified**		**2004 by PSA SICAL**		**2004 modified**		**2005 by PSA**	**2005 modified by us**		
Sr. No	**Particulars**		**Actuals allowable as per September 2002 ORder**		**Actuals allowable as per September 2002 ORder**		**Actuals allowable as per September 2002 ORder**		**Actuals allowable as per September 2002 ORder**		**Actuals allowable as per September 2002 ORder**			**Actuals allowable as per September 2002 ORder**		**Allowable as per our 2002 Order and also in terms of the revised tariff guidelines (for the period 1 April 2005 to 31 December 2005) (b)**	
		Estimates considered in the September 2002 Order		**Estimates considered in the September 2002 Order**		**Estimates considered in the September 2002 Order**		**Estimates considered in the September 2002 Order**		**Estimates considered in the September 2002 Order**		**Estimates considered in the September 2002 Order**					**Total for the year 2005 (a) +(b)**
I.	Through put (in TEUs)	**203079**	**214238**	**203079**	**214238**	**223387**	**234929**	**223387**	**234929**	**245725**	**294298**	**245725**	**294298**	**313317**	**78329**	**234988**	**313317**
II.	Capacity (TEUS)	300000	226200	300000	226200	300000	226200	300000	226200	300000	226200	300000	226200	339300	339300	339300	
III.	Revenue	4361.02	4831.85	4,361.02	4,831.85	4,235.94	5,196.61	4,895.65	5,196.61	4,780.11	6,307.54	5,542.08	6,307.54	6,526.26	1,631.57	4,894.70	6,526.26
IV	**Operating Cost**																
	(I).Operating Exp (excluding Royalty and license fee for CITOS)	333.74	428.84	333.74	428.84	389.14	477.23	389.14	477.23	453.74	756.39	453.74	756.39	1,310.98	327.75	983.24	1,310.98
	(ii). Royalty	0	540.24	0.00	0.00	0.00	775.76	0.00	0.00	0.00	1,095.07	0.00	0.00	1,496.42	0.00	525.92	525.92
	(iii) Annual License fee (CITOS)	0	59.02	0.00	0.00	0.00	79.86	0.00	0.00	0.00	76.47	0.00	0.00	62.19	0.00	46.64	46.64
	(iv). Employee	316.62	313.5	316.62	313.50	403.42	379.72	403.42	379.72	456.60	387.77	456.60	387.77	441.54	110.39	331.16	441.54

	Cost																
	(v) Other Exp	313.16	193.9	313.16	193.90	284.13	342.54	284.13	342.54	299.76	407.98	299.76	407.98	414.66	103.67	311.00	414.66
	(vi) Exchange loss	0.00	1.63	0.00	1.63	0.00	0.00	0.00	0.00	0.00	1.35	0.00	1.35	2.70	0.68	2.03	2.70
	(vii). Depreciation	768.43	766.39	768.43	766.39	796.17	765.32	796.17	765.32	796.15	952.96	796.15	952.96	745.43	186.36	559.07	745.43
	(viii). Deferred Exp written off	24.54	242.9	24.54	24.54	24.54	110.40	24.54	24.54	24.54	110.02	24.54	24.54	45.00	6.14	18.41	24.54
	(ix). Finance Exp	55.13	55.23	55.13	55.23	55.13	54.04	55.13	54.04	55.13	45.84	55.13	45.84	18.09	4.52	13.57	18.09
	(x) EPCG Penalty	94.54	0	94.54	0.00	94.54	0.00	94.54	0.00	94.54	0.00	94.54	0.00	0.00	0.00	0.00	0.00
	Subtotal	**1906.15**	**2601.7**	**1,906.15**	**1,784.03**	**2,047.07**	**2,984.87**	**2,047.06**	**2,043.39**	**2,180.46**	**3,833.86**	**2,180.45**	**2,576.83**	**4,537.01**	**739.49**	**2,791.02**	**3,530.50**
V	**Surplus (III-IV)**	**2,454.87**	**2,230.16**	**2,454.87**	**3,047.83**	**2,188.87**	**2,211.74**	**2,848.59**	**3,153.23**	**2,599.65**	**2,473.68**	**3,361.63**	**3,730.72**	**1,989.25**	**892.08**	**2,103.68**	**2,995.76**
V I	Interest	859.7	769.98	859.70	769.98	856.08	480.44	856.08	480.44	823.45	239.52	823.45	239.52	33.03	33.03	0.00	33.03
VII	Net Surplus (V-VI)	**1,595.17**	**1,460.18**	**1,595.17**	**2,277.85**	**1,332.80**	**1,731.30**	**1,992.51**	**2,672.79**	**1,776.21**	**2,234.16**	**2,538.17**	**3,491.20**	**1,956.22**	**859.05**	**2,103.68**	**2,962.74**
VIII	Adjusted owners Capital	1742.94	**2875.35**	**1,742.94**	**3,093.72**	**1,699.93**	**3,199.66**	**1,699.93**	**3,585.25**	**2,043.12**	**4,075.93**	**2,043.12**	**4,417.89**	**6327.8**	**6,327.80**		
IX	Capital Employed	**Not shown since ROE was allowed prior to revised tariff guidelines issued on 31 March 2005**												**7303**		**5,792.40**	
X	Return on Equity @ 20% for the years 2002 upto March 2005.	348.58	**575.07**	**348.59**	**618.74**	**339.99**	**639.93**	**339.99**	**717.05**	**408.62**	**815.18**	**408.62**	**883.58**	**1137.98**	**316.39**	**651.65**	**968.04**
	Capacity utilisation	67.70%	94.70%	**67.7%**	**94.7%**	**74.5%**	**98.8%**	**74.5%**	**98.8%**	**82.0%**	**130.0%**	**82%**	**130%**	**92%**			**92%**
	Return linked to capacity utilisation	235.97	544.66	**235.97**	**586.02**	**253.16**	**631.97**	**253.16**	**708.13**	**334.70**	**815.18**	**334.70**	**883.58**	**1137.98**	**316.39**	**651.65**	**968.04**
XI	**Net surplus / (deficit)**	**1,359.20**	**915.52**	**1,359.20**	**1,691.82**	**1,079.64**	**1,099.33**	**1,739.35**	**1,964.65**	**1,441.51**	**1,418.98**	**2,203.48**	**2,607.62**	**818.24**	**542.66**	**1,452.03**	**1,994.70**
XII	**Net surplus / (deficit) as a% of operating Income.**			**31.17%**	**35.01%**			**35.53%**	**37.81%**			**39.76%**	**41.34%**		**30.56%**		

XIII	**Surplus allowed to be adjusted in the last tariff Order by way of (a). Deleting lashing/ unlashing charges and 15% tariff reduction (For the year 2002 shown proportionately for two months from implementation of our 2002 Order)**	**189.92**	**0.00**	**189.92**	**0.00**	**635.39**	**0.00**	**1301.26**	**0.00**	**717.02**	**0.00**	**1473.08**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**
XIV	**Average Surplus allowed to be retained unadjusted as per the last tariff Order after effecting tariff reduction and deleting the lashing and unlashing charges is 11.2% of the operating income. (For the year 2002, computed on prorata basis for two months.)**	**285.73**	**0.00**	**36.62**	**40.57**	**186.51**	**0.00**	**547.77**	**582.02**	**801.66**	**0.00**	**620.71**	**706.44**	**0.00**	**0.00**	**0.00**	**0.00**
XV	**Balance surplus after considering the amount allowed to be retained by PSA SICAL (XI-XIII-XIV) (For the year 2002**	**1,644.92**	**915.52**	**0.00**	**241.40**	**630.76**	**1,099.33**	**-109.69**	**1382.63**	**1,526.15**	**1,418.98**	**109.69**	**1901.17**	**818.24**	**542.66**	**1452.03**	**1994.70**

	shown proportionately for two months from implementation of our 2002 Order)																
XVI	**Net gain accrued to PSA SICAL**		**-729.40**		**241.40**		**468.57**		**1492.32**		**-107.17**		**1791.49**	**-449.04**			**1994.70**
	Sum of net gain accrued to PSA SICAL due to non implementation of Authority 2002 Order (From implementation of our Order till December 2005) as per the above computation																**5519.91**
	Net gain accrued to PSA SICAL for nine months for the year 2006 (figures indicated in the consolidated cost statement)																**1742.82**
	Total net gain accrued to PSA SICAL due to non implementation of Authority 2002 Order (From implementation of our Order till Septmber 2006)																**7,262.73**
	Net loss as per PSA SICAL's computation should be (Rs.817.04 lakhs). Its computaion has arithmetical error.																

										Annex - II
	Consolidated cost statement of PSA SICAL TERMINALS LTD									
								(Rs. in Lakhs)		
Sr.No.	**Particulars**	**Estimates as furnished by PSA SICAL at existing tariff**					**Estimates modified by us**			
		Actuals upto Nov 2005 and est for Dec 2005	**2006**	**2007**	**2008**	**2009**	**2006**	**2007**	**2008**	**2009**
	Traffic (In TEUs)	313,317	356100	391710	430881	300000	356100	391710	430881	430,881
	Capacity Utilization	92.34%	104.95%	115.45%	126.99%	88.42%	104.95%	115.45%	126.99%	126.99%
I	**Total Operating Income**									
	(i) Container handling income	6425	7380	8155	9013	6531	7530	8321	9196	9196
	(ii) Others	101	87	124	186		87	124	186	186
	Total Income	**6526**	**7467**	**8279**	**9199**	**6531**	**7617**	**8445**	**9382**	**9382**

II	Operating costs (excluding depreciation)									
	(i) Operating & Direct Labour	442	512	543	576	612	509	532	556	581
	(ii) Equipment Running Costs									
	(a) Power Cost	161	191	227	270	1310	187	212	241	252
	(b) Fuel cost	365	422	547	626		433	498	573	598
	(c)Repairs & maintenance	272	398	483	503		351	370	387	404
	(d) Others	81	83	96	111		83	87	91	95
	Subtotal (a+b+c+d)	**879**	**1095**	**1353**	**1510**	**1310**	**1055**	**1167**	**1291**	**1349**
	(iii) Royalty / revenue share	1496	2243	3352	4960	4411	1051	1571	2324	2969
	(iv) Equipment Hire	504	573	579	584	590	573	579	584	590
	(v) Other expenses	58	60	61	62	62	60	61	62	62
	Total (i to v)	**3379**	**4483**	**5887**	**7693**	**6986**	**3248**	**3909**	**4817**	**5550**
III	Depreciation	745	740	855	855	843	740	868	868	856
IV	Overheads									
	(i) Management & Administration overheads	116	126	133	139	140	126	132	138	140
	(ii) General Overheads	190	345	369	398	398	199	207	217	227
	(iii) Preliminary & Upfront Payment write-off	45	45	45	45	44	25	25	25	25
	(iv). License fee for Terminal Operating System	62	68	68	69	77	65	68	71	74
	Total (i to iv)	**413**	**584**	**615**	**652**	**658**	**414**	**431**	**450**	**465**
	Total expenditure	**4537**	**5806**	**7356**	**9198**	**8485**	**4401**	**5208**	**6134**	**6871**
V	**Surplus**	1989	1660	923	0	-1954	3215	3237	3248	2511
V I	**Capital Employed**	**7303**	**7348**	**7385**	**7385**	**4993**	**5944**	**5343**	**4640**	**3783**
VII	RoCE - Maximum permissible (15%)	1095	1102	1108	1108	749	892	801	696	567

	RoCE adjusted for capacity utilization						892	801	696	567
VIII	**Net Surplus / (Deficit)**	894	558	-185	-1107	-2703	2324	2435	2552	1943
	Efficiency Gains	0	3815	3815	3815		0	0	0	0
	Net Surplus / (Deficit)	894	-3257	-4000	-4922	-2703	2324	2435	2552	1943
IX	**Net Surplus/ Deficit as a % of operating income**	13.69%	-43.63%	-48.31%	-53.52%	-41%	30.86%	29.27%	27.75%	21.13%
X	**Balance surplus for the year 2006 (for nine months)for adjustent of gain over the next three years**									
XI	**Past Accruals for the period 2002 to 2005 plus the net surplus of the year 2006 proportionately for half of the year**									
XII	**Past accruals spread over the three years, (proportionately for three months in 2006 and nine months in 2009)**									1816
XIII	**Net Surplus after adjustment of past accruals (proportionately for three months for the year 2006 and for nine months for the year 2009)**									
XIV	**Net Surplus after adjustment of past accruals as a % of operating income**							58.36%	54.07%	47.46%
XV	**Average Net surplus**						**54.33%**			

ANNEX–III

PSA SICALTERMINALS LIMITED

SCALE OF RATES

PREFACE

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

1. DEFINITIONS

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

(i). ***"Coastal Vessel"*** shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal license issued by the competent authority.

(ii). ***"Container"*** means the standard ISO container, suitable for the transport and stacking of cargo and must be capable of being handled as a unit and lifted by a crane with a container spreader.

(iii). ***"Foreign Going Vessel"*** shall mean any vessel other than a coastal vessel.

(iv). ***"Hazardous container"*** means a container containing hazardous goods as classified under IMO.

(v). ***"Over Dimensional container"*** means a container carrying over dimensional cargo beyond the normal size of standard containers and needing special devices like slings, shackles, lifting beam, etc. Damaged containers and container requiring special devices for lifting is also classified as Over Dimensional Container.

(vi). ***"Per Day"*** means per calendar day or part thereof.

(vii). ***"Per Shift"*** means period of 8 hours or part thereof.

(viii). ***"Port"*** means the Tuticorin Port Trust (TPT) whereas "Terminal" means Tuticorin Container Terminal (TCT), operated by PSA SICAL Terminals Limited.

(ix). ***"PSA SICAL"*** means PSA SICAL Terminals Limited, a company incorporated in India, its successors and assigns.

(x). ***"Reefer"*** means any container for the purpose of the carriage of goods, which require power supply to maintain the desired temperature.

(xi). ***"Shut Out Container"*** means a container, which has entered the terminal for export for a vessel as indicated by Equipment Interchange Receipt (EIR) and is not loaded to the vessel for whatsoever reason.

(xii). ***"Tonne"*** means one metric Tonne of 1,000 kilograms or one cubic metre.

(xiii). ***"Transhipment Container"*** means container discharged from a vessel and placed in the custody of the PSA SICAL for the purposes of shipment on another vessel declared on a transhipment manifest with the ultimate port of destination marked on the container lodged with the PSA SICAL prior to or at the time such a container is placed in its custody.

2. GENERAL

(i). "Status of a vessel as borne out by its certification issued by Director General of Shipping is the relevant factor for deciding whether the vessel is 'foreign-going' or 'coastal'. Foreign going vessels permitted to undertake coastal voyages and the cargo/container carried by them will also qualify for the concession in respect of such permissible voyages."

(ii). (a). A foreign-going vessel of Indian flag having a General Trading Licence can convert to coastal run on the basis of a Customs Conversion Order.

(b). A foreign-going vessel of foreign flag can convert to coastal run on the basis of a Coastal Voyage Licence issued by the Director General of Shipping.

(c). In cases of such conversion**,** coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods**.**

(d). In cases of such conversion coastal rates shall be chargeable only till the vessel completes coastal cargo discharging operations**;** immediately thereafter**,** foreign going rates shall be chargeable by the discharge ports**.**

(e). For dedicated Indian coastal vessels having a Coastal Licence from the Director General of Shipping, no other documents will be required to be entitled to coastal rates.

(iii). (a). The container related charges for all coastal containers, should not exceed 60% of the normal container related charges.

(b). The concession will be on all the relevant charges for ship shore transfer and transfer from/ to quay to/from storage yard as well as wharfage on containers and cargo.

(c). Container from a foreign port which reaches an Indian Port "A" - for subsequent transhipment to Indian Port "B" - will be levied the concession charges relevant for its coastal voyage. In other words, containers from/to Indian Ports carried by vessels permitted to undertake coastal voyage will qualify for the concession.

(iv). All dollar denominated tariff will be recovered in Indian Rupees after conversion of charges in dollar terms into its equivalent Indian Rupees. For this purpose, the market buying rate notified by the Reserve Bank of India, State Bank of India or its associates or any of the public sector banks as may be specified from time to time prevalent on the day of entry of the vessel into the Terminal (in case of import container) and on the day of arrival of containers in the Terminal premises (in case of export containers) shall be applied for conversion of the dollar-denominated charges into Indian rupees.

(v). A regular review of exchange rate shall be made once in 30 days from the date of arrival in the cases of vessels staying in the port for longer period. The basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of review.

(vi). Containers less than and upto 20**'** in length will be reckoned as one TEU for the purpose of levy of tariff**.**

(vii). All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.

(viii). All invoices are issued as due on presentation. Failure to pay may cause a lien to be placed on the goods handled at the Terminal and the responsible party may be denied further use of the Terminal until all outstanding charges have been paid.

(ix). (a). The user shall pay penal interest on delayed payments of any charge under this Scale of Rates. Likewise, the PSA SICAL shall pay penal interest on delayed refunds.

(b). The rate of penal interest will be 13% p.a. The penal rate will apply to both the PSA SICAL and the port users equally.

(c). The delay in refunds by the PSA SICAL will be counted beyond 20 days from the date of completion of services or on production of all the documents required from the users, whichever is later.

(d). The delay in payments by the users will be counted beyond 10 days after the date of raising the bills by PSA SICAL. This provision shall, however, not apply to the cases where payment is to be made before availing the services as stipulated in the MPT Act, 1963 prescribed as a condition in the tariff.

(x). A premium of 25% will be levied in case of Hazardous cargo containers / Over dimensional Cargo Containers over all the applicable handling charges and storage charges prescribed for respective categories of containers.

(xi). Users shall not be required to pay charges for delays beyond a reasonable level attributable to the PSA SICAL.

(xii). In case a vessel idles due to non-availability or breakdown of the shore based facilities of PSA SICAL or any other reasons attributable to the PSA SICAL, rebate equivalent to berth hire charges payable to TPT accrued during the period of idling of vessel shall be allowed by PSA SICAL.

(xiii). The Customer has to declare the hazardous nature of the cargo as per the IMO classification and furnish the relevant hazardous details to the PSA SICAL, prior to discharge from the vessel for Import Containers and prior to processing of EIR in case of Export Containers. The liabilities and cost towards the consequences arising due to non-declaration or mis–declaration shall, however, be on the customer’s account.

3. APPLICATION

(i). Import and Export rates shall apply when:

(a). a loaded or empty container is discharged from a vessel, delivered directly out of the Container Terminal or moved and stored in the container yard and eventually delivered out of the Container Terminal; or

(b). a loaded or empty container is shipped and the reverse operations to (a) are performed.

(ii). Transhipment container rates shall apply to a loaded or empty container when it is discharged from the first carrier onto PSA SICAL’s premises and remained in the custody of PSA SICAL until it is transhipped in its original status by PSA SICAL to a nominated second carrier.

(iii). Re-export container rates shall apply to a loaded container when:

(a). it is discharged from the first carrier onto PSA SICAL premises and remained in the custody of PSA SICAL until it is re-exported;

(b). it is declared for re-export within 72 hours after discharge of the first carrier is completed; and

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

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

SECTION- I

1. Container operations

1.1. HANDLING CHARGES FOR IMPORT AND EXPORT CONTAINERS

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length (in US$)	*Container exceeding 20 feet in length and upto 40 feet length (in US$)*	*Container exceeding 40 feet in length and upto 45 feet length (in US$)*	*Container not exceeding 20 feet in length (in Rs.)*	*Container exceeding 20 feet in length and upto 40 feet length (in Rs.)*	*Container exceeding 40 feet in length and upto 45 feet length (in Rs.)*
(a).	Quay Crane Charges -Loaded and Empty	US$8.61	US$12.92	US$17.22	Rs.225.00	Rs.337.50	Rs.450.00
(b).	Transport from/ to CY and Lift-on /Lift-off - Loaded - Empty	Rs.312.50 Rs.157.50	Rs.468.75 Rs.236.25	Rs.625.00 Rs.315.00	Rs.187.50 Rs.94.50	Rs.281.25 Rs.141.75	Rs.375.00 Rs.189.00

Notes:

(1). Export Containers have to be delivered to PSA SICAL at least 2 hours before berthing of the vessel to be accepted for loading.

(2). Charges in 1.1. (a) above include handling by quay crane and lashing/unlashing, stowage planning and supervision.

(3). Charges in 1.1. (b) above include transport from the quayside to container yard and a lift at CY for landing an import container and transport to the quayside from the CY and a lift at CY for loading an export container.

1.2. HANDLING CHARGES FOR TRANSHIPMENT CONTAINERS

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length (in US$)	***Container exceeding 20 feet in length and upto 40 feet length (in US$)***	***Container exceeding 40 feet in length and upto 45 feet length (in US$)***	***Container not exceeding 20 feet in length (in Rs.)***	***Container exceeding 20 feet in length and upto 40 feet length (in Rs.)***	***Container exceeding 40 feet in length and upto 45 feet length (in Rs.)***
(a).	Container Operator who has transhipped more than 400 TEUs of loaded or empty Transhipment Containers per calendar month	9.36	14.04	18.72	244.50	366.75	489.00
(b).	If transhipped less than 400 TEUs per calendar month	12.92	19.38	25.84	337.50	506.25	675.00

Notes

(1). The above charge applies to the complete cycle of transhipment from discharge from the first carrier to the loading onto the second carrier and include charges towards handling by quay crane (discharge and loading), lashing/unlashing, stowage, planning and supervision, transport between CY and quayside, lift on and off at CY.

(2). A shut out charge as per item 1.8 shall apply:

(i). if the carrier is changed after berthing of the originally nominated carrier; or

(ii). if the nomination is changed from a later carrier to an earlier carrier after the earlier carrier is berthed.

(3). A container from foreign port landing at PSA SICAL for subsequent transhipment to an Indian Port on a coastal voyage or vice versa would be charged at 50% of the transhipment charge prescribed for foreign-going vessel and 50% of that prescribed for the coastal category.

(4). Any Transhipment container delivered out of the Container Terminal by road or rail shall be charged the import export container rate.

1.3. LIFT ON OR LIFT OFF

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length (in Rs.)	***Container exceeding 20 feet in length and upto 40 feet length (in Rs.)***	***Container exceeding 40 feet in length and upto 45 feet length (in Rs.)***	***Container not exceeding 20 feet in length (in Rs.)***	***Container exceeding 20 feet in length and upto 40 feet length (in Rs.)***	***Container exceeding 40 feet in length and upto 45 feet length (in Rs.)***

(a).	Loaded	157.50	236.25	315.00	157.50	236.25	315.00
(b).	Empty	80.00	120.00	160.00	80.00	120.00	160.00

Note

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

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

Sl. No.	Particulars	Foreign-going Vessels (in US$)	Coastal Vessels (in Rs.)
(a).	Without landing Hatch Cover on the quay	7.18	187.50
(b).	With landing Hatch Cover on the quay	17.97	469.50

1.5. SHIFTING OF CONTAINERS WITHIN VESSEL (restows)

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length (in US$)	*Container exceeding 20 feet in length and upto 40 feet length (in US$)*	*Container exceeding 40 feet in length and upto 45 feet length (in US$)*	*Container not exceeding 20 feet in length (in Rs.)*	*Container exceeding 20 feet in length and upto 40 feet length (in Rs.)*	*Container exceeding 40 feet in length and upto 45 feet length (in Rs.)*
(a).	Loaded or empty container shifted by landing and reshipping	12.92	19.38	25.84	337.50	506.25	675.00
(b).	Loaded or empty container shifted without landing and reshipping	4.31	6.47	8.62	112.50	168.75	225.00

Note

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

1.6. EXTRA MOVEMENT

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length (in Rs.)	*Container exceeding 20 feet in length and upto 40 feet length (in Rs.)*	*Container exceeding 40 feet in length and upto 45 feet length (in Rs.)*	*Container not exceeding 20 feet in length (in Rs.)*	**Container exceeding 20 feet in length and upto 40 feet length (in Rs.)**	*Container exceeding 40 feet in length and upto 45 feet length (in Rs.)*
(a).	Loaded and Empty	250.00	375.00	500.00	250.00	375.00	500.00

Note

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

1.7. REEFER RELATED AND OTHER GENERAL SERVICES

Sl. No.	Particulars	Foreign-going (in US$)	Coastal (in Rs.)
(a).	Pre-trip inspection (including the supply of Electricity) per container	16.08	700.00
(b).	Connection or disconnection Services Onboard a Vessel. Per Container	1.15	50.00
(c).	Supply of electricity (including connecting and disconnecting, monitoring of temperature at Reefer yard) per 4 hours or part thereof-		
	(i). not exceeding 20 feet in length	1.29	56.25
	(ii). exceeding 20 feet in length	1.73	75.00
(d).	Cleaning of a Container		
	(i).not exceeding 20 feet in length	0.75	32.50
	(ii). exceeding 20 feet in length	1.50	65.00

Notes

(1). Pre-trip Inspection of the reefer containers and cleaning of containers are optional services and shall be rendered when requested.

(2). Above tariff does not include parameter setting or repair & maintenance of malfunctioning reefers. Above charges are also applicable to restow reefer containers.

1.8. SHUT OUT

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

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length (in US$)	*Container exceeding 20 feet in length and upto 40 feet length (in US$)*	*Container exceeding 40 feet in length and upto 45 feet length (in US$)*	*Container not exceeding 20 feet in length (in Rs)*	*Container exceeding 20 feet in length and upto 40 feet length (in Rs.)*	*Container exceeding 40 feet in length and upto 45 feet length (in Rs.)*
(a).	Loaded and Empty	11.49	17.23	22.98	500.00	750.00	1000.00

(ii). Where a container is shut out by one vessel and subsequently shipped via another vessel, in addition to the stevedorage charge:

(a). the charge as per item (a) above shall also apply.

(b). the free storage shall be given to the Container in accordance with item 1.10 from the time the container is first received. If the free storage period is exceeded, store rent shall be calculated after the expiry of the free period up to the time of lift on.

1.9. WHARFAGE

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length	*Container exceeding 20 feet in length and upto 40 feet length*	*Container exceeding 40 feet in length and upto 45 feet length*	*Container not exceeding 20 feet in length (in Rs.)*	*Container exceeding 20 feet in length and upto 40 feet length (in Rs.)*	*Container exceeding 40 feet in length and upto 45 feet length (in Rs.)*
(a).	Per Container	US$0.46	US$0.69	US$0.92	12.00	18.00	24.00
(b).	Per containerised Cargo	Rs.250.00	Rs.375.00	Rs.500.00	150.00	225.00	300.00

1.10. STORAGE OF CONTAINERS

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

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length (in US$)	*Container exceeding 20 feet in length and upto 40 feet length (in US$)*	*Container exceeding 40 feet in length and upto 45 feet length (in US$)*	*Container not exceeding 20 feet in length (in Rs.)*	*Container exceeding 20 feet in length and upto 40 feet length (in Rs.)*	*Container exceeding 40 feet in length and upto 45 feet length (in Rs.)*
(i).	First 5 days	Free	Free	Free	Free	Free	Free
(ii).	From 6 to 15 days	0.38	0.76	1.14	16.35	32.70	49.05
(iii).	From 16 to 22 days	1.50	3.00	4.50	65.35	130.70	196.05
(iv).	More than 22 days	2.90	5.80	8.70	126.30	252.60	378.90

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

Sl. No.	Particulars	Foreign-going			Coastal		
		Container not exceeding 20 feet in length (in US$)	*Container exceeding 20 feet in length and upto 40 feet length (in US$)*	*Container exceeding 40 feet in length and upto 45 feet length (in US$)*	*Container not exceeding 20 feet in length (in Rs.)*	*Container exceeding 20 feet in length and upto 40 feet length (in Rs.)*	*Container exceeding 40 feet in length and upto 45 feet length (in Rs.)*
(i).	First 15 days	Free	Free	Free	Free	Free	Free
(ii).	From 16 to 30 days	2.00	4.00	6.00	87.10	174.20	261.30
(iii).	More than 30 days	3.00	6.00	9.00	130.65	261.30	391.95

Notes

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

(b). Free storage period for export loaded and empty containers commences from the time the container arrives in the terminal. If the free storage period is exceeded, store rent is charged on 24-hour basis up to the time the vessel berths.

(2). Free storage period for transhipment and re-export containers commences from the time of completion of discharge of the first carrier. If the free storage period is exceeded, store rent is charged on 24-hour basis up to the time the second carrier berths.

(3). For the purpose of calculation of free time, Sundays, Customs notified holidays and the Terminal's non-operating days shall be excluded

(4). The storage charges shall not accrue for the period during which the PSA SICAL is not in a position to deliver / ship containers when requested by the user.

(5). The storage charges on abandoned FCL containers / shipper owned containers shall be levied upto the date of receipt of intimation of abandonment in writing or 75 days from the day of landing of the container, whichever is earlier subject to the following conditions:

(i). The consignee can issue a letter of abandonment at any time.

(ii). If the consignee chooses not to issue such letter of abandonment, the container Agent / MLO can also issue abandonment letter subject to the condition that,

(a). the line shall resume custody of container along with cargo and either take back it or remove it from the port premises; and
(b). the line shall pay all port charges accrued on the cargo and container before resuming custody of the container.

(iii). The container Agent / MLO shall observe the necessary formalities and bear the cost of transportation and destuffing. In case of their failure to take such action within the stipulated period, the storage charge on container shall be continued to be levied till such time all necessary actions are taken by the shipping lines for destuffing the cargo.

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

1.11. Charges for Miscellaneous Services

Sl. No.	Particulars	*Container not exceeding 20 feet in length*	*Container exceeding 20 feet in length*
1.	Direct Loading (Loaded and Empty) - Foreign going - Coastal	US$10 Rs.486.00	US$15 Rs.728.00
2.	Reshuffling - Loaded and Empty	Rs.600.00	Rs.900.00
3.	Trucking - Loaded and empty	Rs.500.00	Rs.750.00
4.	Change of shipment status - Loaded and empty	Rs.728.00	Rs.1093.00
5.	Change of Container Status - Per Container	Rs.97.00	
6.	Cancellation of Document - Per EIR	Rs.75.00	
7.	Late Processing of EIR	Rs.500.00	

Notes

(1). **Direct loading** charge applies when, at the request of customers, PSA SICAL accepts an export container delivered to the terminal after the prescribed closing time. This charge is in addition to all applicable charges in a normal export cycle.

(2). **Reshuffling** charge applies when, at the request of customers, PSA SICAL reshuffles containers in the yard.

(3). **Trucking** charge applies when, at the request of customers, PSA SICAL transports containers between the port's railway siding at the Additional berth and PSA SICAL.

(4). **Change of shipment status** charge applies when:

(i). a transhipment container in PSA SICAL premise is changed to an import container;

(ii). an import container in PSA SICAL premise is re-exported;

(iii). an export container is delivered out of PSA SICAL premise; or

(iv). a transhipment container is re-nominated to another second carrier more than 8 hours before the berthing of the originally nominated carrier or the re-nominated carrier, which is earlier.

(5). **Change of container status** charge applies each time the detail of an import or export container is changed after processing by PSA SICAL.

(6). **Cancellation charge** applies when EIR is cancelled at the request of customer.

(7). **Late Processing fee** applies when EIR is processed after the EIR cut off time (i.e. 4 hours before Estimated time of Berthing)

SECTION – II

2. OTHER SERVICES

2.1 VISITOR ENTRY PASS

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

2.2 PHOTOGRAPHY

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

2.3 DOCUMENT

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

<u>Note</u>

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

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SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS AND ARGUMENTS MADE IN THE JOINT HEARING BEFORE THE AUTHORITY

F. No. TAMP/52/2005 – PSA SICAL - Proposal received from the PSA SICAL Terminals Limited (PSA SICAL) for revision of its tariff.

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

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

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

	prospective users only. It is quite incorrect, illogical and ironical that benefits on accounts of excess payment made by those who already availed services are to be passed on to the prospective users. It will be fair if the entire excess amount collected by PSA SICAL is refunded to the respective parties without any delay together with interest as applicable according to rules.	
(x).	eference to clause 2.8.1. of the guidelines about the treatment of royalty in cases where bidding process was finalised before 29 July 2003, it has stated that if such an arrangement is allowed, the BOT operator can submit any number of tenders in different names and quote the highest bid to the port in their tenders with slight difference. This will definitely defeat the very purpose of the tender concept as a whole. The trade will be exploited by the BOT operator and the landlord Port directly. The terminal operator should alone pay the Royalty from out of their operational performance and its efficiency and they should not look upon the trade and enhance the rates for the purpose of payment of royalty.	ecific comments furnished.
(xi).	2A and Table 3 shows that the royalty paid and payable based on the volume of TEUs handled is gradually increasing on a per TEU basis from Rs.157/- per TEU in 2004 to Rs.630/- per TEU in 2006. The volume of containers handled during this period increases gradually, but the royalty per container increases tremendously. After attaining a saturation point of 4,50,000 per annum also, the royalty per TEU keeps on increasing. The terminal operator has quoted very high royalty in the tender in the interest of obtaining the tender and now trying to include such royalty as a part of the cost of operation. Such an action on the part of the terminal operator would tantamount to exploitation of the trade. The Government itself is advising for cost cutting and at such circumstances this sort of exploitation is not advisable and must not be encouraged.	ecific comments furnished.
(xii).	shing / unlashing charges was removed by TAMP in its September 2002 Order based on the representation from the Trade in 1999. PSA SICAL has tried to club the lashing / unlashing charges together with the quay crane charge and applied 30% increase on the whole. This is not at all acceptable to us and should be rejected. The lashing / unlashing charges have to be excluded as it was not accepted by TAMP in the previous tariff approval. The QC charges alone are payable by the trade.	ecific comments furnished.
corin Chamber of Commerce and Industry (TCCI)		
(i).	The Balance Sheet of the Company has not been attached. There is no cost analysis in the report but only accounting analysis. It is not clear where bulging occurs and only after cost analysis it can be known whether reasonable increase can be allowed or not.	The Audited Annual Reports for financial year 2002, 2003 and 2004 have been submitted to TAMP. There is no diversion and interlocking of accounts. All relevant information in the required format regarding cost / expenditure and revenue justifying reasonable tariff increase has been furnished.

		Hence, the statement made by the Chamber that "there is no cost analysis in the report but only accounting analysis" is not correct. Submission made by it is a genuine expression of the 'value-addition' brought in through its operations in Tuticorin Port.
(ii).	After the commissioning of the Sethu Samudram Project, the cost of handling of even bigger vessels will come down. Any increase in the tariff rate at this stage will divert the traffic to other ports. Even the PSA SICAL admits that Tuticorin enjoys only diverted traffic and further diversion away from Tuticorin may not be in operators interest.	Reduction in the cost of handling of bigger vessels due to commissioning of Sethu-samudram project will have no impact on cost of container handling. The draft limitation of 7th berth will continue even after implementation of Sethu-samudram project and inner harbour development. The container handling charges in the port forms only 2% to 4% of the total logistics cost. It is the remaining 96% to 98% component (which is regulated and market determined) that has impact on the 'shared traffic'. It will continue to help its customers to reduce the total logistics cost by providing unmatched turnaround time for vessels, fixed window and on-time berthing, catch-up service for out-of-window vessels, reliable and hassle-free terminal operation at the wharf and at the gate, etc.
corin Port Trust		
(i).	ference to the PSA SICAL's claim that it will not be able to discharge its legitimate Licence Agreement (LA) obligation from 2007 if moderate increase in tariff within the competitive range is not approved, it has clarified that tariff revision and discharging the legitimate Licence Agreement obligations are two different issues. First is to be in conformance with the guidelines issued by this Authority and in line with the MOC filed by the Counsels of the BOT operator and this Authority before the Hon'ble High Court of Madras on 17 August 2005. The legitimate License Agreement obligations are based on the bilateral BOT agreement between the Port and the BOT operator and is clearly distinct and in no way related to fixation of tariff. It has clarified that it was not a party to the MOC and is not willing to communicate with TAMP in this regard nor accept any role assumed by TAMP in this regard.	egitimate license agreement obligation referred in its proposal relates to royalty. The royalty is a legitimate business expenditure and will have to be met out of revenue which is the only source of cash inflow available to meet this expenditure. Tariff increase proposal is within the ambit of the revised guidelines and is not inconsistent with the license agreement. The spirit of the revised guidelines, provide the manner in which royalty is to be treated for tariff fixation and accounting for efficiency gains is acknowledged. Hence, it is requested to increase tariff within the competitive range and within the frame-work of the revised guidelines. Understanding the linkage and fixing a fair tariff is left to TAMP.
(ii).	Unless the PSA SICAL files a petition to the Government of India and obtains the decision about treatment of royalty for regulation of tariff prior to 31 March 2005 and incorporates the said decision in the current proposal, the proposal will not be complete. This Authority may therefore, direct PSA SICAL to comply with this requirement prior to considering its proposal for revision in tariff.	It has already made a proposal to MOS for quantum of royalty to be allowed as "pass-through" cost for the period prior to 31 March 2005. The decision of the Government can be incorporated in the working.
(iii).	The berth occupancy for 2003-04 was 38% and 41% for 2004-05 as per TPT's figures and hence the 30% berth occupancy claimed by the PSA SICAL is not correct. This computation may be incorrect, as the quay length available in the terminal should be treated as one berth and not two as assumed at present. In any case the lower berth occupancy is not a relevant factor in the instant case for revision of PSA SICAL's	It does not intend to go into details of calculation of berth occupancy and accepts TPT's figures for the purpose of this exercise. The fact that it provides the best service with the lowest berth occupancy is not disputed. This is a factor relevant in tariff fixation since TAMP's overall approach is to "use tariff as leverage to

	tariff.	improve operational efficiency of the Ports". Demonstration of efficient performance through such parameters is also important to justify efficiency gains.
(iv).	PSA SICAL's argument that its revenue is comparatively lower than the other container terminal operators and tariff in terms of per TEU is also the lowest in the country is not found to be relevant for tariff fixation.	Competitive nature of its tariff (revenue less than Rs.2100/- per TEU) is very relevant in tariff fixing exercise especially since TAMP's / Government's stated policy objective is to move to competitive pricing.
(v).	Para: 27 of PSA SICAL's proposal - Loss making period will surface in later years in case of fixed royalty but the same will surface in initial years in case of revenue sharing. With reference to this point it has stated that loss / profit depends on the efficiency of the operator on an economic scale which should have been factored into while quoting the figures of royalty. In the current case, PSA SICAL obtained the award of operation of the 7th berth as container terminal because of higher structure of royalty quoted by them which obtained a higher Net Present Value over the competitor. Otherwise, the concession would not have been bagged by the present BOT operator. The contention is, therefore, not at all relevant to the tariff fixation exercise.	It has explained about the impact of "loss making period in the case of fixed and increasing royalty" in its proposal to explain the difference between this form of royalty and the revenue-share arrangement. This is relevant factor in tariff fixing exercise in view of revised guidelines prescribing a clause about treatment of royalty.
(vi).	The point made by the PSA SICAL in para 32 about a strong relationship between efficiency gains, competitive tariff and statutory obligations and suggestion to factor this in during tariff fixing exercise may be considered in the light of the revised guidelines issued by this Authority.	TAMP should consider the strong relationship between efficiency gains, competitive tariff and statutory obligations in the light of the revised guidelines.
(vii).	As regards the PSA SICAL's claim of achieving efficiency gains in terms of optimum investment it has pointed out that the amount of investment per TEU is not an isolated factor for comparison. It is to be read in conformance with comparable facilities and service levels. Besides, procurement of new equipment in the market versus installing partially utilised assets in the same services elsewhere affects the value of investment per TEU directly. Timing up of the investment also has to be taken into account for comparison.	Sufficient information has been furnished on "comparable facilities", "service levels", "used equipment vs. new equipment", normative performance levels", "timing of investment", etc. to justify efficiency gains due to optimum investment.
(viii).	It has made the following observation with reference to PSA SICAL's request in Para 41 about allowing to make necessary adjustment in its proposal as and when the RFP document for 2nd Container terminal is released which will have adverse impact on the volume projections of the VII berth operator and consequent revenue projections: (a). The advantage of being eight years in the field by the year 2008 and having the lowest tariff will actually lead to better consolidation for the VII berth operator and, hence, the revenue may actually go up. (b). Clause 6.2.3. (Additional facilities) of the BOT agreement between TPT and PSA SICAL contains a condition for future expansion of container berths by the licensor and allows the BOT operator to participate in the competitive bidding without any discrimination, therefore, the fear that there will be adverse impact on the VII berth operator is not based on facts. (c). In view of the above observation, the request of	The development of 8th berth is a reality. It is true that the clause 6.2.3 allows the existing operator to participate in the competitive bidding but this does not prevent traffic sharing. Moreover, there is a "minimum guarantee traffic" clause in the 8th berth bid document. The traffic projection in its proposal does not consider this sharing of traffic since the timing of the operation of 8th berth will be known only after RFP document is released. Hence, it is again requested to TAMP to allow making adjustment in its proposal once the timing is known. It is not understood how the revenue of the 7th berth operator will go up when the 8th berth becomes operational as pointed out by TPT.

	the PSA SICAL to allow adjustment of the said impact on the tariff revision exercise does not arise at all.	
(ix).	While comparing the PSA SICAL rates with the rates at other container terminals in (Table 1) to show that its tariff is the lowest among the other container terminals in the country, the comparability of services across the major ports is not highlighted so as to obtain the comprehensive picture of the subsidisation involved in PSA SICAL rates.	Table 1 shows the rates for specific activity in comparison with other container terminals. Moreover, its revenue per TEU is perhaps the lowest in the country as acknowledged even by the TPT.
(x).	The details of calculation of income projections are not available. In the operating cost, the operating expenses have been increased by nearly 209% in 2005, 6% in 2006, 16% in 2007 and 8% in 2008. The employee cost has been increased by 6% in 2006 after effecting 25% increase in 2005. Inflation rate @ 5% per year is confirmed and hence, the basis of adopting different percentage increase in Tables need to be justified.	It agrees to give detailed clarifications on TPT's observations on Income and Expenditure projections at an appropriate time. The increase in employee cost by 25% is because of expansion of its capacity expansion by more than 50%. In fact efficient utilisation of human resource has resulted in less than proportional increase in employee cost.
(xi).	The basis of working out the factor for calculating the royalty gap between the first and second quote is 1 – P&O Rate PSA Rate	No specific comments furnished.
(xii).	Table 7.3.1. Operating Expenses without factoring efficiency: The Running, Repairs and Maintenance (RRM) cost per TEU which is adopted on the volume shows an increase of 13% for 2005, 51% for 2006, 12% for 2007 and 5% for 2008. There is no justification enclosed for adopting the differential rate of increase. There are fixed and variable elements involved in RRM cost and hence calculation with the assumption of 100% variability may not be correct.	The increase in RRM cost in 2005 is because of the specific financing / lease arrangement for the additional equipment, namely 1QC and 4RTGs. This will have to be considered in conjunction with the insignificant increase in capital employed after the capacity addition.

Container Shipping Lines Association (India) (CSLA)

(i). PSA SICAL have mentioned that if a moderate increase in tariff within competitive range is not approved, then it will not be able to discharge its legitimate license agreement obligation from year 2007. Whilst this statement may be given it's due weightage, it does not warrant proposed hike as steep as 30% on the prevailing tariff.

(ii). With a 30% hike proposed in tariff and after considering actual royalty amount pending decision by TAMP on the reasonable level that could be admitted in the tariff, the ROCE will work out to 56.19% for 2006, 47.9% for 2007 and 40.3% for 2008. These levels of ROCE are far too high by any standards and thus there is no case for allowing the proposed hike of 30%. Even at the prevailing tariff level and considering the full royalty amount, the ROCE works out to 26% for the year 2005, 23.6% for 2006 and 11.1% for 2007. These by itself is very fair return on capital employed. When only a reasonable amount of royalty is admitted as cost, the financial results would look even better and thus any major revision in tariff is unwarranted.

(iii). It is not clear from the cost statement that how the royalty for the year 2008 is as high as 54% of revenue. This point needs to be explained. Such levels of royalty / revenue sharing cannot be passed as an element of cost to customers. Even if the recommendation of admitting the second highest royalty quote is considered, it will surely not be at a level too different from PSA SICAL's quote. Admitting such levels of royalty would beat the justification on which royalty was not admitted as an item of cost in the CCTL's case.

(iv). PSA SICAL is seeking 15% return per annum on capital employed. The stated level of return is understood to be the maximum permissible level of return allowed in tariff fixation exercise. Nothing stops a port / terminal operator to seek a level lower than 15%. There are very few business especially in shipping and infrastructure sector that can guarantee this kind of returns.

(v). PSA SICAL admits achieving largest growth rate in container traffic during the year 2004-05. The projected growth rate and the terminal's efficiency in handling should itself act as an incentive for PSA SICAL to make good profits. Thus any major change in tariff is unnecessary.

(vi). The efficiency offered by PSA SICAL is very good. It supports the views of the PSA SICAL that the efficiency gain must be allowed to be retained by the Operator. TAMP while reviewing the actual physical and financial performance at the end of the current tariff period may accordingly give due consideration to this point which will certainly reward PSA SICAL for its efficiency.

(vii). It is not very clear from the financial statement if income from container storage inside the Terminal has been considered. If not, the same must be taken into account and the income and the financials may be reviewed accordingly.

(viii). Since PSA SICAL has not given a detailed financial statement; it is difficult to evaluate each items in their operating cost. More clarity is required on the depreciation. It is not very clear why in 2007 the depreciation amount has gone up drastically.

(ix). PSA SICAL has not shown any expenditure towards investments in infrastructure etc. Are they not planning for any investments to further improve the efficiency in the existing facility?

(x). Undertaking furnished along with the proposal shows that the proposed tariff will be valid with retrospective effect from 1 April 2005. Retrospective application of tariff cannot be allowed and any changes will be applicable after expiry of 30 days from the date of notification.

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

PSA SICAL Terminals Limited

(i). Our performance in terms of equipment productivity, employee productivity, cost per TEU, etc., can be benchmarked against any of the best managed terminals in the world.

(ii). We never attempt to pass on any unreasonable and uneconomical costs to users. At the same time, our tariff should also be viable and in the competitive range.

(iii). We have filed our petition to the Government on royalty issue. We will take up with the Government for its direction on this issue.

(iv). We have given profit and loss Accounts to the Port Trust. We have reservation in sharing such details with all users. We will consider circulation of a summary statement.

(v). We have achieved the financial results with one of the lowest tariff in the world.

(vi). Royalty is an expenditure and is paid to the Government agency. We cannot ignore this element while fixing tariff.

(vii). The user service charges proposed are not new. Such charges are approved by TAMP elsewhere.

(viii). Our liability towards EPCG for second set of equipment is still outstanding. We also have other foreign currency obligations. We leave it to TAMP to take a uniform view on dollar denomination of tariff.

(ix). The MOC is very fair. Adjustment of gains of the past in future tariff is the most practical solution.

(x). We have added 4 RTGs and doubled our yard capacity. We increased our capacity by 50% in 2005. The argument of users that we had not improved facilities is wrong.

(xi). Operation costs are going up because all equipment added are on hire. Please note that there is no substantial change in capital employed inspite of additional capacity of 50% created in the last two years.

Tuticorin Steamer Agents Association

(i). We do not agree with the MOC since it envisages that the benefit of non-implementation of tariff of 2002 should be passed on to future users. It should be refunded to the actual users who had paid in excess of the notified tariff of 2002.

(ii). The attempt of PSA SICAL to bring back lashing / unlashing charge of US$ 8.04 per TEU by merging it with some other item should not be allowed.

(iii). Royalty is the commercial risk taken by PSA SICAL. It cannot be borne by the Trade.

(iv). The increase sought by PSA SICAL is not 30%. If you compare with 2002 tariff, the increase is 58.5% which is extremely high.

(v). The 3rd QC bought by PSA SICAL is second hand. The productivity is not at the desired level, and is much lower when compared with its own other two QCs.

(vi). PSA SICAL has not incurred any loss so far. Why should they want royalty as 'pass through'?

(vii). Let the 2002 tariff continue for another 3 years.

Tuticorin Chamber of Commerce and Industry

(i). We endorse the views of TSAA.

Indian Chamber of Commerce and Industry

(i). We would like to reiterate our written submission made earlier.

(ii). The excess tariff collected since October 2002 should be refunded.

Tuticorin Custom House Agents Association

(i). We endorse the views of TSAA.

(ii). We request for reconsideration of the TAMP guidelines allowing part of royalty / revenue share as cost item. Users cannot be responsible for the commercial decisions of the bidders.

(iii). PSA SICAL by signing the MOC agreed to the validity of 2002 tariff. They should, therefore, immediately revert to 2002 tariff pending notification of new tariff.

(iv). PSA SICAL proposes to charge for various allied services now. Many of these services are provided free of cost now. The proposal in this regard is not acceptable to users.

The Container Shipping Lines Association (India)

(i). The proposed increase of 30% is steep. We, however, acknowledge the efficient performance of PSA SICAL. This can be rewarded as per TAMP guidelines. But the proposed increase should also be moderated.

(ii). PSA SICAL has asked for revised tariff from 1 April 2005. Please notify revised tariff only prospectively.

The Shipping Corporation of India Limited

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

(ii). A 30% increase in tariff will strip PSA SICAL of the advantages it enjoyed in the market so far.

(iii). Lashing / unlashing should not be charged separately.

(iv). Please review the method of denominating tariff in US$ and Rupee. Please maintain only one currency base.

Tuticorin Port Handling Agents Association

(i). The amount collected in excess since September 2002 should be refunded.

(ii). Please review the policy of dollar denomination of tariff.

Tuticorin Port Trust

(i). Competitive tariff to PSA SICAL can be allowed so that they can meet their BOT liability towards the Port Trust.

(ii). The increase estimated in some of the cost items is very high and remains unexplained.

(iii). We have dual role to play. While we have a duty to Trade, we are also a party to the BOT arrangement. Our interest in the BOT should be protected.

(iv). We request that the guidelines for tariff fixation should be strictly adhered to.

(v). TAMP should, as per the guidelines, fix tariff protecting the interest of users. Then comes allowing reasonable return to the investor.

(vi). Please reckon and reward cost reduction due to efficiency improvements as per guidelines; but, cost reduction due to volume increase should be treated differently. Efficiency should be rewarded.

(vii). We do not have any reservation against the MOC. We feel it is just and reasonable. But, we are not a party to the MOC. The users should not have any reservation to follow the MOC.

(viii). The dollar denomination of tariff should be reviewed. PSA SICAL has already discharged its EPCG liability.

(ix). We endorse the provisions in the tariff guidelines regarding admissibility of royalty. It is just and a balanced view.

(x). Charges not allowe,d elsewhere should be disallowed here also.

(xi). Annual Accounts of PSA SICAL should be circulated for allowing meaningful discussion and understanding of the proposal.

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

Indian Chamber Of Commerce and Industry

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

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

Tuticorin Custom House Agents' Association

(i). The memorandum of compromise drawn without the consent of users is quite incorrect and, therefore, the same should be treated as null and void and suitable orders issued upholding the 2002 rates.

(ii). The concept of spreading over of the gains enjoyed by M/s PSA SICAL to the prospective users for a period of 3 years is not acceptable to us.

(iii). Since the 2002 rates were accepted in the memorandum of compromise, the excess amount collected by PSA SICAL should be refunded to the respective parties together with interest.

(iv). If for any reasons the refund is not possible, the 2002 rates should be continued to compensate the users, the gain hitherto wrongfully enjoyed by them, by way of collection of charges at the 1999 approved tariff, instead of 2002 rates.

(v). The subsequent revision after compensating to the users, should be based only on the 2002 approved rates.

(vi). Since service providers are permitted to realise their export obligations paying in Indian currency according to the recent orders of CBEC, the practice of fixing in US dollars should be dispensed with.

(vii). The lashing and unlashing charges should be excluded as it was not accepted by TAMP in the tariff approved in the year 2002. The effort of PSA SICAL to increase the QC charges to cover up the lashing and unlashing charges should not be encouraged and their proposal should be rejected.

(viii). PSA SICAL should alone pay the royalty from out of their operational performance and its efficiency. They should not look upon the trade to enhance the rates for the purpose of payment of royalty.

(ix). The financial performance of PSA SICAL in the past years was exceeding well whereas it has declared dividend to the tune of 70% in 2003 and 2004. There is, therefore, no necessity to revise its tariff.

(x). No additional investment was made by PSA SICAL for procurement of additional new equipment when compared to the increase in the number of vessels called and containers handled.

(xi). Non-availability of high tech equipment, non-availability of stand-by generator for RMGC, very low cost on repairs and maintenance of machineries, low cost of labour, lower nature of salary and wage structure to the staff, etc. are the main components which count on the expenditure factor of Tuticorin Container Terminal. Naturally, the cost would automatically come down in Tuticorin.

(xii). The case of other terminals operated in major city ports are rather different. Expenditure on such areas in those city port terminals are higher than those prevailing in Tuticorin. It is perhaps incongruous on their part to claim those rates at Tuticorin also. Such an attitude would be unlawful besides far from ethics to go for a claim for which they are not entitled to. Therefore, PSA SICAL's claim needs to be rejected.

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

<u>Tuticorin Steamer Agents' Association and Tuticorin Port Handling Agents Association</u>

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

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

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

Revenue per TEU in Rupees

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

* Not implemented in view of stay.

(ii). The crane movement per hour at its terminal is 28 as against 24 moves at NSICT, 22 moves at CCTL and 19 at JNPT.

(iii). All the equipment at its terminal are state-of-the art hitech equipment enabling it to deliver the productivity level far in excess of any ports in India and around the region.

(iv). Its RRM costs are very low because of efficiency in operations and maintenance management.

(v). The low employee cost is not because of the nature of salary and wage structure but because of high labour productivity far in excess of other terminals in India.

(vi). The associations have made only subjective statements of comparing its expenditure with the other cities. In fact, operating at Tuticorin could be costlier due to non-availability of spare parts, maintenance difficulties due to poor connectivity and higher administrative cost due to locational disadvantages.

(vii). The proposed miscellaneous charges are similar to other charges approved by TAMP as additional charges in other container terminals like VCTPL.

(viii). Regarding comments on MOC, refund of gains, if any, due to non implementation of 2002 order, retaining 2002 order, etc, it has clarified that MOC and the revised guidelines adequately address the concerns of both the investor and the customers. Hence these comments are not relevant. Since MOC also allows PSA SICAL to collect charges based on 1999 TAMP Tariff till a new tariff is notified, it is only fair that PSA SICAL's tariff proposal is compared with 1999 tariff.

(ix). It has already emphasised its cost leadership on various parameters and hence it does not intend to pass on any inefficiency to the customer by way of this tariff revision. On the contrary it is only seeking an increase in tariff within the competitive range to achieve sustainability of operating standards and to be able to discharge its legally binding and legitimate obligations.

(x). Royalty will have to be paid out of "top-line" irrespective of whether royalty is considered as pass-through or not. Its tariff is only Rs.2100/- per TEU as against approximately Rs.3000/- per TEU in Indian / World terminals. Hence disallowing competitive tariff based on royalty considerations will prevent it from discharging its legally binding obligation and is not fair. In fact it agrees with the views of the TSAA that royalty has to be paid out of operational performance and this is the essence of the efficient investor seeking competitive tariff.

(xi). With reference to the comment of the users on its profits and dividend declared it has clarified that its profits are not out of high tariff but out of the lowest tariff in the country. The financial performance has to be viewed against its need to develop a sustainable competitive advantage in view of our legally binding obligations. Hence this cannot be used as a reason for denying the legitimate request for tariff increase in the competitive range. Also, 70% dividend of PSA SICAL has to be viewed in the light of its very low capital base. 70% dividend in the case of PSA SICAL translates into only Rs.350/- per TEU whereas even 20% dividend in some terminals will be equivalent to nearly Rs.500/- per TEU.

(xii). It is not seeking anything which is not in synchronisation with either BOT agreement or the revised guidelines. Its proposal needs to be considered in totality of all the provisions/ clauses of the revised guidelines and various stated government policies relating to port tariff.

(xiii). The comments made by TSAA on capacity addition and productivity: The comments are not supported by facts. It is true that equipment added in 2004 and 2005 were used ones; but major refurbishing / life extension activities have been done. During the first quarter 2006, the complete drive units of QC 3 will be changed along with major mechanical refurbishment. This will make QC 3 even perform better than the earlier quay cranes.

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