(Published in Part - III Section 4 of the Gazette of India, Extraordinary)

Tariff Authority for Major Ports

G No. 55 **New Delhi, 01 March 2012**

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 the Nhava Sheva International Container Terminal Private Limited for General Revision of its Scale of Rates as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports

Case No. TAMP/54/2011-NSICT

Nhava Sheva International Container Terminal Private Limited - - - Applicant

O R D E R

(Passed on this 14th day of February 2012)

This case relates to the proposal received from the Nhava Sheva International Container Terminal Private Limited (NSICTPL) for general revision of its Scale of Rates.

2. The tariff of NSICTPL, a BOT operator at Jawaharlal Nehru Port Trust (JNPT) was last fixed vide tariff Order dated 30 December 2008 with a validity period till 27 January 2012. In the said Order, an across the board increase of 18% in the then existing Scale of Rates of NSICTPL was granted, for the year 2009. For the subsequent two years i.e. 2010 and 2011, a graded increase of 3.27% and 3.86% over the tariff of the respective previous years was approved.

3.1. This Authority had passed a common Order dated 30 September 2008, which, interalia, requires the major port trust and private terminals to file their tariff proposals by 30 June of the financial year in which tariff revision falls due. Since the validity of the tariff of the NSICTPL fixed in December 2008 fell due in the year 2011-12, the NSICTPL was required to submit its proposal for revision of its tariff by 30 June 2011. Accordingly, the NSICTPL was reminded in this regard vide our letter dated 15 July 2011.

3.2. The NSICTPL vide its letter dated 27 July 2011 requested time upto October 2011 for filing its proposal for revision of its tariff. The NSICTPL was advised to file its proposal till 27 October 2011 in terms of Clause 3.1.3 of the tariff guidelines of March 2005, vide our letter dated 4 August 2011.

4.1. In this backdrop, the NSICTPL under cover of its letter dated 27 October 2011 has filed its proposal for revision of its Scale of Rates. The main points made by the NSICTPL in its proposal dated 27 October 2011 are summarized below:

(i). The application for review of tariff is prepared on the basis of the previous TAMP Orders of 2008 and 2009 and based on the capacity of the terminal as determined vide these Orders. In this regard, the NSICTPL in its proposal has drawn reference to the following positions/ guidelines laid out in the above mentioned Orders.

(ii). <u>2008 Order Para 13 (ii)(a):</u>
Clause 2.2. of the tariff guidelines, 2005 requires TAMP to be guided, among other things, by the factors which will encourage competition, economical use of resources, efficiency in performance and optimum investment. There is, therefore, a need to reward performance which enhances output due to efficient use of resources. Tariff fixation cannot be a mere arithmetic exercise in the cost plus framework but the one which balances the interest of users and port operators and needs to take into account the long term financial viability of operators so as to encourage flow of much needed private investment into the port sector.

(iii). <u>2008 Order Para 13(ii)(b):</u>
This Authority finds it to be a reasonable approach to determine tariff with reference to standard capacity of the terminal instead of the actual volumes achieved or achievable. An operator can handle volumes beyond the standard capacity by improving efficiency and/or by infusing more capital. Such an approach of tariff fixing cannot, however, recognise any expenditure incurred to handle volumes above the standard capacity and the additional capital deployed. At the same time, an operator will not be put to disadvantage by reduced tariff on

account of higher volumes handled by him beyond the standard capacity. It is, therefore, a better approach to determine tariff with reference to certain pre determined standards of operations and asset utilisation, instead of relying solely on the actuals of an operator. Such a normative approach benefits an efficient operation and at the same time protects the interest of the users by not allowing cost of inefficiency to be passed on to the users in the name of actuals. While stipulating that the existing cost plus approach would continue, clause 2.4.1. of the tariff guidelines, 2005 also mentions about the attempts to be made to evolve a normative approach.

(iv). 2008 Order Para13(ii)(b):
It, therefore, appears reasonable to adjust the existing approach to recognise the volume efficiency which is possible by considering the traffic level as per the standard capacity of the terminal.

(v). 2008 Order Para 13(ii)(c):
The formula prescribed in the 2008 guidelines is applied to determine the standard capacity of NSICT to analyse this case.

(vi). 2008 Order Para 13(ii)(d):
If the method prescribed in the tariff guidelines of 2008 is applied, the standard capacity of NSICT, as explained subsequently, works out to 1.195 million TEUs which is considered as traffic level in this analysis. It is noteworthy that the standard capacity determined for NSICT is nearly double of the minimum throughput guaranteed under the license agreement.

(vii). 2008 Order Para 13(iii)(d):
All assets depreciate over a period of time and, therefore, its book value reduces gradually. Consequently, the ROCE reduces over the project period if there is no regular infusion of capital and can theoretically even reach Zero level once the assets are fully depreciated. Concomitantly, the absolute size of return available to an operator thus shrinks over time due to depreciation of assets. On the other hand, the revenue share/ royalty outflow increases gradually over the project period due to volume buildup and escalating the unit rate of royalty as per the concession agreement. This impairs the capacity of the operators to meet the cost not considered for tariff computation out of the return allowed to them. At the same time, it is necessary to ensure that an unintended benefit due to revaluation of capital assets does not accrue to the operators. It may be necessary to reexamine the appropriateness of allowing return on the written down value of assets.

(viii). 2008 Order Para 13(iv)(a):
It may be relevant here to point out that the gross value of assets considered now will be followed unchanged in the subsequent tariff determination of NSICT. Even if NSICT puts in more investment, it will be taken to be for the purpose of improving efficiency or handling volumes over and above the standard capacity and, therefore, the cost of such investment should be met by the operator out of the revenue from the additional volumes.

(ix). 2008 Order Para 13(vi)(b):
As mentioned earlier, clause 2.13. of the tariff guidelines requires 50% of the benefit accrued due to estimate variations to be set off while revising the tariff. The condition imposed in the tariff order of 2000 requires the entire (undue) benefit to be adjusted. The NSICT has not challenged the condition prescribed in the tariff order of 2000, which guided the case of NSICT till notification of the tariff guidelines 2005. The NSICT was allowed to retain 50% of the surplus as these guidelines recognise the efforts of the operator in building up volumes.

(x). 2008 Order Para 13(viii):

The guidelines for upfront tariff setting for PPP Projects at the major port trusts notified by this Authority in February 2008 in compliance of the policy directions issued by the Government of India prescribes the methodology for determination of optimal capacity of a container terminal. The optimal capacity of the container terminal is the lower value of the optimal quay capacity and optimal yard capacity. Following the methodology prescribed therein and considering the quay length of the terminal operated by the NSICT the quay capacity works out to 11,95,740 TEUs. Likewise, the yard capacity works out to 23,11,292 TEUs. Since the quay capacity is lower than the yard capacity, the value of quay capacity of 11,95,740 TEUs is considered as the standard capacity of the terminal operated by the NSICT.

(xi). 2008 Order Para 13(ix)(a):

As the traffic only to the extent of the standard capacity level is considered in the interim approach for the purpose of tariff determination for the future period, the capital cost corresponding to such capacity level can only be recognized.

(xii). 2008 Order Para 13(ix)(a):

Accordingly, the total gross value of assets as on 1 January 2009 relevant for standard capacity under consideration in this exercise is ₹83864 lakhs.

(xiii). 2008 Order Para 13(ix)(c):

It can thus be seen that the gross block of assets as per the Annual Accounts of NSICT after moderation in the equipment cost relevant to attain the standard capacity of 1.19 million TEUs is well within the capital cost estimation based on the guidelines of 2008. That being so, the gross value of assets required to handle standard capacity of traffic with their values derived from the books of Accounts of the NSICT is considered in this analysis.

(xiv). 2009 Order Para 4:

It is thus clear that none of the stakeholders have any serious objection to the methodology adopted to determine tariff in the NSICT case in the September 2008 Order. The request and suggestions made in the consultation process are more for further liberalising the approach. That being so, this Authority decides to confirm the standard capacity based approach followed in the earlier tariff Order of September 2008 in the NSICT case. As already highlighted in the earlier Order of September 2008, the revised approach adopted results in a win-win situation for both the operators and users. The revised approach encourages an operator to handle higher level of volumes to improve his returns. With increase in volumes, it is possible to progressively reduce the level of royalty pass through in tariff which will lessen the tariff burden on users.

4.2. The salient features and assumptions for the tariff review as furnished by NSICTPL are summarised below:

(i). The results for the past period of 2009 to 2011 have been considered at standard capacity of 11,95,470 TEUs based on the audited accounts for these periods and forecast for the period April to December 2011.

(ii). In calculation of these results,

(a). the depreciation has been considered on the normative assets required for the standard capacity.

(b). the expenses has been apportioned as per the method followed in the 2008 order.

(c). royalty has been allowed at the percentage allowed under the 2009 Order. However, NSICTPL does not agree and reiterates that full royalty should be allowed as a cost. NSICTPL has considered 100% royalty for the period 2012-14 and requests the Authority to consider the same, for the following reasons:

(i). Royalty is a cost. It was only because of Royalty that the NSICTPL was given right to construct and operate the facility. The bid conditions did not disallow inclusion of royalty in computation of tariff.

(ii). As per the Ministry Order No PR/14019/C/2002-PG has clearly stated that the position of royalty not being factored in, is to be clearly indicated in the bid documents, while inviting bids. No conditions regarding disallowance of full or part royalty was there in the JNPT's invitation to bidders.

(iii). Clause 2.8.1 of the guidelines goes against the basic tenets of the bid conditions and this adversely affects NSICTPL's right to operate the facility. As per the said guideline royalty will be taken into account as a cost in order to avoid likely loss to the operator. By disallowing part of royalty, loss does occur. Hence if loss occurs full royalty is to be allowed.

(iv). Even the current allowance of the 2nd highest royalty is not in line with bid conditions. The Authority in all its orders prior to March 2006 order have allowed complete royalty in computation of tariff.

(v). As per Clause 2.8.1, royalty shall be subject to maximum amount quoted by the next lowest bidder. The amount quoted by the next lowest bidder over the license period was ₹4345 crores as against ₹4039 crores by NSICTPL. The average royalty per TEU of the next lowest bidder works out to ₹2617/ as against ₹2601/ of NSICTPL. Hence full royalty paid by NSICTPL must be allowed.

(iii). The Capital employed has been taken as the Gross Value of Normative Fixed Assets as 1st January 2009 as the 2008 Order Para 13(iv)(a) states that this capital employed would be considered for all subsequent tariff revisions .

(iv). The actual Volume for the period January 2009 to December 2011 is 44,99,542 TEUs as compared to the estimated volume of 44,13,939 TEUs under the 2009 Order. There is a variance of 1.93%. The variance of the surplus is less than 20%. Since the physical & financial performance variation is less than 20%, there is no necessity of adjustment of surplus arising in this period.

(v). The surplus for the period April 2005 to Sept 2008 has been determined at ₹217.33 crores in the 2009 Order. The actual volume for this period is 49,03,484 TEUs and estimated traffic for this period was 43,13,645, the variation is less than 20% hence no surplus should be adjusted .

Even admitting without accepting that the surplus of ₹217.33 crores requires adjustment as determined by TAMP then, as per the guidelines, 50% of such surplus is allowed to be retained by the Operator. Thus the surplus for the period January 2005 to September 2008 will be ₹108.66 crores. Of this ₹43.47 crores has been adjusted in the 2009 Order, leaving ₹65.19 crores to be adjusted in the forthcoming tariff revision.

The NSICTPL has not considered any adjustment of the past surplus on this account.

(vi). The projections for the period January 2012 to Dec 2014 have been estimated at standard volume of 11,95,740 TEUs. Competition from other terminals on the

West Coast has increased and NSICTPL understands that further container terminals are planned to be operational at Mundra and Hazira. NSICTPL has, however, maintained its calculations at standard capacity of 11,95,740 TEUs.

(vii). The escalation factor notified for 2011-12 is 6%. The WPI for March 2010 is 10.36% higher than March 2009, similarly the WPI for March 2011 is 9.68% higher than March 2010. The real inflation in particular the food inflation and fuel is more severe about 15% per annum for last two years and this will drive the costs of all inputs. NSICTPL has, therefore, considered an escalation of 9.5% which is worked out based on the movements of WPI published by the Government of India.

(viii). The financial position as reflected in the Cost statements furnished by NSICTPL is as follows:

(₹ in lakhs)

Particulars	Actuals				Estimates		
	2009 (Jan - Mar)	**2009-10**	**2010-11**	**2011 (Apr-Dec)**	**2012**	**2013**	**2014**
Traffic (in TEUs)	298935	1195740	1195740	896805	1195740 *	1195740 *	1195740 *
Operating Income	9287	41279	44208	34186	44599	44592	44592
Operating Expenditure	3,879	18,403	21,200	17,711	38,935	41,499	44,375
Depreciation	1154	5552	5619	4111	5489	4935	4682
Overheads	493	1,709	1,856	1,469	2,236	2,412	2,604
ROCE (permitted)	3355	13418	13418	10064	13418	13418	13418
Net Surplus/ Deficit	406.50	2196.50	2114.30	831.50	(15479)	(17673)	(20487)
Net Surplus/ Deficit as % of Income	4%	5%	5%	2%	-35%	-40%	-46%
Average Surplus / Deficit	4.0%				-40.09%		

* only upto the level of standard capacity.

4.3. Based on the above deficit position, the NSICTPL is seen to have generally sought an across the board increase of 37.50% over the tariff prevailing in the year 2011.

4.4. The NSICTPL has furnished copies of its Audited Accounts for the financial years 2008-09 to 2010-11.

4.5. The NSICTPL has stated that TERI has been appointed by the Ministry of Shipping (MOS) for revision of tariff guidelines of 2005 and it is anticipated that this revision will address several issues, which the Authority themselves have raised in various Orders. On the ground that the revised guidelines are awaited, the NSICTPL has requested to keep on hold its tariff revision till the revised guidelines are issued.

5. In accordance with the consultative procedure prescribed, a copy of the proposal from the NSICTPL (except Annual Accounts) was forwarded to the JNPT and also to the concerned user organisations for their comments. The comments received from user organisations were forwarded to NSICTPL for its comments. NSICTPL has not responded to the comments made by the users/ user organisations till the finalization of the case.

6.1. Based on a preliminary scrutiny of the proposal, the NSICTPL was requested vide our letter dated 28 November 2011 to furnish additional information / clarifications on various issues. The NSICTPL vide its letter dated 30 December 2011 has furnished its response. A summary of the queries raised by us and the response furnished by NSICTPL is tabulated below:

Sl. No.	Queries raised by us	Response received from NSICTPL
(a).	**General:**	
(i).	In the Form – 1, at Sl. No.3, the NSICTPL has stated that its pricing strategy is cost and capacity based. The NSICTPL is to bring out the impact of the anticipated improvement in performance on the cost of rendering the service.	The Benchmark level of productivity considered by NSICTPL for the proposed scale of rates is 20 moves per hour which is committed as per the concession agreement.

<table>
<tr>
<td>(ii).</td>
<td>Sl. No. 4 of the Form – 1 requires the NSICTPL to furnish the current and proposed Scale of Rates alongwith the reasons for the proposed changes in the Scale of Rates. Though the NSICTPL has furnished the proposed Scale of Rates, it has not furnished the reasons for the proposed changes. The information, as required at Sl no. 4 of Form – 1 to be furnished.</td>
<td>The proposal has been submitted based on volumes at standard capacity and the applicable rate of return. The tariff increase is worked out based on shortfall in return on capital as indicated in form 3A. There are no new tariff items proposed nor any changes in the terms. The table of Current and Proposed Scale of Rates is enclosed.</td>
</tr>
<tr>
<td>(iii).</td>
<td>The NSICTPL has not furnished the details of the change in the average cost for typical terminal users as required at Sl no. 5 of Form – 1. The NSICTPL to furnish the requisite details.</td>
<td>The major cost of a typical terminal user is the stevedoring charges for foreign going containers. The change due to the tariff revision will be as below, these costs cover all the tariff from Discharge / load from vessel to gate in / out or rail in / out.
<table>
<tr><th>Cost Details</th><th>Present Cost</th><th>Proposed Cost</th></tr>
<tr><td>Loaded Container not exceeding 20' in length</td><td>3341.25</td><td>4594.20</td></tr>
<tr><td>Loaded Container exceeding 20' and upto 40'</td><td>5011.87</td><td>6891.32</td></tr>
<tr><td>Loaded Container exceeding 40'</td><td>6682.47</td><td>9188.39</td></tr>
<tr><td>Loaded ICD Container not exceeding 20' in length</td><td>4343.61</td><td>5972.46</td></tr>
<tr><td>Loaded ICD Container exceeding 20' and upto 40'</td><td>6515.43</td><td>8958.72</td></tr>
<tr><td>Loaded ICD Container exceeding 40'</td><td>8687.22</td><td>11944.93</td></tr>
<tr><td>Empty Container not exceeding 20' in length</td><td>2784.38</td><td>3828.52</td></tr>
<tr><td>Empty Container exceeding and upto 40'</td><td>4176.56</td><td>5742.77</td></tr>
<tr><td>Empty Container exceeding 40'</td><td>5568.73</td><td>7657.01</td></tr>
</table>
</td>
</tr>
<tr>
<td>(iv).</td>
<td>The tariff guidelines of March 2005 stipulate that tariff should be linked to benchmark levels of productivity. In this context, the NSICTPL may furnish the current performance and the targeted objective for productivity enhancement measures, as required at Sl. No.6 of Form – 1. The NSICTPL may consider incorporating it as a conditionality in its proposed draft Scale of Rates.</td>
<td>The Benchmark level of productivity considered by NSICTPL for the proposed scale of rates is 20 moves per hour which is committed as per the concession agreement.</td>
</tr>
<tr>
<td>(v).</td>
<td>The NSICTPL to furnish an alternate set of cost statements with detailed workings for the years 2012 to 2014, in the light of the actual traffic and financial/ cost details for the years 2009 to 2011 keeping in view the stipulations made in Clause 2.5.1. of the tariff guidelines of 2005.</td>
<td>The current tariff revision application is made on the basis of the previous TAMP Orders of 2008 and 2009 and based on the standard capacity as determined by TAMP.

During 2009 to 2011, the growth in Jawaharlal Nehru Port and other ports in Gujarat in summarised as under:
<table>
<tr><th></th><th>Volumes in 000' TEUs</th><th>Growth %</th></tr>
<tr><td>Year 2008</td><td>4,175</td><td>-</td></tr>
<tr><td>Year 2009</td><td>3,855</td><td>(7.66%)</td></tr>
<tr><td>Year 2010</td><td>4,281</td><td>11.00%</td></tr>
<tr><td>Year 2011 (Estimated)</td><td>4,288</td><td>0.16%</td></tr>
</table>
Since the terminals at JNPT are operating above 100% capacity and there is no enhancement in physical infrastructure likely in 2012-14, the service levels to the trade are getting affected. As a result, the volumes are likely to shift to Gujarat ports</td>
</tr>
</table>

<table>
<tr>
<td></td>
<td></td>
<td>where additional capacity is created at Mundra, Pipvav and Harzira.

This is demonstrated by the volume data given below of Gujarat ports for past period.
<table>
<tr><th></th><th>2008</th><th>2009</th><th>2010</th><th>2011</th></tr>
<tr><td>Mundra</td><td>840</td><td>860</td><td>1175</td><td>1440</td></tr>
<tr><td>Pipavav</td><td>193</td><td>321</td><td>466</td><td>605</td></tr>
<tr><td>Total</td><td>1033</td><td>1181</td><td>1641</td><td>2045</td></tr>
<tr><td>Growth YOY</td><td>-</td><td>13.8%</td><td>39.0%</td><td>24.6%</td></tr>
</table>

Both these ports and new facility at Hazira is likely to come up during 2012. This is likely to adversely affect the volumes at JN Port.

The new terminal at Mumbai Port is also likely to commission during 2012-14 and the volume at JN Port will be shared with this new terminal as well.

Based on our submissions, unless reasonable tariff increase is granted, the operations are likely to result in negative operating margin after considering the cash outflow of the royalty due to JNPT as per concession agreement. Under that situation, it may not be possible to sustain operations at even the standard capacity to minimize cash losses.

We have however maintained our calculation at the standard capacity of 11,95,740 TEUs which itself is stretched.</td>
</tr>
<tr>
<td>(vi).</td>
<td>The NSICTPL to furnish actuals including traffic for the period from January 2011 to October 2011, duly certified by a Chartered Accountant.</td>
<td>The volumes for April to November 2011 are 9,62,720 TEUs.

The volume from April to November has also been confirmed by JNPT vide their letter dated 19 December 2011. The financial performance for April 2011 to November 2011 is enclosed for your review. In view of shortage of time, we have not managed to get this information audited. Should the Authority wish the traffic and financial results to be certified by a Chartered Accountant, we will provide the same on hearing from you.</td>
</tr>
<tr>
<td>(vii).</td>
<td>Rebates and discounts, if any, over the notified ceiling tariff, allowed by NSICTPL during the years 2008-09 to 2010-11 to be furnished year wise.</td>
<td>The TAMP tariff are only ceiling levels and there is no bar on offering lower tariffs as clarified by the Authority from time to time. Generally NSICTPL has not been providing any rebates to the customers. However we have offered some volume related rebates to customers on case to case basis. The details of the Volume Discounts is as follows:
Amt in Lacs
<table>
<tr><th>Financial Year</th><th>Amount</th></tr>
<tr><td>2008-09</td><td>Nil</td></tr>
</table></td>
</tr>
</table>

		2009-10 968 2010-11 330
B.	**<u>Comparison of actuals vis-à-vis estimates provided earlier</u>:** Clause 2.13 of the tariff guidelines of 2005 requires this Authority to review the actual physical and financial performance at the end of the prescribed tariff validity period with reference to the projections relied upon at the time of fixing the prevailing tariff. In this context, the NSICTPL to clarify/ furnish the following:	 The minimum guaranteed volume under the concession agreement is 6,00,000 TEUs. The standard capacity as determined in the TAMP Order of 2008 and 2009 is 11,95,740 TEUs. This is more than two times of the volume agreed in the concession agreement. The Authority has adopted the 2008 guidelines to determine the standard capacity and capital employed and the order have been passed this basis. The applicable physical performance is therefore fixed at 11,95,740 TEUs. The actual data was furnished with regard to the standard capacity.
(i).	The NSICTPL to furnish duly filled in Form – 7 for the years 2009 to 2011.	The TAMP order dated 30th Dec 2008 Para 3 (ii) states “ The standard capacity based method adopted will however provide an avenue for an efficiency operator to meet the payment of royalty /revenue share which is not considered in tariff computation from the contribution made by the volumes handled in excess of standard capacity” The Form 7 is therefore not relevant in such case. However as insisted by the Authority, we are furnishing the actual volume & costs in the format as required in Form 3A, 3B. Please note the order has been passed taking the periods as calendar year, whereas the audited accounts are for financial years, hence the revenue & costs for the period Jan –Mar 2009 have been taken prorate from the audited accounts of 2008-2009. For the period April to Dec 2011 the revenue and costs have been estimated.
(ii).	The NSICTPL to furnish a Reconciliation statement to reconcile the difference between the Surplus before Interest and tax to be given in its Cost statements as stated above for the years 2009 to 2011 and the Surplus as reflected in the audited Annual Accounts for the years 2008-09, 2009-10 and 2010-11, alongwith reasons for difference.	Reconciliation is furnished.
(iii).	The NSICTPL requested to clarify the nature of the following income/ expenses as reported in the audited annual accounts for the years 2008-09 to 2010-11:	

	(a). Excess Provision for earlier years written back (b). Discount Provision for earlier years written back (c). Profit on sale of Investment (d). Dividend on Investment (e). Exchange loss (net) (f). Front end and other fees (g). Provision for doubtful debts. (h). Provision for slow moving inventory (i). Other finance charges	These are certain provision of costs and bad debts made in earlier years no longer required hence written back. There is no such item in the period under consideration. The cash balances are being invested in mutual funds. These are profits on sale of these investments. These represent the returns on the investment. The company had taken foreign currency loan and these gains / loss represent the MTM gain/loss booked at the end of the period. These are primarily the charges paid for hedging the foreign currency loans. These are provision made for old recoverable which in the management opinion are doubtful of recovery. Inventory includes some spares which were non moving for few years, provision has thus been for write-off of such unusable inventory. These are charges paid for loans taken from financial institutions.
(iv).	This Authority vide its Order dated 30 December 2008 had allowed an across the board increase of 18% in the then existing Scale of Rates, which was to be applicable for the year 2009. For the subsequent two years, a graded increase of 3.27% and 3.86% over the respective previous years was approved. While furnishing the Form – 7, as mentioned earlier, the NSICTPL to update the estimated income for the years 2009 to 2011 with reference to the above said year wise increase in tariff.	As mentioned above, TAMP order dated 30th Dec 2008 Para 3 (ii) states " The standard capacity based method adopted will however provide an avenue for an efficiency operator to meet the payment of royalty /revenue share which is not considered in tariff computation from the contribution made by the volumes handled in excess of standard capacity". Since the tariff has been determined on standard capacity the Form 7 is not relevant.
(v).	This Authority vide paragraph no.13(xii)(f) of its Order of September 2008 has allowed payment of technical service fee as an item of cost for the years 2009 to 2011 subject to the condition that the NSICTPL at the time of next review would produce the Income tax assessment Orders from the financial year 2002-03 onwards for verification. The NSICTPL has not furnished the relevant Assessment Orders. The NSICTPL is, therefore, to	The assessment orders for the Financial year 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 have been furnished. (From the copies of the Assessment Orders furnished by NSICTPL, it is seen that the Income tax authorities every year have disallowed 57% of the Technical Service Fee paid by NSICTPL during the respective years.)

	furnish the Income tax assessment Orders from the financial year 2002-03 onwards.	
(vi).	It may be recalled that in the Order of NSICTPL passed in December 2008, it has been mentioned that the balance unadjusted past surplus of ₹173.87 crores lakhs pertaining to the past period (April 2005 to September 2008) is to be considered for set off from the tariff cycle commencing from January 2012. The NSICTPL in its Cost statements furnished now has not given effect to the said adjustment of set off of past surplus. The actual total surplus of ₹217.36 crores (for the period April 2005 to September 2008) has already been quantified for adjustment in the tariff Order of December 2008 and one instalment of ₹43.47 crores has already been set off during the year 2011. The NSICTPL is, therefore, to make necessary adjustments with regard to the past surplus for the period from April 2005 to September 2008 in its revised Cost statement to be furnished.	The actual volume for this period is 49,03,484 TEUs and TAMP had considered traffic for this period at 43,13,645 TEUs, the variation is less than 20%, hence no surplus should be adjusted. Even admitting and without accepting that the surplus of ₹217.36 crores requires adjustment as determined by TAMP, then as per the guidelines, 50% of such surplus is allowed to be retained by the operator. Thus the surplus for the period January 2005 to September 2008 will be ₹108.68 crores. Of these, ₹47.47 crores has been adjusted in 2009 order (Refer Annexure 2 of December 30, 2008 order) leaving ₹65.21 crores to be adjusted in the forthcoming tariff revision.
C.	**<u>Financial/ Cost Statement</u>:**	
1.	**<u>Capacity</u>**:	
(i).	With reference to calculation of quay capacity NSICTPL to furnish the following:	
	(a). Calculation showing its quay capacity by taking into account the actual parameters relating to number of quay cranes, average number of moves per hour per crane and the TEU ratio.	The TAMP order of 2008 & 2009 have estimated the standard capacity of the terminal. NSICT representation on capacity was not accepted and the Standard capacity was fixed at a higher level. The standard capacity once fixed cannot keep changing, especially when there is no change in the physical infrastructure, therefore in our opinion the above data required under C (1) (i) (a) is not relevant. We have however maintained our calculation at the standard capacity of 11,95,740 teus.
	(b). Actual average number of moves per hour per crane achieved at the terminal in the last three years i.e. 2009, 2010 & 2011.	The average number of moves achieved per hour per cranes are summarised as under :- 2009 – 23.75 2010 – 22.66 2011 – 21.63 (Up to November 2011)
	(c). This Authority while fixing the upfront tariff for the 4th container terminal at Jawaharlal Nehru Port Trust (JNPT) vide Order no. TAMP/40/2008 – JNPT dated 25 February 2009, for the reasons stated therein, had accepted the modification to the norm relating to the number of quay cranes as suggested by JNPT at one quay crane for every 83.33 meters of quay length. This position to be noted by NSICTPL.	The TAMP order of 2008 & 2009 have estimated the standard capacity of the terminal. NSICT representation on capacity was not accepted and the Standard capacity was fixed at a higher level. The standard capacity once fixed cannot keep changing, especially when there is no change in the physical infrastructure, therefore in our opinion the above data required under C (1) (i) (c) is not relevant. We have however maintained our calculation at the standard capacity of 11,95,740 TEUs.

(ii).	With reference to calculation of yard capacity NSICTPL to furnish the following:	
	(a). The NSICTPL to calculate its yard capacity by taking into account the actual parameters relating to total ground slots, average stack height, surge factor and average dwell time. While calculating the average number of ground slots, it may be borne in mind that in the case of upfront tariff fixation for the container terminal at New Mangalore Port Trust (NMPT) vide Order dated 30 December 2009, ground slots of 360 TEUs per hectare was considered which was based on the analysis of the NMPT with reference to the area occupied by a container and additional area required for movement of container handling equipment, space between containers etc. The same number of ground slots of 360 TEUs per hectare has been considered while fixing upfront tariff for the Mega Container terminal at Chennai Port Trust (CHPT).	The TAMP order of 2008 & 2009 have estimated the standard capacity of the terminal. NSICT representation on capacity was not accepted and the Standard capacity was fixed at a higher level The standard capacity once fixed cannot keep changing, especially when there is no change in the physical infrastructure, therefore in our opinion the above data required under C (1) (ii) (a) is not relevant. We have however maintained our calculation at the standard capacity of 11,95,740 TEUs.
	(b). The NSICTPL to furnish the actual average stack height achieved at the terminal in the last three years i.e. 2009, 2010 & 2011.	The TAMP order of 2008 & 2009 have estimated the standard capacity of the terminal. NSICT representation on capacity was not accepted and the Standard capacity was fixed at a higher level. The standard capacity once fixed cannot keep changing, especially when there is no change in the physical infrastructure, therefore in our opinion the above data required under C (1) (ii) (a) is not relevant. We have however maintained our calculation at the standard capacity of 11,95,740 teus.
	(c). The NSICTPL to furnish the actual average dwell time at the terminal in the last three years i.e. 2009, 2010 & 2011.	The TAMP order of 2008 & 2009 have estimated the standard capacity of the terminal. NSICT representation on capacity was not accepted and the Standard capacity was fixed at a higher level. The standard capacity once fixed cannot keep changing, especially when there is no change in the physical infrastructure, therefore in our opinion the above data required under C (1) (ii) (c) is not relevant. New terminals at Pipava and Mundra have come up on the West Coast, further terminal at Hazira is expected to be operational in 2012 H1. These are pulling away business from Nhava Sheva and this loss of business is expected to increase in the coming period. We have however maintained our calculation at the standard capacity of 11,95,740 TEUs.
2.	**Traffic**: With reference to estimation of traffic, NSICTPL to furnish the following:	
(i).	The NSICTPL to furnish the details of the	The actual container volume handled

<table>
<tr>
<td></td>
<td>actual container volume handled during the period of 10 months from January 2011 to October 2011 and also the container mix.</td>
<td>during the period January to October 2011 is 1212738 TEUs. The container mix is furnished.</td>
</tr>
<tr>
<td>(ii).</td>
<td>Form 2A of the tariff filing formats applicable for private terminal operators like NSICTPL requires to furnish actual traffic for the preceding years and estimated traffic for the future three years for fixation/ revision of tariff. The NSICTPL is, therefore, to furnish the traffic estimates for the years 2012 to 2014, with basis for such estimates.</td>
<td>
The current tariff revision application is made on the basis of the previous TAMP orders of 2008 & 2009 and based on the standard capacity as determined by TAMP.
During 2009 to 2011, the growth in Jawarharlal Nehru Port and other ports in Gujarat is summarized as under :-
<table>
<tr><th></th><th>Volume in 000’ TEUs</th><th>Growth %</th></tr>
<tr><td>Year 2008</td><td>4,175</td><td>-</td></tr>
<tr><td>Year 2009</td><td>3,855</td><td>(7.66%)</td></tr>
<tr><td>Year 2010</td><td>4,281</td><td>11.00%</td></tr>
<tr><td>Year 2011 (Estimated)</td><td>4,288</td><td>0.16%</td></tr>
</table>
Since there is terminals at JNPT are operating above 100% capacity and there is no enhancement in physical infrastructure likely in 2012-14, the service levels to the trade are getting affected. As a result, the volumes are likely to shift to Gujarat ports where additional capacity is created at Mundra, Pipavav & Harzira.
This is demonstrated by the volume data given below of Gujarat ports for past period.
<table>
<tr><th></th><th>2008</th><th>2009</th><th>2010</th><th>2011</th></tr>
<tr><td>Mundra</td><td>840</td><td>860</td><td>1175</td><td>1440</td></tr>
<tr><td>Pipavav</td><td>193</td><td>321</td><td>466</td><td>605</td></tr>
<tr><td>Total</td><td>1033</td><td>1181</td><td>1641</td><td>2045</td></tr>
<tr><td>Growth YOY</td><td>-</td><td>13.8%</td><td>39.0%</td><td>24.6%</td></tr>
</table>
Both these ports and new facility at Hazira is likely to come up during 2012. This is likely to adversely affect the volumes at JN Port.
The new terminal at Mumbai Port is also likely to commission during 2012 – 14 and the volumes at JN Port will be shared with this new terminal as well.
Based on our submissions in Form 3 – A, unless the reasonable tariff increase is granted, the operations are likely to result in negative operating margin after considering the cash outflow of the royalty due to JNPT as per concession agreement. Under that situation, it may not be possible to sustain operations at even the standard capacity to minimize cash losses.
However we have maintained our calculation at the standard capacity of 11,95,740 TEUs.
</td>
</tr>
</table>

3.	**Operating Income**:	
(i).	Note 3 to Form 2B of the prescribed formats for tariff proposal adopted by this Authority requires the operator to provide detailed computation of income with reference to the estimated traffic. However, no such computation has been furnished by NSICTPL. The NSICTPL to furnish detailed computation of income with reference to the estimated traffic at NSICTPL's existing Scale of Rates and the proposed Scale of Rates for all the years under consideration for container handling activity.	Detailed calculations have been provided for the estimated traffic of 11,95,740 TEUs under form 2 A and 2 B. (The NSICTPL has not furnished any detailed calculations of income. It is just referring to the Form 2A and 2B furnished by it earlier.)
(ii).	The NSICTPL to furnish a detailed computation to show the calculation of income from the storage charges for all the years under consideration. The dwell time analysis, based on which the NSICTPL has arrived at the storage income, may also be furnished as required under Note 1 to Form 2B.	The dwell time analysis is furnished. The storage income is estimated in line with realization during 2009 – 2011.
(iii).	The Exchange rate considered by NSICTPL in the estimation of the income from the dollar denominated tariff items for the years 2012 to 2014 to be furnished.	The dollar rate considered for the dollar denominated tariff items for years 2012 to 2014 is ₹ 45 per US Dollar.
(iv).	This Authority vide Order dated 28 June 2007 approved the proposal of JNPT to levy an additional amount of ₹ 400 per TEU towards Inter Terminal Rail Handling Operation (ITRHO) of ICD containers moved by rail at the terminals of JNPT, including NSICTPL. A provision in this regard was also ordered to be inserted in the Scale of Rates of NSICTPL. The NSICTPL to furnish documentary evidence to substantiate the payments made to Jawaharlal Nehru Port Trust (JNPT) and Gateway Terminals India Private Limited (GTIPL) relating to ITRHO. Further, NSICTPL to furnish ITRHO receipts from JNPT and GTIPL for the period 2009 till date.	The details of Invoices raised by JNPT/ GTIPL for the period Jan 09 to date along with the details of payments made against the same has been furnished. Copies of the payment vouchers with supporting bills for reference have also been enclosed.
4.	**Operating Cost**:	
(i).	The Form – 3B to be updated with actual details for the years 2010 and 2011 and with estimates for the years 2012 to 2014 in line with the actuals for the years 2009 to 2011.	The details of actual Revenue & costs for period Jan 2009 to Dec 2011 is furnished. The estimates for 2012 to 2014 are based on the standard capacity of 11,95,749 TEUs.
(ii).	**Operating & Direct Labour**: The actual number of employees under the said category during the years 2009 to 2011 to be furnished. The average cost per employee during the said period may also be indicated.	Please refer to Annexure 5 – Form 3 B for details. (The NSICTPL has given the requisite details for the years 2009 to 2011)
(iii).	**Maintenance Labour:** Similarly, the actual number of employees	Please refer to Annexure 5 – Form 3 B for

<table>
<tr><td></td><td>under the said category during the years 2009 to 2011 to be furnished. The average cost per employee during the said period may also be indicated.</td><td>details.

(The NSICTPL has given the requisite details for the years 2009 to 2011)</td></tr>
<tr><td>(iv).</td><td><u>Equipment running cost</u>:</td><td></td></tr>
<tr><td></td><td>(a). <u>Power Cost</u>:</td><td></td></tr>
<tr><td></td><td>(i). The actual power consumption per TEU during the years 2009 to 2011 to be furnished.</td><td>Please refer to Annexure 5– Form 3 B for details.
(The NSICTPL has given the requisite details for the years 2009 to 2011)</td></tr>
<tr><td></td><td>(ii). In the Form – 3B furnished by NSICTPL, it is seen that the power consumption per TEU during the years 2009-10 to 2010-11 is fluctuating, as compared to the power consumption per TEU during the year 2008-09. The power consumption per TEU for the year 2009-10 is around 4% higher as compared to the year 2008-09. Similarly, the power consumption per TEU for the year 2010-11 is around 17% higher as compared to the year 2009-10. Also, the power consumption per TEU for the year 2011-12 is around 8% higher as compared to the year 2010-11. The NSICTPL to furnish reasons for higher level of power consumption from year to year.</td><td>The major consumption of power is for the reefer containers. Reefer power consumption constitutes upto 55 to 63%. Increase in reefer volume results in higher power consumption, thereby overall higher power consumption per TEU. The details of reefer volume is summarised as under :-

<table><tr><th>Period</th><th>Volume - TEUs</th></tr><tr><td>April 08 to March 09</td><td>54,240</td></tr><tr><td>April 09 to March 10</td><td>57,957</td></tr><tr><td>April 10 to March 11</td><td>66,367</td></tr><tr><td>April 11 to Dec 11(Annualized)</td><td>69,272</td></tr></table>
Consequent to the reduction in volume the impact of reefer power consumption is higher in the years 2012 to 2014.</td></tr>
<tr><td></td><td>(iii). The documentary evidence to reflect the actual unit cost of electricity applicable for the months from August to October 2011 to be furnished.</td><td>The bills for the months of August to October 2011 is furnished. It is pertinent to note that when the earlier application for revision was made in 2008 the costs then as on May 08 was ₹6.36 per unit, the rate presently is at ₹13.39 per unit, an increase of 110%.</td></tr>
<tr><td></td><td>(b). <u>Fuel Cost</u>:

With reference to the estimated fuel cost, NSICTPL to clarify/ furnish the following:</td><td></td></tr>
<tr><td></td><td>(i). The actual fuel consumption per TEU during the years 2009 to 2011 to be furnished.</td><td>Please refer to Annexure 5 -3 B for details.

(The NSICTPL has given the requisite details for the years 2009 to 2011)</td></tr>
<tr><td></td><td>(ii). In the Form – 3B furnished by NSICTPL, it is seen that there is a reduction in the consumption of fuel per TEU during the years 2009-10 to 2010-11 as compared to the fuel consumption per TEU during the year 2008-09. The reason for the reduction in fuel consumption to be explained.</td><td>Fuel consumption varies with volume. The volumes for 2009-10 & 2010-11 are higher than the earlier period resulting in efficiencies and hence lower consumption per TEU.</td></tr>
<tr><td></td><td>(iii). There is seen to be around 6.50% increase in the fuel consumption estimated for the years 2012 to 2014 as compared to the year 2011. The estimated increase in the fuel consumption to be justified with reasons.</td><td>Fuel consumption per unit is a function of number of moves done per hour. RTG fuel consumptions continue even when the RTG is not carrying out loading / unloading operations since the anxillary engine is operational. For 2012 – 14, the volumes are computed at standard capacity which is lower than previous period resulting in higher consumption per TEU.</td></tr>
</table>

<table>
<tr>
<td></td>
<td>(c). <u>Repairs & Maintenance Cost</u>:

The NSICTPL has stated that Repairs and Maintenance has been considered as a percentage of gross block of assets. However, by applying the percentage as given by NSICTPL in Form – 3B to the gross block of asset given in Form – 4A, the amount of Repairs and Maintenance works out to be less as compared to the amount of Repairs and Maintenance as mentioned by NSICTPL in its Form– 3B. The NSICTPL to furnish detailed workings with regard to calculation of Repairs and Maintenance Cost for the year 2012 to 2013.</td>
<td>

The error in computing the percentage is rectified and updated form Form 3B with correct percentage is furnished. Detailed working for the working of Repairs & Maintenance is furnished.</td>
</tr>
<tr>
<td>(v).</td>
<td><u>Royalty/ Revenue share:</u></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a). The NSICTPL has claimed full royalty as cost for the years 2012 to 2014. In this regard, it to be noted that Clause 2.8.1. of the tariff guidelines of 2005 permits the royalty payment as cost to the extent of the quote of the second highest bidder subject to certain conditions. The NSICTPL may revise its workings, in line with the stipulation contained at Clause 2.8.1 of the tariff guidelines of 2005.</td>
<td>Our submission in the issue of allowing full royalty as a part of costs for the purpose of fixation of tariff is summarized as under :-

There is no dissent on the fact that royalty is a cost.
It is only because of the royalty paid that NSICT was given the right to construct and operate the facility.
The bid conditions did not disallow the inclusion of the royalty in computation of tariff.
The Tariff Authority in all its Orders except the Order of March 2006 allowed the complete royalty in computation of tariff.
A comparison of the royalties between NSICT and the second highest bidder is as below:

<table>
<tr><th></th><th>NSICT</th><th>2nd Highest Bidder</th></tr>
<tr><td>NPV of royalty quoted</td><td>₹ 312 Crores</td><td>₹ 225 Crores</td></tr>
<tr><td>Volume Guaranteed</td><td>15.25 Mln TEU</td><td>16.60 Mln TEU</td></tr>
<tr><td>Total Royalty</td><td>₹ 4039 Crores</td><td>₹ 4,345 Crores</td></tr>
<tr><td>Average royalty per TEU</td><td>₹ 2,601</td><td>₹ 2,617</td></tr>
</table>

It is NISCT’s submission that the current allowance of second highest royalty is not in line with the bid conditions. There was no disallowance of royalty or part of royalty prescribed or stipulated.
The Ministry of Shipping Order number PR-14019/C/2002-PG dated 29th July 2003 issued on the treatment of revenue sharing royalty after discussion with the Chairman TAMP has clearly stated that the position of royalty / revenue sharing being not factored in to be clearly indicated in the bid documents itself while

</td>
</tr>
</table>

		inviting bids for Private Sector Participation at major Ports. There were no conditions regarding disallowance of full or part royalty in JNPT's invitation to bidders. • The position arising out of TAMP's Guidelines 2.8.1 goes against the basic tenets of the bid conditions and results in the change of law that adversely affects NSICT's right to operate the facility. • The Guideline 2.8.1. in case of BOT cases prior to the 2003 Order. It says that revenue/royalty share will be taken into account as a cost in order to avoid likely loss to the operator. In disallowing part of the royalty a loss does occur in the return allowed by TAMP. Hence if a loss arises full royalty is to be allowed. • It is incorrect to use the NPV of the cash flow to the Port over the period of the Agreement for the determination by TAMP of the quantum of royalties paid. Using such a method results in loss to the operator in determining the tariff. • Guidelines 2.8.1 states that the royalty / revenue share shall be subject to the maximum amount quoted by the next lowest bidder. The amount quoted by the next lowest bidder over the period of the agreement was ₹4345 crores against ₹4039 crores by NSICT and the average royalty per TEU of the next lowest bidder was ₹2617 against ₹2601 of NSICT. Hence full royalty paid by NSICT must be allowed. • Even if Guideline 2.8.1. is deemed applicable, the said Guideline on a plain reading states that the royalty / revenue share shall be allowed to the maximum amount quoted by the next lowest bidder. NSICT's royalty is lower than the second bidder. Thus NSICT's full royalty needs to be allowed. There can be no other interpretation and hence the position adopted in the March 2006 Order of applying the net present value by TAMP cannot be adopted. Hence to reiterate full royalty needs to be considered in the tariff computation.
	(b). From the figures furnished by NSICTPL in Form – 3B, it is not clear as to how the NSICTPL has arrived at the per TEU royalty figures for the years 2009 to 2014. The NSICTPL to furnish necessary workings in this regard.	The concession agreement requires payment of royalty on per TEU basis irrespective of actual revenue earned. Though the tariff rate applicable for 40' container is 1.50 times 20' container, the royalty outgo is twice resulting in very low /

<table>
<tr><td></td><td></td><td>negative margin on 40’ containers at present tariff.

▪ The royalty outgo for 2009 to 2014 is summarised along with percentage of realization per TEU at present tariff.

▪ In form 3B, the royalty for the period 2009 to 2011 is computed as allowed under order of 30th December 2008, Annexure 3 (3) item number 14. Hence the per TEU royalty is lower than actual payout.

▪ For the period 2012 to 2014 has been calculated on actual amount to be paid as per concession agreement.

▪ Exact computation of royalty figures indicated in form 3 B is furnished.

A table showing the per TEU rate of Royalty paid/ to be paid by NSICTPL for the years 2009 to 2014 as per the Licence Agreement is given below:

<table>
<tr><th>Year</th><th>Rate per TEU (in ₹)</th></tr>
<tr><td>2009</td><td>Jan to Jun – 1542
Jul to Dec – 1960</td></tr>
<tr><td>2010</td><td>Jan to Jun – 1960
Jul to Dec – 2086</td></tr>
<tr><td>2011</td><td>Jan to Jun – 2086
Jul to Dec – 2218</td></tr>
<tr><td>2012</td><td>Jan to Jun – 2218
Jul to Dec – 2361</td></tr>
<tr><td>2013</td><td>Jan to Jun – 2361
Jul to Dec – 2510</td></tr>
<tr><td>2014</td><td>Jan to Jun – 2510
Jul to Dec – 2670</td></tr>
</table></td></tr>
<tr><td>(vi).</td><td><u>Equipment Hire Charges</u>:

With reference to the estimated equipment hire charges, NSICTPL to furnish the following:</td><td></td></tr>
<tr><td></td><td>(a). List showing the assets taken on hire/ estimated to be taken on hire during the years 2009 to 2014.</td><td>The only assets taken on hire (included under the equipment hire charges) are Trailers for Inter Terminal movement of containers & utility vehicles used in the terminal.</td></tr>
<tr><td></td><td>(b). The latest contract copy with reference to each of the equipment taken on hire to be furnished.</td><td>Latest contract copies of the ITV vendor have been furnished.

(The NSICTPL has furnished copies of the Contract entered by it with private parties for providing of Tractor Trailers. All the contracts are valid till 31.01.2013).</td></tr>
<tr><td></td><td>(c). The NSICTPL to furnish detailed workings to arrive at the equipment hire charges estimated for the years 2012 to 2014.</td><td>(The NSICTPL has furnished the necessary workings.)</td></tr>
</table>

(vii).	**<u>Insurance</u>**: The NSICTPL to furnish the basis and the workings for the estimated insurance cost. The estimates of insurance cost to be justified with reference to actual payment made to insurance company(ies) during the years 2009 to 2011. A latest copy of the Agreement entered into with insurance company(ies) to be furnished.	The major component of the insurance cost is the insurance on the terminal equipment **–Port Package policy.** Copy of the latest Port Package Insurance policy has been furnished. The total insurance for the period 20010-11 is ₹201.43.The estimates for the periods 2012 to 2014 have been taken considered escalation of 6% in first year and subsequently 9.5%.
(viii).	**<u>Other expenses</u>**:	
	(a). The items considered under the said head of expenditure to be listed out.	The items considered under said head of expenditure is listed below: Contract Labour / casual - ops Staff Welfare General Operations Security Charges We draw the attention of the Authority to increase in CISF costs payable to the Port Authority as required under concession agreement. These costs have witnessed a significant increase vide letter received from the Port especially in view of sixth pay commission. The estimated costs for 2012 – 14 are revised based on that. The charge for April 2011 to December 2011 covers the arrears for previous years.
	(b). The estimated other expenses for the years 2012 to 2014 to be justified with reference to the actuals during the years 2009 to 2011.	For 2012 the existing contracts as far as applicable have been considered for estimation. For 2013 and 2014 cost escalation has been considered at ruling inflation of 9%.
(ix).	**<u>Technical Services Fee</u>**: (a). The NSICTPL to establish the reasonableness of the actual/ estimated technical services fee in the cost statement for all the years under consideration i.e. 2009 to 2014 applying the yardstick of "arms length relationship" as required under clause 2.8.2. of the revised tariff guidelines.	 The technical service agreement is with DPW FZE. DPW FZE has expertise in developing, operating, marketing and administering container facilities in the training of the necessary work force in the recruitment of qualified personnel and in the provision of management services. DPW FZE has entered into an agreement with NSICT for rendering technical, management, financial and other services for efficient management and operation of port. The current efficiency of NSICT as compared to the Public sector ports is resultant of the guidance given by DPW FZE. The Income tax authorities had taken a view of allocating equal percentage of fees for each service indicated in the management fees agreement. In a particular year, where for some of the areas where services were not rendered /

		proof of services rendered could not be furnished, the department proceeded with disallowance of those percentage of services. This basis of disallowance is not rational in case of agreement wherein a bouquet of services needs to be provided on need based requirement. The fees cannot be allocated equally to each element of services listed in the management fee agreement. Hence we believe the entire fee payment should qualify as allowable expense for the purpose of computing the tariff. While the Income tax authorities have disallowed part of the fees paid, NSICT has not disputed the same as it has been covered under the sec 80IA provisions of the Income Tax Act which gives a tax holiday for 10 years and hence there was no resultant benefit by litigating the same. However NSICT has filed letters with the Income Tax dept to convey its protest against such disallowance and has reserved its right to challenge similar disallowance in past/future years.
	(b). Document establishing the remittance of TSF for the year 2009, 2010 and 2011 to be furnished.	Documents for the remittance of TSF have been furnished.
(x).	**<u>Overheads</u>**: (a). The NSICTPL to list out the items of expenditure considered under the management and administration overheads and furnish detailed workings for the expenditure under this head for all the years under consideration.	The management and administration overheads represent the costs towards the salary and other benefits to General Management staff. The details of expenditure considered under this head is listed below: Basic Salary Variable Allowance Statutory Bonus Performance Bonus Mediclaim Premium Provident Fund Provident Fund & Administrative charges Leave Encashment Trainee Salary Superannuation Gratuity Worksmen compensation claim Reimbursement of Conveyance plan
	(b). The estimated management and administration overheads for the years 2012 to 2014 is around 12% more than the estimates for respective previous year. The NSICTPL to justify the estimates, with reference to the actuals during the years 2009 to 2011.	The average salary increase given to management staff is approx 12 to 13% over the previous year. Besides estimate for 2012 to 2014 considers the full cost of the positions which have remained vacant in the previous year.

<table>
<tr><td></td><td>(c). The items considered under 'General Overheads' to be listed out and detailed workings under this head for all the years under consideration may also be furnished. the estimates to be justified with reference to the actuals during the years 2009 to 2011.</td><td>The list of items considered under General Overheads is given below:

Printing
Stationery
Communication - Telephone
Communications - Lease Line
Communication - Mobiles
Bank Charges
Office General Expense
Dues and Subscriptions
Courier and Postage

Existing contracts have been used to estimate some cost heads the overall Cost escalation is at the average 6% over previous year.</td></tr>
<tr><td>(xi).</td><td><u>Depreciation</u>:
NSICTPL to furnish detailed workings for the estimated depreciation for all the years under consideration bearing in mind clause 2.7.1. of the revised tariff guidelines. The rates of depreciation adopted may also be furnished giving reference to the Companies Act or provisions of concession agreement, as the case may be.</td><td>Please refer to form 4 A indicating depreciation amount charges for each head of assets. The depreciation rates used are summarized as under :-

Depreciation is provided using the Straight Line Method (‘SLM’) as per the useful lives of the assets estimated by the management or at the rates prescribed under schedule XIV of the Companies Act, 1956 whichever is higher. Depreciation on additions/deletions of fixed assets made during the year is provided on pro-rata basis from/to the date of such additions/deletions.

The key assets and related depreciation rates are:

<table>
<tr><th>Asset</th><th>Rate</th></tr>
<tr><td>Leasehold improvements</td><td>Amortized over the lease period</td></tr>
<tr><td>Buildings (Refer note (a) below)</td><td>4%</td></tr>
<tr><td>Plant and machinery</td><td></td></tr>
<tr><td>- Tractors and trailers</td><td>11.31%</td></tr>
<tr><td>- Boats and mobile fuel tanker</td><td>20%</td></tr>
<tr><td>- Reach stackers and Empty handlers</td><td>10.34%</td></tr>
<tr><td>- Simulator</td><td>33.33%</td></tr>
<tr><td>- Quay cranes, rubber tyre gantries, rail mounted gantries</td><td>10.34%</td></tr>
<tr><td>- Other</td><td>5.28%</td></tr>
<tr><td>Motor vehicles and furniture and fixtures</td><td>20%</td></tr>
<tr><td>Computers</td><td>33.33%</td></tr>
</table>

(a) Set up cost is capitalized as buildings and is amortized over a period of 25 years.</td></tr>
<tr><td>5.</td><td><u>Capital employed</u>:</td><td></td></tr>
<tr><td></td><td><u>Fixed Assets</u>:</td><td></td></tr>
<tr><td></td><td>(a). The Form – 4A furnished by NSICTPL is incomplete. The NSICTPL to furnish a complete and updated Form – 4A incorporating details for the years 2009 to 2014.</td><td>The NSICTPL has furnished the details of actual fixed assets for the period 2009 to 2011.

Since the order for 2008 and 2009 passed</td></tr>
</table>

		by the Authority considered the gross value of normative fixed assets as at 1st January 2009 and stated that :- It may be relevant here to point out that the gross value of assets considered now will be followed unchanged in the subsequent tariff determination of NSICT. Even if NSICT puts in more investment, it will be taken for the purpose of improving efficiency or handling volumes over and above the standard capacity and therefore the cost of such investment should be met by the operator out of the revenue from the additional volumes. (Order 2008 Para 13 (IV) (a)). Based on the above the particulars for 2012 to 2014 are not required for the tariff assessment.
	(b). The NSICTPL to furnish details regarding the actual number of handling equipment, gross value of each of the equipment and the date of their commissioning at the NSICTPL.	The NSICTPL has furnished the requisite details.
	(c). The NSICTPL to furnish Form – 4B giving full details with regard to the additions to the gross block for the years 2012 to 2014, if any.	As per concession agreement the equipment specified needs replacement during 2017 – 2021. These replacement dates were based on the assumption that the terminal will deliver volume of 600,000 TEUs. As the Authority is aware that the volumes actually handled are significantly higher and the associated wear and tear to these equipment may require replacement of key equipments prior to 2017. However the proposal has been prepared based Capital employed taken as the gross value of the normative gross fixed assets as at 1 Jan 2009 as per 2008 order para 13 (iv) which states that this capital employed would be considered for all subsequent tariff revision. Even if NSICT puts in more investment, it will be taken for the purpose of improving efficiency or handling volumes over and above the standard capacity and therefore the cost of such investment should be met by the operator out of the revenue from the additional volumes. Based on that in spite of need to replace the equipment, additions to key Fixed assets for years 2012 to 2014 are not considered.
	(d). The additions to the gross block, if any, during the years 2012 to 2014 to be supported with documentary proof and the present status of these proposed investments also to be furnished.	Not applicable as explained in (c) above.

	(e). It to be noted that completed and commissioned assets alone will be counted for capital employed and work-in-progress should be excluded. A confirmation in this regard to be furnished.	We confirm that only completed and commissioned assets have been included in the normative gross fixed assets.
6.	**Working Capital**:	
(i).	The NSICTPL does not appear to have considered Working Capital as part of Capital employed for the years 2011 to 2014. The NSICTPL to compute working capital keeping in mind the stipulation contained at Clause 2.9.9 of the tariff guidelines of March 2005.	The Capital employed has been taken as the Gross Value of Normative Fixed Assets as 1st January 2009 as the 2008 Order Para 13(iv)(a) states that this capital employed would be considered for all subsequent tariff revisions. The details required for working capital estimate are therefore not relevant.
(ii).	As stated earlier, while furnishing the complete and updated Form – 4A for the years 2012 to 2014, the working capital components also to be furnished.	Please refer to response under (i) above
D.	**Scale of Rates**:	
(i).	The NSICTPL has formulated its proposed Scale of Rates considering an increase of 37.50% over the tariff prevailing at NSICTPL during the year 2011. The benefit of productivity improvements accruing to users justifying this hike to be listed out.	The Benchmark level of productivity considered by NSICTPL for the proposed scale of rates is 20 moves per hour which is committed as per the concession agreement. The proposed increase in tariff is to compensate for the increase in various costs.
(ii).	The NSICTPL to furnish detailed working with cost elements considered to arrive at the charges proposed for normal containers, ICD containers, Transhipment containers, hazardous and Over Dimensional Containers.	NSICTPL does not maintain activity based books of accounts, hence there are no records for the costs for individual activity as required. However the tariff increase percentage proposed is common for all tariff items in line with the general increase/ decrease in stevedoring rates approved by the authority from inception of NSICTPL tariff.
(iii).	Similar working with cost elements considered to be furnished towards the charges proposed for services for hatch covers, restows, shut out, storage and other services.	NSICT does not maintain activity based books of accounts, hence there are no records for the costs for individual activity as required. However the tariff increase percentage proposed is common for all tariff items in line with the general increase/ decrease in stevedoring rates approved by the authority from inception of NSICT tariff. Should you require any further clarification/ details we would be glad to provide the same.

7. The JNPT was also requested vide our letter dated 28 November 2011 to furnish the information / clarifications. After reminders, the JNPT under cover of its letter dated 2 February 2012 has responded:

<table>
<tr><th>Sl. No.</th><th>Queries raised by us</th><th>Response received from JNPT</th></tr>
<tr><td>(i).</td><td>Actual traffic of NSICTPL during the calendar years 2009 and 2010. The actual traffic of NSICTPL from January 2011 to October 2011 may also be furnished.</td><td><table><tr><td>Year</td><td>Traffic (in TEUs)</td></tr><tr><td>2009</td><td>1486381</td></tr><tr><td>2010</td><td>1572366</td></tr><tr><td>2011</td><td>1449653</td></tr></table></td></tr>
</table>

<table>
<tr><td>(ii).</td><td>JNPT to furnish the traffic forecast of NSICTPL terminal for the years 2011 to 2014 as per the port's business plan / annual plan / five year plan.</td><td>The traffic forecast of NSICTPL for the XIIth Five Year Plan projected by JNPT is a s under:
<table>
<tr><th>Year</th><th>Traffic (in million TEUs)</th></tr>
<tr><td>2012-13</td><td>1.52</td></tr>
<tr><td>2013-14</td><td>1.55</td></tr>
<tr><td>2014-15</td><td>1.57</td></tr>
<tr><td>2015-16</td><td>1.60</td></tr>
<tr><td>2016-17</td><td>1.62</td></tr>
</table></td></tr>
<tr><td>(iii).</td><td>The actual Royalty/ Revenue share paid by NSICTPL to be furnished for the calendar years 2009 to 2011.</td><td>The actual Royalty/ Revenue share paid by NSICTPL for the calendar years 2009 to 2011 is as follows:
<table>
<tr><th>Year</th><th>Royalty (₹ In Crores)</th></tr>
<tr><td>2009</td><td>260.29</td></tr>
<tr><td>2010</td><td>317.75</td></tr>
<tr><td>2011</td><td>311.82</td></tr>
</table></td></tr>
<tr><td>(iv).</td><td>JNPT to confirm that the per TEU royalty rate furnished in Form – 3B of the proposal of NSCITPL is in line with the provisions of the Licence Agreement.</td><td>The per TEU royalty rate as per provisions of the Licence Agreement is as follows:
<table>
<tr><th>Period (3rd July to 2nd July)</th><th>Rate per TEU</th></tr>
<tr><td>2008-09</td><td>1194</td></tr>
<tr><td>2009-10</td><td>1542</td></tr>
<tr><td>2010-11</td><td>1960</td></tr>
<tr><td>2011-12</td><td>2086</td></tr>
<tr><td>2012-13</td><td>2218</td></tr>
<tr><td>2013-14</td><td>2361</td></tr>
</table></td></tr>
<tr><td>(v).</td><td>With reference to mixed train handling, the JNPT to furnish the following:</td><td></td></tr>
<tr><td></td><td>(a). Year-wise payments received by JNPT from NSICTPL from the year 2009 till date.

(b). Year-wise payments made by JNPT to NSICTPL from the year 2009 till date.</td><td>With reference to mixed train handling, year-wise payments by NSICTPL to JNPT is as follows:
<table>
<tr><th>Year</th><th>Amount in ₹</th></tr>
<tr><td>2009</td><td>74085600</td></tr>
<tr><td>2010</td><td>73484400</td></tr>
<tr><td>2011</td><td>58109600</td></tr>
</table>
No payment have been made by JNPT to NSICTPL as JNPT are always handling more number of mixed containers on their behalf than by NSICTPL on behalf of JNPT and bills are being raised only for the net TEUs handled.</td></tr>
</table>

8.1. A joint hearing in this case was held on 19 December 2011 at the Office of the Authority. The NSICTPL made a power point presentation mainly touching upon the main infrastructure available at JNPT, impact of royalty and escalation in operating cost. The NSICTPL, JNPT and the users made their submissions.

8.2. As decided at the joint hearing, the BCHAA and the IMC vide their letter dated 22 December 2011 and 23 December 2011 respectively have furnished their written comments on the NSICTPL proposal in reference.

9. 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 will also be made available at our website http://tariffauthority.gov.in.

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

(i). The Scale of Rates of NSICTPL was last revised in December 2008 with a tariff validity period till 27 January 2012. Though the NSICTPL has submitted its proposal for review of its tariff, it has requested to keep on hold its tariff revision till the revised guidelines are issued by the Government. The tariff guidelines announced by the Government in March 2005 as a policy direction under Section 111 of the MPT Act to this Authority is in force now. Tariff review has to be undertaken when due and by following the tariff guidelines that are in force at the material time. It is relevant here to mention that the Indian Private Ports & Terminals Association (IPPTA) requested the Government in August 2011 to advise this Authority to keep on hold the revision of tariff of its members till such time the new tariff guidelines are announced by the Government. We have not received any advice from the Government with regard to the request made by the IPPTA. Therefore, this Authority is not in a position to accede to the request of the NSICTPL to keep on hold its tariff revision till the new tariff guidelines are announced by the Government.

(ii). The NSICTPL under cover of its letter dated 27 October 2011 has filed its proposal for review of its existing tariff. This proposal was taken up for consultation with the relevant users. The cost statement furnished by NSICTPL under cover of its letter dated 27 October 2011 along with subsequent additional information/ clarification furnished by NSICTPL has been relied upon in this analysis. Incidentally, though the NSICTPL maintains its books of accounts on Financial Year basis, it has furnished estimates for fixation of tariff following the Calendar Year basis for the years 2012 to 2014.

(iii). As mentioned in the earlier part of this Order, the NSICTPL has requested to consider its tariff proposal based on the normative capacity based approach as followed in the tariff Order of December 2008. Accordingly, it has proposed to restrict traffic volumes to the level of normative capacity at 1195740 TEUs as considered in the tariff Order of December 2008 and has furnished the estimates accordingly for the years 2012 to 2014. Based on the cost position calculated for a traffic of 1195740 TEUs for the years 2012 to 2014, the NSICTPL has sought an across the board increase of 37.50% over the level of tariff prevailing in the year 2011.

(iv). The NSICTPL has considered its quay capacity at 1195740 TEUs, based on the standard capacity as determined in the tariff Orders of September and December 2008. The NSICTPL has stressed that the standard capacity once fixed cannot change, especially when there is no change in the physical infrastructure. In this regard, it may be recalled that the capacity of 1195740 TEUs as assessed in the tariff Orders of September and December 2008 Orders of NSICTPL was based on the norm of 1 quay crane for every 100 metres of quay length.

It may also be recollected that in the tariff Order no.TAMP/40/2008-JNPT dated 25 February 2009 relating to fixation of upfront tariff for container handling terminal at the JNPT, this Authority has approved the norm of 1 quay crane for every 83.33 metres of quay length for JNPT, based on the analysis furnished by JNPT, which is the licensor port for NSICTPL. The JNPT had also, interalia, stated that the actual position in this regard prevailing in its other terminals also justified the position of 1 quay crane for every 83.33 metres of quay length. The upfront tariff guidelines of 2008 clearly permit this Authority to adjust the norms indicated therein, based on the justification furnished by the Port Trust and the port specific conditions. Accordingly, the updated norm was approved based on the analysis of JNPT which in turn relied upon the position prevailing at the Port. The fact relating to updated norms was within the knowledge of NSICTPL (DP World Nhava Sheva), as the relevant upfront tariff passed for JNPT has been forwarded to DP World also, as it was consulted in the relevant proceedings. The updated norm of

1 quay crane per 83.33 meters of quay length was adopted to assess the capacity of Gateway Terminals India Private Limited (GTIPL), another private terminal operator at JNPT, while deciding their tariff case very recently.

Considering the updated norm of 1 quay crane for every 83.33 metres of quay length, the number of quay cranes works out to 8 quay cranes at NSICTPL. Incidentally, the NSICTPL has also deployed 8 number of quay cranes in its terminal. If deployment of 8 number of quay cranes, which is the factual position at NSICTPL, is taken into account, the capacity of the terminal works out to 1594320 TEUs at 70% utilisation, as against the quay capacity considered by NSICTPL at 1195740 TEUs.

(v). In the tariff Orders of September 2008 and December 2008, a standard capacity based method was adopted to fix tariff for NSICTPL. In the said approach, the traffic projection for the future period was restricted to the level of the standard capacity of the terminal which was determined at 1195740 TEUs following the formula prescribed in the upfront tariff guidelines of 2008. The operating cost and investment were also restricted to the level of standard capacity.

The standard capacity approach adopted in the case of fixation of tariff of NSICTPL in the year 2008, has not been applied for deciding any of the tariff cases decided by this Authority after deciding the case of NSICTPL. Even in the tariff cases recently decided by this Authority relating to the proposals filed by the other container terminals like Chennai Container Terminal Private Limited (CCTPL) and Chennai International Terminal Private Limited (CITPL) at the Chennai Port Trust vide tariff Order dated 25 March 2011 and 9 January 2012 and in the case of GTIPL at JNPT vide tariff Order dated 19 January 2012, the standard capacity approach was not applied. The tariff guidelines of 2005 require adoption of actual portwise cost plus approach. Clause 2.4.1 of the said tariff guidelines prescribes continuance of port-wise cost plus return on capital employed approach for fixing tariff. Clause 2.5.1 specifically mentions about consideration of traffic projections and expenditure estimates for the future period while fixing tariff under cost plus method.

Clause 2.9.10 of the tariff guidelines, which governs the manner of allowing the admissible rate of return on the capital employed, links the return to capacity utilisation of 60% and above. It should be noted that the mention made in the said clause 2.9.10 about standardization of the method of determining designed capacity is in the context of allowing maximum return on capital employed.

(vi). Clause 2.13 of the tariff guidelines of 2005 mandates review of the actual physical and financial performance of the Major Port Trusts and private terminals at the end of the prescribed tariff validity period with reference to the projections relied upon at time of fixing the prevailing tariff.

The NSICTPL is of the view that since the existing tariff has been determined on standard capacity approach, the past period analysis in its case is not relevant. For the purpose of analysing the performance variation, the estimates relied upon in the immediate preceding tariff Order is to be compared with the actuals of the corresponding period. In the case of NSICTPL, the immediate preceding tariff Orders are the Orders passed in September 2008 and December 2008. Though the standard capacity based approach was adopted in the above said tariff Orders of 2008, the estimated position of NSICTPL for the years 2009 to 2011 based on traffic projections was also considered which eventually decided the quantum of pass through of royalty to be allowed.

Therefore, in order to assess the performance of NSICTPL as stipulated in Clause 2.13 of the tariff guidelines of 2005, the estimates relating to the estimated traffic of 1471313 TEUs considered in the tariff Order of December 2008 for the years

2009 to 2011 and the actuals for the corresponding period is compared for the purpose of this analysis.

As stated earlier, though the NSICTPL maintains its books of accounts on Financial Year basis, it has furnished estimates for fixation of tariff following the Calendar Year basis. Hence, the actuals for the period January 2009 to March 2009 (covered by the Annual Accounts for the year 2008-09), 2009-10, 2010-11 are analysed. The estimates for the period from April 2011 to December 2011 are also considered in the past period analysis. In short, the actual physical and financial performance of the operator for the three calendar year period of 2009 to 2011 is analysed.

(vii). With reference to a specific request to NSICTPL to furnish actuals for the period from January 2011 to October 2011, duly certified by a Chartered Accountant, though the NSICTPL has furnished the actuals, the actuals have not been certified by a Chartered Accountant by NSICTPL on the ground of shortage of time. The NSICTPL, however, agreed to furnish the same if this Authority wishes to have the traffic and financial results certified by a Chartered Accountant, on hearing from us. In this regard, even though the NSICTPL had sufficient time of more than a month, it is not clear as to why the NSICTPL did not furnish the actuals certified by a Chartered Accountant. Exchange of further correspondence in this regard with NSICTPL would have further delayed the processing of the proposal of NSICTPL to have a notified Scale of rates of NSICTPL in place of the existing Scale of Rates, the validity of which has already expired on 27 January 2012. Since the NSICTPL has reported that the financial cost position estimated by it for the period from April 2011 to December 2011 is based on the actuals upto November 2011, we have relied upon this position in the analysis of this case. The estimates for the year 2011 would be replaced with actuals, in the next review of tariff of NSICTPL, so as to determine the actual position of surplus/ deficit for the year 2011.

(viii). The performance of NSICTPL during the period from January 2009 to December 2011 is analysed below:

(a). As brought out earlier, this Authority in its order of December 2008 allowed an across the board increase of 18% in the then existing Scale of Rates of NSICTPL for the year 2009 and a graded increase of 3.27% and 3.86% over the tariff of the respective previous years for the subsequent two years i.e. 2010 and 2011. Since the impact of the upward revision of tariff is reflected by the actual income, the estimated income for the period from January 2009 to December 2011 is updated to reflect the increase granted, so as to enable a correct comparison between the actuals and the estimates.

(b). In the tariff Order of December 2008, the traffic was estimated at 1471713 TEUs each for the years 2009 to 2011 respectively. On pro-rata basis, traffic handled for the period from January 2009 to March 2009 is 363,505 TEUs. It has handled 1532075 TEUs and 1537240 TEUs during the years 2009-10 and 2010-11 respectively. For the period of 9 months i.e. from April 2011 to December 2011 during the year 2011-12, the NSICTPL has estimated traffic to the tune of 1078500 TEUs. Subsequently, the JNPT has communicated that NSICTPL has handled 1087358 TEUs during the period of 9 months from April 2011 to December 2011. The actual traffic position reported by JNPT for the period from April to December 2011 is considered in this analysis. To summarise, the following is the actual traffic position:

Year	Traffic (TEUs)
2008-09 (3 months from January to March)	363505
2009-10	1532075
2010-11	1537240
2011-12 (9 months from April to December	1087358

It is also relevant to mention here that the estimates of operating income, equipment running cost, royalty, equipment hire charges and technical service fee furnished by NSICTPL for the period of nine months of April to December 2011 is updated to reflect the increase in the traffic considered by us in the past period analysis.

(c). Inspite of a request made, the NSICTPL has not furnished workings to arrive at the actual income based on the volume of traffic under each category and the respective rates as prescribed in the SOR of NSICTPL for each of the years. However, with reference to our query, the NSICTPL has stated that it has offered some volume related rebates to customers on case to case basis to the tune of ₹968 lakhs and ₹330 lakhs during the years 2009-10 and 2010-11. Since the tariff fixing exercise cannot recognize the discounts/ rebates allowed by the private operator at his discretion, the amount of rebate furnished by NSICTPL is added back to the income reflected in the Annual Accounts for the years 2009-10 and 2010-11, as has been done in other relevant cases also.

(d). As seen from the Annual Accounts, the other income stream of NSICTPL includes Rent recovery, Serve from India Scheme entitlement, interest income, profit on sale of investments, dividend from investments, excess provision for earlier years written back, exchange gain, miscellaneous income and profit on sale of fixed assets.

The items of income namely Rent recovery, profit on sale of assets and miscellaneous income appear to be arising out of normal operation of NSICTPL. Therefore, these items of other income are considered in this analysis.

An amount of ₹490 lakhs is shown as Entitlement of Serve from India Scheme (SFIS) Scrip in the Annual Accounts for the year 2010-11. Generally, the value of this scrip is usable in lieu of the duty liabilities on the import of equipment, Spares and Consumables. With reference to the credit for the SFIS Scrip available, the NSICTPL has not explained the proposed utilization of the duty Credit in the years 2012 to 2014. The operator has not proposed any capital expenditure for the current tariff cycle from 2012 to 2014. The NSICTPL is advised to adjust the value SFIS against the capital expenditure and furnish the details of such adjustment in the next review of its tariff. Therefore, the amount of ₹490 lakhs is not treated as Other income in the Cost statement for the year 2010-11 in this review exercise. Incidentally, in the last tariff revision at Chennai Container Terminal Private Limited (CCTPL) also, SFIS credits were not considered as part of income but adjusted/ allowed to be adjusted in future against the duty payable on imported capital equipment.

Interest income is not considered as part of income in fixation of tariff of major port trusts/ private terminals. The exchange gain arising out of servicing of foreign currency loans are also not treated as part of income, as has been done in other relevant cases also.

It appears that the NSICTPL has parked its surplus cash in some investments and earned profit and dividend from such investments. Therefore, these items are not considered in this analysis.

Since provision kept for expenses is not treated as expenditure in the tariff fixation exercise, the provision added back to income is also not considered in this analysis, as has been done in other relevant cases also.

(e). Similarly, the interest expenditure, provision for doubtful debts, provision for slow moving inventory and the foreign exchange loss are also not treated as an item of cost in the tariff fixation exercise, as has been done in other relevant cases also.

(f). (i). The Annual Accounts for the years 2008-09 to 2010-11 show an amount of ₹20692.51 lakhs, ₹28395.07 lakhs and ₹31543.49 lakhs as Royalty respectively. The JNPT has confirmed the above royalty payments from NSICTPL. The NSICTPL in its proposal has claimed full pass through of royalty by reiterating the submissions made by it during the proceedings relating to the tariff Order of September 2008. The arguments put forth by NSICTPL in support of its claim for allowing full royalty as a pass through has already been elaborately dealt by this Authority in Paragraph no. 13(v) of the tariff Order of September 2008. Further, clause 2.8.1 of the tariff guidelines of 2005 requires royalty to be taken into account for tariff computation in the BOT cases where bidding process was finalized before 29 July 2003, in such a manner as to avoid likely loss to the operator on account of the royalty/ revenue share not being taken into account subject to a maximum of the amount quoted by the next lowest bidder. Besides this provision in tariff guidelines, the Government in the year 2006 had explicitly advised this Authority to strictly adhere to the tariff guidelines relating to royalty in the NSICTPL case. There does not appear to be any reason to review the matter again and accede to the request made by NSICTPL now.

(ii). It may be recalled that in the tariff Order of December 2008, royalty to the tune of 39.98%, 48.77% and 46.21% of the actual royalty has been allowed as a pass through for the years 2009 to 2011 respectively. Hence, for the purpose of review of past period performance, royalty is considered to the tune of 39.98%, 48.77% and 46.21% of the actual royalty reflected in the annual accounts for the respective years.

(g). Clause 2.8.2 of the tariff guidelines of 2005 stipulates consideration of 'Technical Services Fee' as admissible item of cost for tariff purposes only if its reasonableness is established applying the yardstick of 'arms length relationship' as per the Income Tax Act. While responding to a query to furnish the Income tax Assessment Orders, the NSICTPL has furnished the Income tax Assessment Orders for the financial years 2002-03 to 2007-08. From the copies of the Assessment Orders furnished by NSICTPL, it is seen that every year the Income tax authorities have allowed only 43% of the Technical Service Fee paid by NSICTPL during the respective years on the ground that NSICTPL has not furnished evidences for receipt of some of the services listed in the agreement relating to Technical Services. Though the NSICTPL has stated to not have disputed the disallowance of the amount as it enjoys tax holiday as per the provisions of sec 80IA of the Income Tax Act, it has indicated to have conveyed its protest to the Income Tax department against such disallowance and has reserved its right to challenge similar disallowance in past/ future years. The NSICTPL has requested to consider the entire payment as allowable expense for the purpose of computing the tariff.

Irrespective of the request of NSICTPL, since the tariff guidelines relating to admittance of TSF as pass through mandates establishment of reasonableness of the Technical Service Fee as determined by the Income tax authorities and since the Income tax authorities have not allowed the full amount of technical service fee in the past, it is not unreasonable to assume at this juncture that the same trend of partial admittance by the Income tax authorities would continue in the future also. The Technical Service fee based on the proportion of the amount allowed by the Income tax authorities in the past at 43% is considered, in this tariff fixation exercise also.

Nevertheless, for the purpose of the past period analysis, the actual technical service fee for the years 2009 to 2011 is considered. This is done since the difference between the actual technical service fee and that allowed as per the Income tax authorities is quantified separately for full adjustment, in line with the decision already taken by this Authority in the past i.e. tariff Order of July 2005 that any benefit allowed under this head would be set off in the future tariff. If actual Technical service fee as per the Assessment Order is considered in the Cost statement for the years 2009 to 2011, it would tantamount to double counting. Consideration of actual Technical service fee for the years 2009 to 2011 in the past analysis should not be construed as recognition of the full amount of technical service fee as admissible expenditure for the said period. The NSICTPL is advised to furnish copies of the Assessment Orders for the financial years 2008-09 to 2010-11 as and when they are obtained from the Income tax authorities. If the actual position that may be reflected in the Assessment Orders for the said years to be furnished by NSICTPL is found to be different from the position relied upon now, the excess or shortfall, if any, will be adjusted fully in the next review of tariff of NSICTPL.

(h). The write-off of preliminary expenses to the tune of ₹24 lakhs is considered for the years 2009 to 2011, as has been considered in the past.

(i). The Operating expenditure as shown in the audited annual accounts for the years 2009-10 and 2010-11 do not match with the sum total of the adjusted operating expenditure and overheads in the Cost statement (after reconciliation). The expenses in the Cost statement are higher to the tune of ₹7.19 lakhs in the year 2009-10 and lower by ₹10.32 lakhs in the year 2010-11. Suitable adjustments have been made under the head 'Other Overheads' in the cost statement to the said extent, to match with the audited position.

(j). For the purpose of determining the capital employed, the net block of assets as reflected in the annual accounts for the respective years is taken into account.

The NSICTPL has not included Working capital for the years 2009 to 2011. The working capital is considered in the following manner:

(i). As per Clause 2.9.9 of the tariff guidelines of 2005, sundry debtors balances will be two months' Estate income & Railway Terminal charges payable by Indian Railways. Since these items are not relevant in the case of NSICTPL, Sundry Debtors is considered as NIL.

(ii). As per the common Order passed by this Authority dated 30 September 2008, prepayments of certain expenses which flow from the provisions of the Licence Agreement can be considered as Sundry Debtors.

As per Article 7.3.5.2 of the License Agreement entered by the NSICTPL with the JNPT, the royalty is payable on 7th day of the subsequent month. That being so, the NSICTPL is not required to make any advance payment of royalty. Hence prepayment of royalty is not considered as part of current assets for the years 2009 to 2011.

(iii). The tariff guidelines of 2005 prescribe a limit of six months average consumption of stores excluding fuel incase of items of Inventory. 50% of the actual consumption of stores and spares as reflected in the Annual Accounts each for the years 2008-09 to 2010-11 is considered as Inventory forming part of current assets.

(iv). As per the tariff guidelines of 2005, cash balance is considered at one month's cash expenses, as stipulated in the guidelines.

(v). The figures of sundry creditors as reflected in the Annual accounts for the respective years is relied upon in the analysis.

(k). Subject to the above, the Working Capital works out to be negative. Hence, it is considered as NIL in the analysis.

As such, Capital Employed comprising of only Net Block of Assets works out to ₹55092.75 lakhs, ₹48088.10 lakhs, ₹41513.80 lakhs and ₹36293.30 lakhs for the years 2008-09 to 2011-12 respectively.

(l). In the last tariff Order of December 2008, Return on capital employed was allowed at 16% for the years 2009 to 2011. The same position is maintained while analyzing the actuals for the said years. While doing so, Return is allowed on the capital employed for a period of three months in the year 2008-09 and for a period of nine months in the year 2011-12.

(ix). (a). A statement showing the analysis of the performance of NSICTPL for the period from January 2009 to December 2011 is attached as **Annex - I**. A summary of the comparison of the actuals vis-à-vis the estimates considered in the last tariff Order is tabulated below:

(**₹ in Lakhs**)

Particulars	Estimates of December 2008 Order				Actuals					% Variation
	2009	2010	2011	Total	2008-09 (3 months)	2009-10	2010-11	2011-12 (9 months)	Total	
Traffic (in TEUs)	1471313	1471313	1471313	4413939	363505	1532075	1537240	1087358	4520178	2.41%
Op. Income	49064.89	50669.31	52625.14	152359.34	11276.40	53758.67	57096.28	41426.17	163557.52	7.35%
Total Exps (incl. Depn)	28017.81	32784.10	33493.41	94295.32	6182.59	31210.12	35224.47	27360.22	99977.40	6.03%

* The operating income estimates are moderated to reflect the across the board increase of 18% for the year 2009 over the then prevailing tariff of NSICTPL and a graded increase of 3.27% and 3.86% over the tariff of the respective previous years for the subsequent two years i.e. 2010 and 2011.

The details regarding the Actual Return earned by NSICTPL on the Capital Employed are given in the following table:

(**₹ in Lakhs**)

Particulars	2008-09 (3 months)	2009-10	2010-11	2011-12 (9 months)
Actual Surplus before Return earned by NSICTPL	5115.99	22647.63	21939.43	14065.95
Actual Capital Employed	13773.19	48088.10	41513.80	36293.30
Actual Return earned on capital employed	37.14%	47.10%	52.85%	38.76%
Return over and above 16%	132.15%	194.35%	230.30%	142.23%

(b). The additional surplus over and above the admissible cost and permissible return achieved by the NSICTPL during the said three years is found to be in the range of 132.15% to 230.30%, as against 16% return allowed in the last tariff Order. As per clause 2.13 of the tariff guidelines, if review of actual physical and financial performance for the previous tariff cycle shows the variation of more than + or – 20%, then 50% of such accrued benefit / loss has to be adjusted while revising the tariff. Therefore, there is a case to adjust the past surplus in the tariff of NSICTPL.

(c). Thus, the total past surplus has been assessed at ₹414.22 crores for the period from January 2009 to December 2011. As stipulated in clause 2.13 of the tariff guidelines of 2005, 50% of the surplus i.e. ₹207.11 crores is to be set off in the future tariff of NSICTPL, in addition to adjustment of additional Technical Service Fee, as discussed in the next paragraph.

(d). As discussed earlier, the Income tax authorities have disallowed actual Technical Service Fee to the extent of 57% and allowed only 43% of the actual Technical Service Fee in the past. Thus, the additional 57% of the actual Technical Service fee for the past years is quantified at ₹13.48 crores as shown below:

(**₹ in lakhs**)

Year	Actual Technical Service Fee	Technical Service Fee allowable as per Income Tax Order	Additional Amount
2000	0.00	0.00	0.00
2001	0.00	0.00	0.00
2002	0.00	0.00	0.00
2003	0.00	0.00	0.00
2004	0.00	0.00	0.00
2005 (9 months)	377.17	162.18	214.99
2006	320.75	137.92	182.83
2007	326.98	140.60	186.38
2008	327.24	140.71	186.53
2009	360.45	154.99	205.46
2010	346.33	148.92	197.41
2011	306.41	131.76	174.65
Total			**1348.25**

The amount of ₹1348.25 lakhs is to be set off fully in the future tariff in line with the decision already recorded in the tariff Order of July 2005 that any benefit allowed under this head would be set off in the future tariff.

(e). Thus, an aggregate amount of ₹220.59 crores (₹207.11 crores on account of past surplus and ₹13.48 crores on account of additional technical service fee) is available for adjustment. As was done in some earlier cases, this amount is adjusted in five equal installments commencing from the year 2012.

(f). It may be recalled that in the Order of NSICTPL passed in December 2008, it has been mentioned that the balance unadjusted past surplus of ₹173.87 crores pertaining to the past period (April 2005 to September 2008) is to be considered for set off from the tariff cycle commencing from January 2012. In this connection, the NSICTPL has argued that as per the guidelines only 50% of the surplus is to be adjusted. Therefore, the NSICTPL has stated that out of 50% of the surplus for the period January 2005 to September 2008 amounting to ₹108.68 crores, since ₹47.47 crores has already been adjusted in 2009 order, only a balance of ₹61.21 crores is to be adjusted in the forthcoming tariff revision.

In this regard, it is relevant to mention here that the decision to adjust the surplus of ₹217.36 crores pertaining to the period from April 2005 to September 2008 in five annual installments has already been taken in the tariff Order of December 2008. The tariff increase granted vide the tariff Order of December 2008 was subject to the condition of adjusting the surplus of ₹217.36 crores. Tariff approved vide December 2008 Order has been implemented without any demur by NSICTPL. Having enjoyed the beneficial part of the Order, NSICTPL cannot now seek to discard the onerous part of the same Order. Hence, out of the remaining four instalments of surplus pertaining to the period from April 2005 to September 2008, three instalments of past surplus is considered for adjustment during the years 2012 to 2014. The balance one instalment of ₹4346.70 lakhs is to be considered for set off in the year 2015, during the next review of its tariff.

(g). As stated earlier, surplus for the period from January 2009 to December 2011 has been assessed taking into account the estimates for the period from April 2011 to December 2011. The estimates for the period from April 2011 to December 2011 would, therefore, be replaced with actuals, in the next review of tariff of NSICTPL, so as to determine the actual quantum of past surplus for the corresponding period. If any difference in the surplus relied upon in this analysis is noted, such difference will be fully adjusted in the tariff to be set for the next cycle.

(x). Clause 2.5.1 of the tariff guidelines of 2005 requires the traffic projections to be in line with the projections in the five year/ annual plan and the current/ expected growth. Inspite of a specific request to furnish an alternate set of cost statements for the years 2012 to 2014, in the light of the actual/ estimated traffic and financial/ cost details for the year 2011 keeping in view the stipulations made in Clause 2.5.1. of the tariff guidelines of 2005, the NSICTPL has not furnished the requisite cost statement. In the absence of the requisite details, the cost statement of NSICTPL for the years 2012 to 2014 have been constructed based on the revised estimates of traffic, income, expenditure and capital employed, taking the year 2011 as base.

(xi). As stated earlier, NSICTPL has considered traffic of 1195740 TEUs each for the years 2012 to 2014 based on the normative capacity adopted by it. For the reasons stated earlier, the question of restricting the traffic for the years 2012 to 2014 based on the capacity of the terminal at 1195740 TEUs does not arise. Taking into account the position that the operating cost and capital cost of all the 8 cranes are accommodated in the cost statement, capacity of the terminal with 8 quay cranes works out to 1594320 TEUs at 70% utilisation.

Future traffic projections are made based on the actuals of 2011 which is the base year for the tariff cycle 2012-14. It may be recollected that in the Order disposing of the proposal received from Gateway Terminals India Private Limited (GTIPL), which is also a terminal operating at JNPT, a traffic growth of 3% year on year over the traffic for the year 2011 has been considered to estimate the traffic for the years 2012 to 2014. Both the terminals operate adjacent to each other in the same area. Thus, considering a traffic growth of 3% year on year, the traffic estimates for the years 2012 to 2014 work out to 1493305 TEUs, 1538104 TEUs and 1584247 TEUs respectively.

Clause 2.5.1 requires to consider traffic estimates in line with Five Year Plan / Annual Plan. It is noteworthy that the traffic forecast of NSICTPL as projected by JNPT for the XIIth Five Year Plan is 1.52 million TEUs, 1.55 million TEUs and 1.57 million TEUs for the financial years 2012-13 to 2014-15 respectively. If considered on a proportionate basis for the calendar years 2012 to 2014, the traffic estimates so adjusted works out to 1502453 TEUs, 1542500 TEUs and 1565000 TEUs for the years 2012 to 2014 respectively, which is very close to the traffic projections made by us considering the 3% year on year growth. That being so, it is found reasonable to consider same traffic growth of 3% incase of NSICTPL also. Accordingly, the traffic estimates is considered at 1493305 TEUs, 1538104 TEUs and 1584247 TEUs for the years 2012 to 2014 respectively.

While updating the traffic estimates for the years 2012 to 2014, the container mix of the various types of containers as projected by NSICTPL for its traffic estimate of 1195740 TEUs is maintained.

If at all, there is a significant reduction in the actual traffic handled by NSICTPL as compared to the traffic estimates relied upon now, it is open for the NSICTPL to seek an ahead of schedule review of its tariff in terms of clause 3.1.8 of the tariff guidelines of 2005.

(xii). The operating income estimated by NSICTPL in the cost statement for the years 2012 to 2014 is for a traffic of 1195740 TEUs. Inspite of a specific query, the NSICTPL has not furnished workings to arrive at the income estimates for the years 2012 to 2014. In view of the above, the estimated container handling income is calculated for the revised traffic estimates of 1493305 TEUs, 1538104 TEUs and 1584247 TEUs respectively at the level of tariff prevailing in the year 2011. As stated earlier, the container mix of the various types of containers as projected by NSICTPL for its traffic estimate of 1195740 TEUs is maintained.

The NSICTPL has stated to have applied an exchange rate of ₹45 per US$ to estimate the income from the dollar denominated tariff items. Normally, the dollar exchange rate prevailing at the time of finalization of the case in reference is considered as base to determine the income from the dollar denominated tariff items for the future period. However, given the sudden volatility leading to sharp weakening of the Rupee vis-à-vis the US dollar, it may not be possible to say for certain that this position will continue for next three years. The average exchange rate for the last year was ₹46.96 per US$, which is considered in the analysis for estimating of income from dollar denominated tariff items for the years 2012 to 2014, as has been followed in other relevant cases like GTIPL, Chennai International Container Terminal Private Limited (CITPL) and New Mangalore Port Trust (NMPT) in the recent past. In any case, exchange rate fluctuation may not be a significant issue in income estimation in this case since only limited tariff items are denominated in US$ terms in the Scale of Rates of NSICTPL.

In the absence of workings, the income estimated by NSICTPL from the dollar denominated tariff items like demurrage and Reefer connections have been updated in proportion to the increase in the estimates of traffic and to give effect to the exchange rate of ₹46.96 per US$.

The income estimated by NSICTPL from Miscellaneous Services and Other services is not assumed to move in tandem with the traffic and hence is retained at the level estimated by NSICTPL.

Further, it is understood that 15% of the total traffic being the ICD containers would attract the levy of ₹400/- per TEU towards Inter Terminal Rail Handling Operations (ITRHO). Relying upon the percentage of ICD containers as furnished by NSICTPL, the ITRHO income is calculated on the revised traffic estimates of NSICTPL for the years 2012 to 2014. The estimated ITRHO income works out to ₹900.07 lakhs, ₹914.55 lakhs and ₹941.99 lakhs for the years 2012 to 2014 respectively.

No traffic of coastal containers for the years 2009 to 2014 is reported by NSICTPL.

By considering the revised estimated traffic for the years 2012 to 2014 as explained earlier and by considering the Exchange rate of ₹46.96 per US$, the revised estimated income works out to ₹55034.33 lakhs, ₹56671.61 lakhs and ₹58052.18 lakhs for the years 2012 to 2014 respectively at the existing level of tariff.

(xiii). Clause 2.5.1 of the tariff guidelines of 2005 also requires that the expenditure projections of the major port trusts / terminal operators should be in line with traffic adjusted for price fluctuations with reference to current movement of Whole Sale Price Index (WPI) for all commodities announced by the Government of India. Accordingly, this Authority has decided to consider an escalation factor of 6% for the expenditure projections in the tariff cases to be decided during the year 2011-12, as communicated to all the major port trusts and private terminal operators including NSICTPL vide letter no. TAMP/27/2005-Misc dated 11 July 2011.

(xiv). It is relevant here to mention that the NSICTPL has generally considered the estimates relating to the period of 9 months of the year 2011 (i.e. April to December 2011) as the base to calculate the expenses relating to the years 2012 to 2014. In this regard, it is stated that generally the expenses relating to the entire previous year is considered as the base to arrive at the estimates of expenditure for the future period. In the case of NSICTPL, since the first three months of the year 2011 forms part of the financial year 2010-11, the NSICTPL is appeared to have considered the estimates relating to the remaining 9 months of the year 2011 as the base. In our analysis, however, the position for the entire year of 2011 (3 months of 2010-11 and 9 months of the year 2011-12) is considered as base to arrive at the estimates of expenditure for the future period.

(xv). The number of operating and direct labourers at 445 during the year 2011 has been estimated to continue for the years 2012 to 2014 by NSICTPL, which is relied upon in the analysis.

As against the average cost per operating and direct labour at ₹3.71 lakhs per annum during the year 2011, the NSICTPL has estimated an increase of around 17% in the average cost in the year 2012 and a further escalation of around 7.5% each during the years 2013 and 2014 as compared to the respective previous years. No documentary evidence to justify the exceptional escalation is furnished. The estimates for the years 2012 to 2014 are moderated by applying an escalation factor of 6% over the average cost per labour for the year 2011.

(xvi). The average number of maintenance labourers at 106 during the year 2011 has been estimated to increase to 118 employees during the years 2012 to 2014. The increase in the number of maintenance labour estimated for the years 2012 to 2014 is relied upon.

As against the average cost per maintenance labour at ₹5.35 lakhs per annum during the year 2011, the NSICTPL has estimated an increase of around 6% in the average cost in the year 2012 and a further escalation of around 10% each during the years 2013 and 2014 as compared to the respective previous years. The estimates for the years 2012 to 2014 is moderated by applying an escalation factor of 6% over the average cost per labour for the year 2011.

(xvii). The estimated Equipment running cost comprises of power cost, fuel cost and cost of repairs and maintenance. Each item of estimate is discussed in the following paragraphs:

(a). The NSICTPL has estimated electricity consumption of 15.30 units per TEU for the years 2012 to 2014 as against the actual power consumption of 11.87 units per TEU and 13.84 units per TEU during the years 2009-10 and 2010-11. The NSICTPL has attributed the year on year increase in the power consumption per TEU due to increase in the traffic of Reefer containers.

Looking into the container mix furnished by NSICTPL for the past years for the traffic of 1195740 TEUs, it is seen that out of the total traffic, the Reefer containers constitute around 3% of the total traffic for each of the year. Even from the container mix furnished by NSICTPL for the years

2012 to 2014, it is seen that the Reefer containers would constitute around 3% of the total traffic only. That being so, the argument put forth by NSICTPL for estimating an increase in the power consumption for the years 2012 to 2014 does not merit consideration. As such, the actual power consumption of 13.84 units per TEU during the year 2010-11 is taken as base and maintained for the years 2011 to 2014.

From the copies of the electricity bills furnished by NSICTPL for the months of August to October 2011, the average cost per unit of electricity works out to around ₹13 per unit. Incidentally, it may be recollected that in the Order disposing of the proposal received from GTIPL, which is also a terminal operating at JNPT, the unit rate of electricity applicable for the year 2012 has been considered at ₹13.10 per unit. The rate of ₹13.10 per unit is considered for the year 2012 and escalated by 6% per annum for the years 2013 and 2014, taking the estimates for the respective previous years as base.

Based on the average of the fixed power costs as reflected in the electricity bills of August to October 2011, the annual fixed cost is arrived for the year 2011 and escalated by 6% per annum for the years 2012 to 2014, taking the estimates for the respective previous years as base.

(b). The NSICTPL has estimated fuel consumption of 2.14 litres per TEU for the years 2012 to 2014 as against the actual fuel consumption of 2.05 litres per TEU and 2.02 litres per TEU during the years 2009-10 and 2010-11. The NSICTPL has estimated the fuel consumption at 2.01 litres per TEU during the nine months of the year 2011. The NSICTPL has not explained the reason for the increase in the per TEU fuel consumption. As such, the average fuel consumption of 2.01 litres during the year 2011 is taken as base and maintained for the years 2012 to 2014.

The unit cost of fuel considered by NSICTPL at ₹41.60 per litre for the year 2011 is updated to the prevailing rate of ₹45.28 per litre, which was considered in the case of GTIPL also. The unit cost of fuel for the year 2011 is escalated by 6% per annum for estimating the expenditure for the years 2012 to 2014.

(c). From the workings furnished by NSICTPL, it is seen that the NSICTPL has linked the repairs and maintenance to its estimated traffic of 1195740 TEUs and thus calculated the repairs and maintenance cost for the years 2012 to 2014. Since the Repairs and maintenance does not move in line with the traffic, the average estimated repair and maintenance cost for the year 2011 is taken as base and escalated by 6% per annum for the years 2012 to 2014, by considering the estimates for the respective previous year as base. It is relevant here to note that no addition/ deletion of assets are proposed during the years 2012 to 2014.

(xviii). As stated earlier, NSICTPL has sought full pass through of Royalty for the years 2012 to 2014. Clause 2.8.1. of the tariff guidelines of 2005 requires Royalty to be taken into account for tariff computation in the BOT cases where bidding process was finalized before 29 July 2003, in such a manner so as to avoid likely loss to the operator on account of royalty/ revenue share not being taken into account subject to a maximum of the amount quoted by the next lowest bidder.

Besides the provision in the tariff guidelines of 2005, the Government in the year 2006 had explicitly advised this Authority to strictly adhere to the tariff guidelines relating to royalty in the NSICTPL case. Accordingly, based on the advice of the Government this Authority *suo motu* passed an Order no. TAMP/15/2005-NSICT dated 7 March 2006 by allowing pass through of Royalty to the extent of second highest bidder in the case of NSICTPL. When the NSICT challenged before the

Hon’ble High Court of Bombay in the Writ Petition no.3434 of 2006, the Hon'ble High Court of Bombay vide its Order dated 17 May 2006 refused to grant interim stay of the operation of Order dated 7 March 2006.

Since the NPV of the revenue stream quoted by the second highest bidder was found to be 69.50% of the NPV of the bid of NSICTPL, a maximum 69.50% of the royalty quoted by NSICTPL can be admitted for tariff computation purpose, as per the tariff guidelines of 2005. Based on the above position, 69.50% of the Royalty amount payable by NSICTPL for the years 2012 to 2014 is considered as a pass through in this analysis.

The approach of considering Royalty upto the second highest bid as a pass through in the tariff computation is uniformly followed in all cases wherever Royalty/ Revenue share is admissible as an item of cost and adjustment of past surplus is made separately.

(xix). The Equipment hire charges estimated by the NSICTPL for the years 2012 to 2014 is towards hire of trailers for movement of containers from wharf to yard, wharf to ICD yard, hire of reach stackers and hire of utility vehicles. The NSICTPL has furnished contract copies in respect of hire of the trailers alone, which have a validity period till 31 January 2013.

In respect of the hire of trailers for movement from wharf to yard, the NSICTPL has considered a rate of ₹100/- per TEU, ₹109/- per TEU, ₹119/- per TEU and ₹131/- per TEU to estimate the equipment hire charges for the years 2011 to 2014. The hire charge of ₹100/- per TEU considered by NSICTPL is seen to be the highest rate in the slab wise structure rates prescribed in the contract furnished by NSICTPL. The NSICTPL has not furnished reasons for considering the highest rate per TEU to estimate the hire charges. We are also not in a position to verify this rate because the rates for the trailers mentioned in the contract copy are different and depend on the quantum of TEUs handled with trailers. Therefore, the rate of ₹100/- per TEU considered by NSICTPL for the year 2011 is relied upon in the analysis, subject to verification of actuals in this regard in the next review of tariff of NSICTPL. However, an escalation factor of 6% per annum is considered to arrive at the hire charge per TEU for the years 2012 to 2014, instead of the 9% escalation considered by NSICTPL.

In respect of the hire of trailers for movement from wharf to ICD yard, the NSICTPL has considered a rate of ₹190/- per TEU, ₹234/- per TEU and ₹256/- per TEU to estimate the equipment hire charges for the years 2011 to 2014, as against the rate of ₹110/- per TEU prescribed in the contract for the said movement. In the absence of any justification for considering higher rates, the rate of ₹110/- per TEU prescribed in the contract is taken as base and escalated by 6% per annum.

As stated earlier, as per the container mix furnished by NSICTPL, it is seen that ICD containers constitute 15% of the total traffic. For estimating the hire charge expenditure for movement from wharf to ICD yard, the NSICTPL has considered 22% of the total traffic as ICD containers. The reason for considering higher volume of containers for estimation of hire charge relating to ICD containers remains unexplained. In our analysis, the hire charge expenditure for movement from wharf to ICD yard is considered for 15% of the total traffic estimates.

With regard to hire of reach stackers, the NSICTPL has not furnished any documentary evidence. The hire charge of ₹70000/- per annum for the years 2012 to 2014 is considered, subject to verification of actuals in this regard in the next review of tariff of NSICTPL.

With regard to hire of utility vehicles also, the NSICTPL has not furnished any documentary evidence in support of the estimates. Since the utility vehicles are normally put into use by the port operator, the estimates of NSICTPL at ₹57.24 lakhs, ₹60.10 lakhs and ₹63.11 lakhs for the years 2012 to 2014 is relied upon in this analysis, subject to verification of actuals in this regard in the next review of tariff of NSICTPL.

(xx). The NSICTPL has not furnished workings to arrive at the estimated Insurance cost. The NSICTPL has furnished copies of the Insurance policy documents. As seen from the documents, the insurance cost relates to the assets and employee welfare. However, the estimates of Insurance cost furnished by NSICTPL could not be linked to the policy document furnished by NSICTPL. The NSICTPL has stated that for estimating the insurance cost for the years 2012 to 2014, it has considered an escalation factor of 6% for the year 2012 and 9.5% each for the subsequent two years. The estimates of average Insurance cost for the year 2011 is maintained for the years 2012 to 2014, in the absence of workings not being furnished by the NSICTIPL, as done in the case of GTIPL also.

(xxi). As reported by NSICTPL, the Other Expenses comprise of Cost towards contract/ casual labour for operations, staff welfare, general operations and security charges including CISF charges. The NSICTPL has not linked this expenditure to the projected traffic. The average cost towards contract/ casual labour for operations, staff welfare and general operations (excluding security cost) for the year 2011 is taken as base and escalated by 6% per annum, taking the estimates of the respective previous year as base.

With regard to CISF Security charges, as seen from the claim of JNPT in a communication to NSICTPL, the expenses are incurred by the JNPT and later recovered by it from the terminal operators. The NSICTPL has stated that they have not been billed by JNPT since 2004 and that the JNPT has raised a bill in 2011 intimating the likely charges to be recovered from NSICTPL in this regard. The NSICTPL has also furnished a copy of the letter from JNPT confirming this position. Incidentally, the expenses in this regard for the year 2011 include the arrears claimed by JNPT for the past period. Therefore, the estimates for the year 2011 cannot be taken as base. The amount of ₹453.74 lakhs estimated in this regard by NSICTPL for the year 2012 is found comparable to the amount claimed by JNPT for the year 2010-11 including service tax. This position is relied upon in the analysis. For the subsequent years, an escalation factor of 6% is considered.

(xxii). The NSICTPL has not furnished workings for the calculation of Technical service Fee (TSF). From the contract copy furnished by NSICTPL during the earlier review of its tariff, it is seen that there is a fixed as well as a variable component in the amount of TSF. The fixed component is 400000 US$ per annum and the variable component is 1.2% of the Profit before Interest, Tax, Depreciation and amortization expenses. Based on the above position and by considering an exchange rate of ₹46.96 per US$, the estimated TSF is worked out at ₹407.67 lakhs, ₹388.63 lakhs and ₹363.07 lakhs for the years 2012 to 2014 respectively at the existing level of tariff.

With reference to payment of TSF, as stated earlier, the Income tax authorities have allowed this expenditure only to the tune of 43% in the assessment Orders relating to the past. Hence it is reasonable to presume that such payment will be similarly treated for the years 2012 to 2014 also, by the Income tax department. Accordingly, 43% of the assessed amount of TSF is allowed as a pass through for the years 2012 to 2014. The NSICTPL is advised to furnish copies of the Assessment Orders for the years 2012 to 2014 as and when they are obtained from the Income tax authorities. If the actual position that may be reflected in the Assessment Orders for the said years to be furnished by NSICTPL is found to be different from the position relied upon now, the excess or shortfall, if any, will be adjusted fully in the next review of tariff of NSICTPL.

(xxiii). The NSICTPL has not separately claimed any allowance for efficiency gain, as it has maintained a stand of determining tariff with reference to the standard capacity of 1195740 TEUs, with perhaps an assumption that the revenue contribution from the actual volumes handled above the standard capacity so determined by it, would be the reward for efficiency. The users have urged for ensuring recognition of efficiency of the terminal by way of rewarding the terminal. Efficiency gain is to be assessed and factored in future estimates in terms of Clause 2.4.1 of the tariff guidelines of 2005.

Clause 2.4.1. of the guideline states that the benchmark for efficiency will be the average performance of the same operator at the same terminal achieved in the immediately preceding tariff cycle. For this purpose a comparison will have to be made of the cost reduction achieved by the operator in the immediately preceding tariff cycle with that of the tariff cycle, which preceded it.

It is necessary to make a comparison of the relevant items of cost incurred during the years 2009, 2010 and 2011 (covered by the tariff Order of December 2008) with the corresponding relevant items of actual cost incurred during the years 2005-06 to 2007-08 (covered by the tariff Order of July 2005). The computation of efficiency gain with respect to the cost items which are variable with traffic is explained hereinunder:

(a). Power cost:

The actual average power consumption for the years 2005-06 to 2007-08 as furnished by NSICTPL during the review of its tariff in December 2008 is 12.65 units per TEU. The actual power consumption reported by NSICTPL for the years 2009 to 2011 is 12.98 units per TEU. Thus, there is no reduction in the power consumption per TEU, to be factored as Efficiency gain on the part of the operator.

(b). Fuel cost:

The actual average fuel consumption for the years 2005-06 to 2007-08 as furnished by NSICTPL during the review of its tariff in December 2008 is 2.42 litres per TEU. The actual average fuel consumption reported by NSICTPL for the years 2009 to 2011 is 2.04 litres per TEU. Accordingly, there is a reduction in the fuel consumption per TEU by 0.38 litres. 50% of the Efficiency gain at 0.19 litres per TEU at the escalated unit rate of fuel on the revised estimated traffic is allowed for each of the years 2012 to 2014. It is to be noted that the estimates of fuel cost for the years 2012 to 2014 rely upon the fuel consumption of 2.01 litres per TEU.

(c). Equipment hire charges:

The actual average equipment hire charge for the years 2005-06 to 2007-08 as considered in December 2008 Order is ₹207.42 per TEU. The actual average hire charge per TEU reported by NSICTPL for the years 2009 to 2011 is ₹204.62 per TEU. Accordingly, there is a reduction in the hire charge per TEU by ₹2.80. 50% of the Efficiency gain at ₹1.40 per TEU at the estimated traffic is allowed for each of the years 2012 to 2014. It is to be noted that the estimates of equipment hire charge for the years 2012 to 2014 rely upon the per TEU rate of ₹127.45, ₹134.69 and ₹142.60 respectively.

Thus, the amount to be allowed on account of the Efficiency Gain in fuel and equipment hire charges together works out to ₹156.98 lakhs, ₹170.10 lakhs and ₹184.39 lakhs for the years 2012 to 2014 respectively, aggregating to ₹511.47 lakhs.

(xxiv). The Management and Administration Overheads mainly represents the costs towards salary and other benefits to the general management staff, as reported by NSICTPL. The estimated management and administration overheads for the years 2012 to 2014 is around 12% more than the estimates for the respective previous year. The reasoning given by NSICTPL is that an average increase of 12% to13% in salary is given and that it has considered the cost of all the positions which have remained vacant. The NSICTPL has not furnished any documentary evidence in support of its claim. The average for the year 2011 is taken as base and escalated by 6% per annum over the figures of the respective previous years.

(xxv). As seen from the details furnished by NSICTPL, it is seen that the General Overheads comprise of official and administrative expenses. For the purpose of estimation of expenses for the years 2012 to 2014, the estimates for the year 2011 is taken as base and escalated by 6% per annum over the estimates of the respective previous years.

(xxvi). Preliminary expenses written off to the tune of ₹24 lakhs per annum for the years 2012 to 2014 is in line with the approach adopted in the earlier tariff Orders NSICTPL and relied upon in the analysis.

(xxvii). For the purpose of estimation of Other overheads for the years 2012 to 2014, the estimates for the year 2011 is taken as base and escalated by 6% per annum over the estimates of the respective previous years.

(xxviii). The NSICTPL has not estimated any Finance and Miscellaneous Income and Expenditure for the years 2012 to 2014.

(xxix). Inspite of a specific request to furnish Form – 4A which gives details of Capital Employed with respect to the years 2012 to 2014, the NSICTPL has not furnished the same. The net block of assets for the year 2011 is taken as base and adjusted for depreciation, to determine the net block of assets for the years 2012 to 2014. It is relevant to mention here that inspite of a query in this regard, the NSICTPL has not furnished details of additions to its gross block of assets, if any, for the years 2012 to 2014.

(xxx). The NSICTPL has not claimed Workings Capital and return thereon. The Working Capital requirement is estimated in the following manner:

(a). As per Clause 2.9.9 of the tariff guidelines of 2005, sundry debtors balances will be two months' Estate income & Railway Terminal charges payable by Indian Railways. Since these items are not relevant in the case of NSICTPL, Sundry Debtors is considered as NIL.

(b). As stated earlier, since NSICTPL is not required to make any advance payment in line with the provisions of the License Agreement entered by the NSICTPL with the JNPT, no prepayment is considered as part of current assets for the years 2012 to 2014.

(c). The average Inventory considered for the years 2009-10 and 2010-11 in the past period analysis is considered for the years 2012 to 2014.

(d). Cash balance is considered at one month's cash expenses, as stipulated in the guidelines.

(e). The average current liabilities considered for the years 2009-10 and 2010-11 in the past period analysis is considered for the years 2012 to 2014.

(f). Subject to the above, the Working Capital works out to ₹179.14 lakhs, ₹447.50 lakhs and ₹739.59 lakhs for the years 2012 to 2014.

(xxxi). As such, Capital Employed comprising Net Block of Assets and Working capital works out to ₹29511.77 lakhs, ₹22819.47 lakhs and ₹16150.89 lakhs for the years 2012 to 2014 respectively.

(xxxii). As stated earlier, the capacity of NSICTPL has been assessed at 1594320 TEUs. This assessment is for the purpose of deciding the entitlement of NSICTPL for the maximum permissible level of Return on Capital Employed as per Clause 2.9.10 of the 2005 guidelines. Since the capacity utilization works out to more than 60%, Return on the Capital Employed at the rate of 16% is allowed for the years 2012 to 2014. It is to be borne in mind that the capacity of 1594320 TEUs is at 70% utilization.

(xxxiii).(a). Subject to the above discussions, the Cost statement has been modified. The modified Cost statement is attached as **Annex - II**. The results disclosed in the Cost statement prepared are summarized below:

(**₹ in crores**)

Particulars	2012	2013	2014	Total
Operating Income	550.34	566.72	580.52	1697.58
Net Surplus	151.81	146.69	136.11	434.62
Net Surplus as a percentage of Operating Income	27.59%	25.88%	23.45%	25.64% (Average)

In view of the surplus position as depicted in the Cost statement, there is no case for granting any increase in tariff as proposed by the NSICTPL. There is infact a strong case to effect a reduction in the existing level of tariff at NSICTPL.

(b). The average net surplus position of 25.64% is with reference to the estimated operating income for the years 2012 to 2014 at the existing tariff which includes the estimated income from rail handling operations of ICD containers (ITRHO) at ₹900.07 lakhs, ₹914.55 lakhs and ₹941.99 lakhs for the years 2012 to 2014 respectively. Since the tariff for the ITRHO containers is governed by a separate tariff Order and commonly applicable to all the terminals at JNPT, the reduction warranted by the cost position will not be applicable on the existing rate of ₹400 per TEU for ITRHO of ICD containers.

Taking into account the net surplus of ₹434.62 crores for the years 2012 to 2014 and considering the adjusted estimated operating income of ₹1670.02 crores (excluding ITRHO income) for the corresponding period, the average net surplus as a percentage of operating income works out to 26.02%.

(c). Further, it is to be recognized that by the time the Order in respect of NSICTPL is notified and implemented, it would almost be end of February 2012. As a result, the surplus needs to be adjusted by effecting a reduction in the existing tariff over the remaining tariff validity period of 2 years and 10 months.

The estimated Operating Income at the existing level of tariff excluding ITRHO income for the said period of two years and 10 months is ₹1579.79 crores. Thus, to set off the surplus of ₹434.62 crores in the said two years and ten months, the existing tariff requires to be reduced by 27.51%.

(d). However, it has to be borne in mind that any reduction in the existing tariff will result in a reduction in the profit and as a result corresponding reduction in the amount of technical service fee payable. Thus, after taking into account this factor, the reduction to be effected works out to the extent of 27.85%, which is explained below:

(**Figures in Percentage**)

Surplus		27.51
TSF impact on the above (27.51 * 1.2%)	0.330	
TSF impact on the above (0.33 * 1.2%)	0.004	0.33
Percentage reduction warranted		27.85

(e). Out of the total past surplus assessed at ₹220.59 crores, ₹132.36 crores is being adjusted during the years 2012 to 2014 forming part of the current tariff cycle and would leave an unadjusted balance surplus to the tune of ₹88.23 crores to be adjusted in the next tariff cycle of NSICTPL in two installments.

Further, the balance one installment surplus of ₹4346.70 lakhs relating to the period from April 2005 to September 2008 is also to be considered for set off in the year 2015, during the next review of its tariff. In short, a total surplus of ₹13170.41 lakhs is to be set off in the next tariff cycle.

(xxxiv). The proposal of NSICTPL is not based on itemwise cost for each tariff item. The NSICTPL was requested to furnish cost elements considered in the proposed charges. The NSICTPL has expressed its inability to provide such information, on the ground that it does not maintain cost details for the individual activities. Since the proposed tariff for individual services is not with reference to the cost of providing the respective services, it is possible that the deficit in one component of operation is cross subsidized by the surplus in other components. The NSICTPL is advised to gear up its internal system so that it can draw up its proposal supported by cost details for individual activities at the time of next review of its tariff.

(xxxv). In line with clause 2.18.2 of the tariff guidelines, the proposed note relating to penal interest for delayed payment by users/ refund by NSICTPL has been modified to reflect the prevailing Prime Lending Rate of State Bank of India at 14.75% plus 2%.

11. In the result, and for the reasons give above, and based on a collective application of mind, this Authority approves the revised Scale of Rates of the NSICTPL which is attached as **Annex - III**.

12.1. Considering the fact that the validity of the existing tariff has already expired on 27 January 2012, the revised Scale of Rates and conditionalities of the NSICTPL shall come into effect after expiry of 15 days from the date of notification in the Gazette of India and would be in force till 31 December 2014. The approval accorded would automatically lapse thereafter unless specifically extended by this Authority.

12.2. The validity of the existing Scale of Rates of the NSICTPL is deemed to have been extended beyond 27 January 2012 till the effective date of implementation of the revised Scale of Rates.

12.3. This Authority has relied upon the estimates for the years 2012 to 2014. Additional surplus, if any, arising due to variation in actual performance in the said years will be governed by the provisions of Clause 2.13 of the tariff guidelines of 2005 in the next review.

12.4. The tariff of the NSICTPL has been fixed relying on the information furnished by the operator and based on assumptions made as explained in the analysis. If this Authority, at any time, during the prescribed tariff validity period, finds that the actual position varies substantially from the estimates considered or there is deviation from the assumptions accepted herein, this Authority may require NSICTPL to file a proposal ahead of the schedule to review its tariff and to set-off the advantage as per the tariff guidelines of March 2005 accrued on account of such variations in the revised tariff.

13. In this regard, the NSICTPL is required to furnish to this Authority its annual accounts and performance report within 60 days of closing of the respective accounting year. If NSICTPL fails to provide such information within the stipulated time period, the JNPT may initiate appropriate action against NSICTPL. In the event, this Authority would proceed suo motu to review the tariff of NSICTPL. This apart, analysis of variation may also be made at the time of the next general review at the end of the usual tariff validity period and adjustment of additional surplus would be made in line with the tariff guidelines of March 2005 in the tariff to be fixed for the next cycle.

(Rani Jadhav)
Chairperson

Annex - I

NHAVA SHEVA INTERNATIONAL CONTAINER TERMINAL PRIVATE LIMITED

Analysis of performance of NSICTPL for the period from January 2009 to December 2011.

₹ in lakhs

Sr. No.	Particulars	Estimates relied upon in the tariff Order of December 2008			Actuals			
		2009	2010	2011	2008-09 (3 months)	2009-10	2010-11	2011-12 (9 months)
	Traffic (In TEUs)	1471313	1471313	1471313	363505	1532075	1537240	1087358
I	**Total Operating Income**							
	Container handling income	49064.89	50669.31	52625.14	11276.40	53758.67	57096.28	41426.17
	Total	**49064.89**	**50669.31**	**52625.14**	**11276.40**	**53758.67**	**57096.28**	**41426.17**
II	**Operating Costs**							
	Operating & Direct Labour	1352.72	1414.94	1480.03	323.43	1428.89	1512.40	1277.39
	Maintenance Labour	616.27	644.61	674.27	147.28	574.65	578.38	426.80
	Equipment Running Costs	3522.61	3684.65	3854.14	890.07	4017.53	4661.48	3840.62
	Royalty / revenue share	10299.45	14515.77	14630.96	2026.89	11975.83	15181.43	10923.40
	Equipment Hire	3661.11	3829.52	4005.68	783.22	3277.40	3007.38	2180.97
	Insurance *	0.00	0.00	0.00	52.85	199.57	201.43	152.03
	Other expenses	1047.73	1095.93	1146.34	224.02	741.35	792.29	1648.41
	Technical Service Fee	327.00	327.00	327.00	87.87	363.44	340.63	221.25
	Total	**20826.88**	**25512.42**	**26118.42**	**4535.64**	**22578.65**	**26275.42**	**20670.87**
III	**Depreciation**	5020.00	5002.00	5002.00	1153.81	7031.22	7098.81	5220.50
IV	**Overheads**							
	Management & Administration Overheads	475.21	497.07	519.93	151.52	582.07	456.41	482.82
	General Overheads	100.96	105.60	110.46	39.75	192.76	106.73	71.01
	Preliminary expenses & Upfront Payment write-off	24.00	24.00	24.00	6.00	24.00	24.00	18.00
	Others	1570.76	1643.02	1718.60	295.88	801.42	1263.10	897.02
	Total	**2170.93**	**2269.69**	**2372.99**	**493.15**	**1600.25**	**1850.24**	**1468.85**
V	**Operating Surplus / (Deficit) (I) – (II) – (III) - (IV)**	**21047.08**	**17885.21**	**19131.74**	**5093.80**	**22548.55**	**21871.81**	**14065.95**
VI	**Finance & Miscellaneous Income (FMI)**							
	Rent recovery	0.00	0.00	0.00	1.81	8.40	5.03	0.00
	Miscellaneous income	0.00	0.00	0.00	12.50	90.64	62.59	0.00
	Profit on sale of assets	0.00	0.00	0.00	7.88	0.04	0.00	0.00
	Total	**0.00**	**0.00**	**0.00**	**22.19**	**99.08**	**67.62**	**0.00**
VII	**Finance & Miscellaneous Expenses (FME)**	0.00	0.00	0.00	0.00	0.00	0.00	0.00
VIII	**FMI Less FME (VI) - (VII)**	**0.00**	**0.00**	**0.00**	22.19	99.08	67.62	0.00
IX	**Surplus Before Interest and Tax (V) + (VIII)**	**21047.08**	**17885.21**	**19131.74**	**5115.99**	**22647.63**	**21939.43**	**14065.95**
X	**Capital Employed**	53112.00	48394.00	43392.00	55092.75	48088.10	41513.80	36293.30
XI	**Return on Capital Employed**	8497.92	7743.04	6942.72	2203.71	7694.10	6642.21	5806.93
XII	**Net Surplus / (Deficit) (IX) - (XI)**	**12549.16**	**10142.17**	**12189.02**	**2912.28**	**14953.53**	**15297.22**	**8259.03**

Notes:

* In the Estimates, the Insurance cost has been considered as part of Other Expenses.

Annex - II

NHAVA SHEVA INTERNATIONAL CONTAINER TERMINAL PRIVATE LIMITED

Consolidated Cost statement

₹ in lakhs

Sr. No.	Particulars	Actuals				Estimates at the existing level of tariff as furnished by NSICTPL			Estimates at the existing level of tariff as moderated by us		
		2008-09 (3 months)	2009-10	2010-11	2011-12 (9 months)	2012	2013	2014	2012	2013	2014
	Traffic (In TEUs)	363505	1532075	1537240	1087358	1195740	1195740	1195740	1493305	1538104	1584247
I	**Total Operating Income**										
	Container handling income	11276.40	53758.67	57096.28	41426.17	44599.34	44591.88	44591.88	55034.33	56671.61	58052.18
	Total	**11276.40**	**53758.67**	**57096.28**	**41426.17**	**44599.34**	**44591.88**	**44591.88**	**55034.33**	**56671.61**	**58052.18**
II	**Operating Costs**										
	Operating & Direct Labour	323.43	1428.89	1512.40	1277.39	1995.88	2149.09	2314.10	1751.25	1856.32	1967.70
	Maintenance Labour	147.28	574.65	578.38	426.80	670.27	737.30	811.03	669.55	709.72	752.31
	Equipment Running Costs	890.07	4017.53	4661.48	3840.62	4651.34	5065.64	5517.64	5349.61	5802.49	6294.66
	Royalty / revenue share	2026.89	11975.83	15181.43	10923.40	27376.47	29122.25	30969.67	23761.51	26035.07	28517.24
	Equipment Hire	783.22	3277.40	3007.38	2180.97	2609.06	2808.79	3027.37	1903.21	2071.60	2259.20
	Insurance	52.85	199.57	201.43	152.03	214.26	234.62	256.90	214.87	214.87	214.87
	Other expenses	224.02	741.35	792.29	1648.41	1197.37	1194.80	1302.18	1014.58	1075.45	1139.98
	Technical Service Fee	87.87	363.44	340.63	221.25	220.36	186.98	176.00	176.04	167.89	156.95
	Efficiency gain	0.00	0.00	0.00	0.00	0.00	0.00	0.00	156.98	170.10	184.39
	Total	**4535.64**	**22578.65**	**26275.42**	**20670.87**	**38935.02**	**41499.47**	**44374.90**	**34997.59**	**38103.52**	**41487.30**
III	**Depreciation**	1153.81	7031.22	7098.81	5220.50	5489.45	4935.15	4682.28	6960.67	6960.67	6960.67
IV	**Overheads**										
	Management & Administration Overheads	151.52	582.07	456.41	482.82	721.01	807.53	904.43	596.93	632.74	670.71
	General Overheads	39.75	192.76	106.73	71.01	99.65	105.63	111.96	97.69	103.56	109.77
	Preliminary expenses & Upfront Payment write-off	6.00	24.00	24.00	18.00	24.00	24.00	24.00	24.00	24.00	24.00
	Others	295.88	801.42	1263.10	897.02	1391.40	1474.89	1563.38	1212.79	1285.5577	1362.69
	Total	**493.15**	**1600.25**	**1850.24**	**1468.85**	**2,236.06**	**2,412.04**	**2,603.78**	**1,931.41**	**2,045.86**	**2,167.17**
V	**Operating Surplus / (Deficit) (I) – (II) – (III) - (IV)**	**5093.80**	**22548.55**	**21871.81**	**14065.95**	**-2061.19**	**-4254.79**	**-7069.08**	**11144.66**	**9561.56**	**7437.05**
VI	**Finance & Miscellaneous Income (FMI)**										
	Rent recovery	1.81	8.40	5.03	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Miscellaneous income	12.50	90.64	62.59	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	SFIS entitlement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Profit on sale of assets	7.88	0.04	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Total	**22.19**	**99.08**	**67.62**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**
VII	**Finance & Miscellaneous Expenses (FME)**	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
VIII	**FMI Less FME (VI) - (VII)**	22.19	99.08	67.62	0.00	0.00	0.00	0.00	0.00	0.00	0.00
IX	**Surplus Before Interest and Tax (V) + (VIII)**	**5115.99**	**22647.63**	**21939.43**	**14065.95**	**-2061.19**	**-4254.79**	**-7069.08**	**11144.66**	**9561.56**	**7437.05**
X	**Capital Employed**	55092.75	48088.10	41513.80	36293.30	83864.00	83864.00	83864.00	29511.77	22819.47	16150.89
XI	**Return on Capital Employed**	2203.71	7694.10	6642.21	5806.93	13418.24	13418.24	13418.24	4721.88	3651.11	2584.14
XII	**Net Surplus / (Deficit) (IX) - (XI)**	**2912.28**	**14953.53**	**15297.22**	**8259.03**	**-15479.43**	**-17673.03**	**-20487.32**	**6422.78**	**5910.45**	**4852.91**
XVI	**Adjustment of 50% of the surplus for the years 2009 to 2011 and full adjustment of excess Technical Service Fee allowed in the past**	**22059.27**				0.00	0.00	0.00	4411.85	4411.85	4411.85
XIV	**Adjustment of surplus relating to the years 2005 to 2008**	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4346.70	4346.70	4346.70
XV	**Total Surplus/ (Deficit)**	2912.28	14953.53	15297.22	8259.03	-15479.43	-17673.03	-20487.32	15181.34	14669.01	13611.46
XVIII	**Surplus/ (Deficit) as a% of operating income**					-34.71%	-39.63%	-45.94%	27.59%	25.88%	23.45%
XIX	**Average Surplus/ (Deficit) as a% of operating income**						**-40.09%**			**25.64%**	

SCALE OF RATES

NHAVA SHEVA INTERNATIONAL CONTAINER TERMINAL PRIVATE LIMITED

PREFACE

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

1.0 DEFINITIONS

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

1.1 “NSICT” means Nhava Sheva International Container Terminal, a company incorporated in India, its successors and assigns.

1.2 “Coastal Vessel” shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal license issued by the competent authority.

1.3 “Container” means the standard ISO container, suitable for the transport and stacking of cargo and must be capable of being handled as a unit and lifted by a crane with a container spreader.

1.4 “FCL” means Containers said to contain Full Container Load.

1.5 “Foreign going Vessel” shall mean any vessel other than a coastal vessel.

1.6 “Hazardous container” means a Container containing hazardous goods as classified under IMO.

1.7 “ICD” means Inland Container Depot.

1.8 “LCL” means Containers said to contain Less than full Container Load (Container having cargo of more than one importer/ exporter).

1.9 “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 (including boxes having corner casting problem) and Container requiring special devices for lifting is also classified as Over Dimensional Container.

1.10 “Per day” means per calendar day or part thereof.

1.11 “Reefer” means any Container for the purpose of the carriage of goods, which require power supply to maintain the desired temperature.

1.12 “Port” means Jawaharlal Nehru Port Trust.

1.13 “Shut Out Container” means a container, which has entered the terminal for export for a vessel as indicated by VIAN and is not connected to the vessel for whatsoever reason.

1.14 “Transhipment container” means a Container discharged from one vessel, stored in NSICT and transported through another vessel.

1.15 “VIAN” means Vessel Identification Advise Number.

2.0 GENERAL

2.1 Containers less than and upto 20’ in length will be reckoned as one TEU for the purpose of tariff.

2.2 In general all charges for containers more than 20 feet in length and upto 40 in length will be 150% of the applicable charges.

2.3 Handling charges for containers more than 40’ in length and upto 45’ in length will be 200% of the applicable charges.

2.4 Containers other than that of standard size requiring special devices / slings / handling will be charged as per Section 4 below. Such containers will also include damaged containers and any other type requiring special devices.

2.5 Containerrelated charges denominated in US dollar terms shall be collected in equivalent Indian rupees. For this purpose, the market buying rate notified by the Reserve Bank of India, State Bank of India or its subsidiary or any other Public Sector Bank as may be specified from time to time prevalent on the date of entry of the vessel into the port limits (in case of import containers) and on the date of arrival of containers in the Terminal premises (in case of export containers) shall be applied for reconversion of the dollardenominated charges into Indian rupees.

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

2.7 (i) The user shall pay penal interest on delayed payments of any charge under this Scale of Rates. Likewise, the NSICTL shall pay penal interest on delayed refunds.

(ii). The rate of penal interest will be 16.75% per annum. The penal rate chosen will apply to both the NSICTL and the port users equally.

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

(iv). The delay in payments by the users will be counted only 10 days after the date of raising the bills by the NSICTL. This provision shall, however, not apply to the cases where payment is to be made before availing the services as stipulated in the Major Port Trusts Act and/or where payment of charges in advance is prescribed in this Scale of Rates.

2.8 (i) A foreigngoing vessel of Indian flag having a General Trading Licence can convert to coastal run on the basis of a Customs Conversion Order.

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

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

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

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

2.9 The consolidated charges as above include the following elements, viz Stevedoring, use of Gantry crane, use of transfer crane, lashing / unlashing, stowage planning etc., wharfage on tare weight of containers and containerized cargo, transportation and contribution towards railway infrastructure.

2.10 The users will not be required to pay charges for delays beyond a reasonable level attributable to the NSICT.

2.11 Incase vessel idle due to non-availability or breakdown of the shore based facilities of NSICT or any other reasons attributable to the NSICT, rebate equivalent to berth hire charges payable to JNPT accrued during the period of idling shall be allowed.

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

CONTAINERS

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

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
<u>Per Loaded Container</u>		
Not Exceeding 20' in length	2089.28	1253.57
Exceeding 20’ and upto 40’ in length	3133.92	1880.35
Over 40" in length	4178.56	2507.14
<u>Per ICD Container</u>		
Not Exceeding 20' in length	2089.28	1253.57
Exceeding 20’ and upto 40’ in length	3133.92	1880.35
Over 40" in length	4178.56	2507.14
<u>Per Empty Container</u>		
Not Exceeding 20' in length	1687.50	1012.50
Exceeding 20’ and upto 40’ in length	2531.24	1518.75
Over 40" in length	3374.99	2025.00

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

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
<u>Per Loaded Container</u>		
Not Exceeding 20' in length	743.30	743.30
Exceeding 20’ and upto 40’ in length	1114.95	1114.95
Over 40" in length	1486.60	1486.60
<u>Per Empty Container</u>		
Not Exceeding 20' in length	743.30	743.30
Exceeding 20’ and upto 40’ in length	1114.95	1114.95
Over 40" in length	1486.60	1486.60

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

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
<u>ICD Container</u>		
Not Exceeding 20' in length	1044.64	1044.64
Exceeding 20’ and upto 40’ in length	1566.96	1566.96
Over 40" in length	2089.28	2089.28

D. Yard to Truck / Truck to Yard

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
Not Exceeding 20' in length	321.43	321.43
Exceeding 20’ and upto 40’ in length	482.14	482.14
Over 40" in length	642.86	642.86
Empty Container		
Not Exceeding 20' in length	321.43	321.43
Exceeding 20’ and upto 40’ in length	482.14	482.14
Over 40" in length	642.86	642.86

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

SECTION – 2 CHARGES FOR ALL TRANSHIPMENT CONTAINERS

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
Not Exceeding 20' in length	2410.71	1446.43
Exceeding 20’ and upto 40’ in length	3616.06	2169.64
Over 40" in length	4821.42	2892.85
Empty Container		
Not Exceeding 20' in length	2089.28	1253.57
Exceeding 20’ and upto 40’ in length	3133.92	1880.35
Over 40" in length	4178.56	2507.14

Note:

1 A transhipment container is the one, which is discharged from one ship, Stored in the yard and transported through other vessel.A transhipment container sent to CFS, ICD or taken delivery locally shall be charged the local container rate.

2 A Shut out charge as per Section 7 shall apply if -

(a). The vessel nomination is changed ; or

(b). If the vessel nomination is changed from a later vessel to an earlier vessel after the earlier vessel is berthed.

SECTION – 3 CHARGES FOR ALL HAZARDOUS CONTAINER

A. Ship to yard using port crane.

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
Not Exceeding 20' in length	2611.60	1566.96
Exceeding 20’ and upto 40’ in length	3917.40	2350.44
Over 40" in length	5223.20	3133.92
ICD Container		
Not Exceeding 20' in length	2611.60	1566.96
Exceeding 20’ and upto 40’ in length	3917.40	2350.44
Over 40" in length	5223.20	3133.92
Transshipment Container		
Not Exceeding 20' in length	3013.39	1808.03
Exceeding 20’ and upto 40’ in length	4520.08	2712.05
Over 40" in length	6026.77	3616.06

B. Yard to CFS – Transport and lifts at CFS

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
Not Exceeding 20' in length	803.57	803.57
Exceeding 20’ and upto 40’ in length	1205.35	1205.35
Over 40" in length	1607.14	1607.14

C. Yard to Rail for ICDs only

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
ICD		
Not Exceeding 20' in length	1205.35	1205.35
Exceeding 20’ and upto 40’ in length	1808.03	1808.03
Over 40" in length	2410.71	2410.71

D. Yard to truck

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded		
Not Exceeding 20' in length	401.78	401.78
Exceeding 20' and upto 40' in length	602.68	602.68
Over 40" in length	803.56	803.56

SECTION – 4 CHARGES FOR ALL OVER DIMENSIONAL CARGO CONTAINERS.

A. Ship to yard using port crane.

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded		
Not Exceeding 20' in length	4178.56	2507.14
Exceeding 20' and upto 40' in length	6267.84	3760.71
Over 40" in length	8357.12	5014.27
ICD		
Not Exceeding 20' in length	4178.56	2507.14
Exceeding 20' and upto 40' in length	6267.84	3760.71
Over 40" in length	8357.12	5014.27
Transshipment		
Not Exceeding 20' in length	4178.56	2507.14
Exceeding 20' and upto 40' in length	6267.84	3760.71
Over 40" in length	8357.12	5014.27
Empty		
Not Exceeding 20' in length	3374.99	2025.00
Exceeding 20' and upto 40' in length	5062.49	3037.49
Over 40" in length	6749.98	4049.99

B. Yard to CFS – Transport and lifts at CFS

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
Not Exceeding 20' in length	1486.60	1486.60
Exceeding 20' and upto 40' in length	2229.91	2229.91
Over 40" in length	2973.21	2973.21
Empty Container		
Not Exceeding 20' in length	1486.60	1486.60
Exceeding 20' and upto 40' in length	2229.91	2229.91
Over 40" in length	2973.21	2973.21

C. Yard to Rail for ICDs only .

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
ICD		
Not Exceeding 20' in length	2089.28	2089.28
Exceeding 20' and upto 40' in length	3133.92	3133.92
Over 40" in length	4178.56	4178.56
Empty		
Not Exceeding 20' in length	2089.28	2089.28
Exceeding 20' and upto 40' in length	3133.92	3133.92
Over 40" in length	4178.56	4178.56

D. Yard to truck

Particulars	Foreign-going (in Rs.)	Coastal (in Rs.)
Loaded Container		
Not Exceeding 20' in length	642.86	642.86
Exceeding 20' and upto 40' in length	964.28	964.28
Over 40" in length	1285.72	1285.72
Empty Container		
Not Exceeding 20' in length	642.86	642.86
Exceeding 20' and upto 40' in length	964.28	964.28
Over 40" in length	1285.72	1285.72

SECTION 5 – Hatchcovers of vessels

	Rate in US$
Opening hatchcover and replacing it (charge per hatchcover)	
A. When placing the hatchcover on the quay	64.23
B. Without placing the hatchcover on the quay	25.70

SECTION 6 – Restows FCLs & MTs

Shifting containers within the vessel (per move)

	Rate in US$
A. Hatch to Hatch shifting	
FCL & MT 40’	32.11
FCL & MT 20’	21.41
B. Other than (A).	
FCL & MT 40’	128.46
FCL & MT 20’	85.64

Handling charges for containers more than 40’ length and up to 45’ in length will be 200% of the applicable charges.

SECTION 7 - Shut outs/ Renomination of containers

A. Shutouts Charges	**Rate in US$**
FCL & MT 40’	64.23
FCL & MT 20’	42.97

B. Transportation of shutout containers	**Rate in Rs.**
FCL & MT 40’	2054.58
FCL & MT 20’	1369.72

Note : In the case of Shutout Container, the free storage period will be given to the Container in accordance with free storage period prescribed at Serial no.5 of Section 9 from the time the container is first received till the shutout event. If the free storage period is exceeded, storage charges shall be calculated after the expiry of the free period up to the time of lift on.

	Rate in US$
SECTION 8 – Reefer Monitoring and Connection (per 4 hours)	
FCL & MT 20’	6.42
FCL & MT 40’	9.63
Pre- Trip inspection (including supply of electricity)	36.08
Clearing of containers	
FCL & MT 20’	1.44
FCL & MT 40’	2.89

Note : 1 A refrigerated container used for carriage of perishable goods with provision for electrical supply to maintain the desired temperature is considered a reefer container.

2 Above tariff does not include parameter setting or repair and maintenance of malfunctioning reefers. Charges are also applicable to restow reefer containers.

3 Pre- trip inpection of the reefer containers, connection or disconnection services on board the vessel and cleaning of containers are optional services and shall be rendered when requested

4 Additional electricity charges of US$ 25.69 for 20’ & US$ 38.53 for 40’ per calendar day will be applicable in case of Reefer Restow Containers also.

SECTION 9 – Dwell time charges

Charges for Container storage

Sl. No.	***Particulars***	***Rate per container per day or part thereof (in US $)***		
		Upto 20’ in length	***Above 20’ and upto 40’ in***	***Above 40’ in length***
1	***Import-FCL & LCL***			
	0- 3 days	Free	Free	Free
	4-15 days	2.97	5.94	8.91
	16-30 days	5.94	11.89	17.83
	Beyond 30 days	11.89	23.77	35.66
2	***Export – FCL & LCL***			
	0- 7 days	Free	Free	Free
	8-15 days	2.61	5.22	7.82
	16-30 days	5.22	10.43	15.65
	Beyond 30 days	10.43	20.86	31.29
3	***Export / Import – Empty containers***			
	First 15 days	2.97	5.94	8.91
	16-30 days	5.94	11.89	17.83
	Beyond 30 days	11.89	23.77	35.66

4	***ICD – Import & Export – Loaded & empty (Moved by Rail)***			
	First 7 days	Free	Free	Free
	8-15 days	1.29	2.58	3.88
	16-30 days	2.58	5.17	7.75
	31 - 45 days	5.17	10.34	15.51
	Thereafter	10.34	20.68	31.02
5	***Transhipment – Loaded***			
	First 7 days	Free	Free	Free
	8-45 days	2.97	5.94	8.91
	Thereafter	5.94	11.89	17.83
6	***Transhipment – Empty***			
	First 15 days	2.97	5.94	8.91
	16-30 days	5.94	11.89	17.83
	Beyond 30 days	11.89	23.77	35.66
7	***Shutout – Loaded & empty***			
	First 15 days	2.97	5.94	8.91
	16-30 days	5.94	11.89	17.83
	Beyond 30 days	11.89	23.77	35.66
8	***Change of status to local delivery***			
	First 3 days	Free	Free	Free
	4—15 days	2.97	5.94	8.91
	16-30 days	5.94	11.89	17.83
	Beyond 30 days	11.89	23.77	35.66

1 Storage period for a container shall be reckoned from the day following the day of landing upto the day of loading / delivery / removal of container. Free dwell time (storage) allowed shall be exclusive of customs notified holidays and port non-working days.

2 Transhipment containers whose status is subsequently changed to local FCL/LCL/ICD shall lose the concessional storage charges. The storage charges for such containers shall be recovered at par with the relevant import containers storage tariff.

3 In case of ICD container, if documentation is submitted within 48 hours of date of landing of containers, the storage period of 7 free days for loading the container on rail will be applicable. Else the free storage period prescribed for normal containers will be applicable.

4 Normal import containers subsequently changing the mode of dispatch to rail will enjoy the free period applicable to normal import containers only.

5 The total storage period for a shutout container shall be calculated from the day following the day when the container has become shutout till the day of Shipment / delivery.

6 Over high and over dimensional containers shall attract thrice the normal applicable charges.

7 For hazardous container, the storage charges shall be 25% more under the respective slab as given above.

8 The users will not have to pay storage charges for the period during which NSICT is not in a position to deliver/ shift the containers when requested by the users.

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

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

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

(iii) the Line shall resume custody of container along with cargo and either take it back or remove it from the port premises; and

(iv) the Line shall pay all port charges accrued on the cargo and container before resuming custody of the container.

(v) 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.

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

SECTION 10 - Procedure and Charges for Inter Terminal Transfer of Transhipment Containers between NSICT & JNPT.

The following procedure and charges for inter-terminal transfer of transshipment containers between JNPT and NSICT:

(i) **Procedure for handling transshipment (TP) containers :**

a TP containers discharged at the JNPT and bound to be loaded at the NSICT will be transported by the JNP TTs; and, the JNP RTGCs will discharge these containers in the NSICT yard of 4G.

b Similarly, TP containers discharged at the NSICT and bound to be loaded at the JNPT will be discharged by the NSICT by using its RTGCs and TTs in CY31 of the JNPT.

(ii) **Charges for handling TP Containers:**

a If a container is discharged by the JNPT and loaded by the NSICT at its terminal, the charges will be as under :

(i) 50% of transshipment container handling charges as per the JNPT Scale of Rates will be charged to the Line by the JNPT.

(ii) For the same container the NSICT will charge 50% of the transshipment container handling charges as per its Scale of Rates and, in addition, also levy a charge of Rs.1303.84 (for 20') or Rs.1955.78 (for 40') towards inter-terminal transfer.

b If a container is discharged by the NSICT and loaded by the JNPT at its terminal, the charges will be as under:

(i) The NSICT will charge 50% of transshipment container handling charges to the Line as per its Scale of Rates.

(ii) For the same container the JNPT will charge 50% of TP handling charges and in addition, also levy charge towards inter-terminal transfer as per its Scale of Rates.

Section 11 - Miscellaneous Charges

S. No.	***Particulars***	***Rate per Container (in Rs.)***	
		Not exceeding 20' in length	***Exceeding 20' in length and upto 40' in length***
(i).	Fixing/ removal of seal	144.30	144.30
(ii).	Additional service charge for stacking containers in the designated yard for customs examination or for any other purpose, by prior arrangement.	170.27	255.41
(iii).	Charges for shifting within the Terminal for customs examination or any other purpose and subsequent loading of containers for delivery with Prior arrangement with user.	1596.32	2394.48
(iv).	POD Change	1790.76	2686.14
(v).	Change of status of Container from Rail to Road or vice-versa	1790.76	2686.14
(vi).	Fixing/removal of Hazardous Sticker (per container)	144.30	144.30
(vii).	One Door Open Charges per container	721.50	721.50
(viii).	Cancellation of documents - per EIR	72.15	72.15
(ix).	Non- declaration / Mis declaration of Hazardous containers	2164.50	2164.50
(x).	On- Wheel Customs inspection (per container)	432.90	432.90
(xi).	Vessel overstay due to User's fault - Rate per hour	72150.00	72150.00
(xii).	Sending Containers survey report/Photo at Gate through electronic process per container	288.60	288.60

Notes

1 Cancellation charges applies when EIR is cancelled at the request of customers.

2 "One Door Open" charge is applicable for handling container which requires only one door to be kept open (eg. Onion) and when door opening and securing is carried by the terminal.

3 "Fixing of Seal ". Bottle seals shall be fixed on every container arriving at the terminal - by rail /road/sea without a proper bottle seal on it, prior to allowing its entry. This shall be done without the written consent of the shipping line. The list of such containers on which a seal is affixed by the terminal shall be intimated to the lines. Seal charges will be applicable for removal of seals also.

4 "Fixing/ removal of Hazardous Sticker". Hazardous stickers indicating IMCO class only shall be affixed on a container carrying hazardous cargo. Similarly old stickers on the container shall be removed from a container carrying non-hazardous cargo. In either case, the customer has to intimate in writing to NSICT to undertake the said activity, within the terminal.

5 On- Wheel Customs inspection. The on-wheel inspection of a container shall be allowed a the nominated point only, on the written request of the customer. The container doors can be opened only under customs supervision. No stuffing/ destuffing, even partially, shall be permitted within the terminal premises.

6 Non- Declaration / Mis-declaration of Hazardous container. The Customer has to declare the hazardous nature of the cargo as per the IMCO rules and furnish the relevant hazardous details to NSICT. The above charges are only for non-declaration/mis-declaration of the hazardous nature of the container. The liabilities and cost towards the consequences arising due to non declaration or mis declaration shall, however , be on the customers account.

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

F. No.TAMP/54/2011 - NSICT - **Proposal from the Nhava Sheva International Container Terminal Private Limited for general revision of its Scale of Rates.**

A summary of comments received from the users/ user organisations are summarised below:

Container Shipping Lines Association (India) [CSLA]

(i). CSLA welcomes any initiative from TAMP to incentivize (through the tariff mechanism) for increased productivity, efficiency and throughput at the terminal.

(ii). The CSLA has no objection toward the tariff revision on handling rates for laden containers only keeping in view the tariff of the neighbouring terminals.

(iii). Handling rates for hazardous units, reefer units, empties and storage charges for all containers should not be increased at all.

(iv). TAMP should consider tariff proposals on similar guidelines for all the terminals at JNPT.

Mumbai and Nhava Sheva Ship Agents Association [MANSA]

(i). The MANSA does not see any justification for the quantum of increase in tariff proposed the NSICTPL. The Authority has already granted a yearly increase in tariff for the past three years for the period 2009-2011 which has resulted in NSICTPL having the highest Scale of Rates at JNPT.

(ii). TAMP may review the tariff guidelines while considering the proposal from NSICTPL for the revision of tariff. TAMP may consider a reasonable revision subject to NSICTPL maintaining / enhancing their throughput volume in comparison with the average of previous three years performance.

(iii). The storage charges on abandoned containers should be based on the verdict passed on 27 September 2011 by the Hon'ble High Court of Cochin.

Jawaharlal Nehru Port Trust [JNPT]

(i). NSICTPL has considered normative capacity basis and accordingly taken standard capacity of 11,95,470 TEUs and adjusted the past period figures also. Accordingly depreciation has also been considered on the normative assets required for standard capacity. Whilst normative guidelines were issued only for fixing upfront tariff in respect of PPP Project taken up after 2008, these are generally not applicable for determining tariff for terminals which are in existence for which separate guidelines of 2005 are prescribed. It is understood that the same has also been considered in its earlier tariff revision exercise.

(ii). NSICT has handled traffic as per details given below:

Year	Traffic in TEUs
2008-09	14,27,128
2009-10	15,32,075
2010-11	15,27,240

(iii). The royalty paid by them for last three years is as follows:

Year	Royalty (₹ in crores)
2008-09	206.93
2009-10	283.95
2010-11	315.44

(iv). Further, the traffic handled by NSICTPL from April to November 2011 is 9,62,720 TEUs.

2.1. A joint hearing in this case was held on 19 December 2011 at the Office of the Authority. The NSICTPL made a power point presentation mainly touching upon the main infrastructure available at JNPT, impact of royalty and escalation in operating cost. The NSICTPL, JNPT and the users made the following submissions:

Nhava Sheva International Container Terminal Private Limited (NSICTPL)

(i). Bid conditions did not disallow royalty. Royalty is a fixed cost per TEU, irrespective of revenue. Full pass through of royalty should be allowed.

(ii). Labour cost has gone by 15%. Fuel cost increased by 28%. Electricity cost has gone up by 137%.

(iii). Please adopt the same standard capacity approach followed in the earlier Order of 2008.

(iv). The terminal was designed for 6 lakhs TEUs. Utilisation of the terminal in excess of capacity has helped the trade.

(v). We are not aware of the exercise launched by JNPT to assess our capacity.

(vi). When we bid, no condition was put about disallowing royalty. TAMP was not even in existence when our concession was awarded. Our representation for full pass through of royalty is pending before the Government.

(vii). Trade does not mind paying slightly higher tariff for efficient and reliable services, which we always provide.

(viii). Please fix tariff which will reward efficiency and allow us to recover all legitimate cost.

Jawaharlal Nehru Port Trust (JNPT)

(i). The capacity assessed by Ministry of Shipping is also about 1.2 million TEUs, though NSICT has handled above 1.4 million TEUs and our projections are around 1.5 million TEUs for NSICT.

(ii). Upto November 2011, 962720 TEUs are handled by NSICT in the year 2011-12.

Container Shipping Lines Association (CSLA)

(i). We request TAMP to fix tariff which will be fair.

(ii). Please maintain parity in approach for fixing tariff at all 3 terminals.

(iii). Please see our written comments also.

Mumbai and Nhava Sheva Ship Agents Association (MANSA)

(i). Many terminals do not follow TAMP's order on abandoned container. (CSLA – This does not apply to NSICT).

(ii). TAMP may examine the proposal and decide as per guidelines. We don't have any comments on the proposed tariff.

Indian Merchants Chamber (IMC)

(i). We feel efficiency should be rewarded.

(ii). The peculiarity of the existing tariff model is reduced tariff if more volumes are handled. The guidelines are under review, the anomaly should be rectified then.

(iii). Royalty should not allowed as cost as the terminals are aware of the position when they bid.

(iv). We feel, TAMP should consider the proposal after new guidelines are announced.

Bombay Custom House Agents Association (BCHAA)

(i). We are more interested in efficiency / productively than tariff.

(ii). By increased volumes, additional burden should not be put on trade.

2.2. As decided at the joint hearing, the BCHAA and the IMC vide their letter dated 22 December 2011 and 23 December 2011 respectively have furnished their written comments on the NSICTPL proposal in reference, as given below:

The Bombay Custom House Agents' Association (BCHAA)

(i). As a Custom House Agents' Association, we look forward for the better services and better facilitation for cargo handling. We are not aware of any new additional services introduced by the NSICTPL in facilitation of cargo movement where by the trade is benefited.

(ii). It is needless to mention that the Central Government and Trade Bodies are demanding that transaction cost of the service should not be increased and hence our request would be to find some other alternative to compensate NSICTPL for any incurred loss by them rather than revise the scale of rates and burden the trade.

(iii). We also understand that royalty payments to JNPT is a matter of concern for NSICTPL. Both JNPT and NSICTPL should revisit this issue and the trade should not be made to bear this cost.

(iv). In view of above and considering recession world over, we feel this is not the right time to consider increase in the cost of services provided by the port.

Indian Merchants' Chamber (IMC)

(i). NSICTPL has been instrumental in ensuring large volumes being handled at the JNPT.

(ii). NSICTPL has in fact set a Bench Mark of handling maximum of number of consignments per crane and per hour, hence maximum number of containers handled in their limited space allotted at the JNPT.

(iii). We appreciate the efforts by the NSICTPL Container Terminal Operator in handling the larger volumes than its installed capacity permits.

(iv). Due to the above positive steps taken by the NSICTPL, which has direct benefit to the industry, we suggest that tariff of NSICTPL be kindly kept in abeyance, as we have been informed verbally by the Ministry of Shipping, that TERI, who has been appointed by the Govt. of India, Ministry of Shipping to make recommendations and guidelines to the 2005 Port Tariff Report is expected to be received by the early January 2012.

(v). Our suggestions may be accepted inorder to ensure that there is no further flight of cargo from JNPT to Port in Gujrat.

*****