

Government Gazette

Vol. 446, No. 23715, 8 August 2002

GENERAL NOTICE

Notice 1409 of 2002

DEPARTMENT OF TRANSPORT

Minister of Transport., Abdulah Mohamed Omar, MP

'South Africa has also adopted a new Ports Policy in terms of which landlord functions have been separated from port operations. Landlord functions are being performed by the National Ports Authority of South Africa. Operations will see greater participation by the private sector to enable our ports to cope with the needs of the economy and the increasing business in our ports'.

Minister of Public Enterprises, Jeff Radebe, MP

'Government implemented the first stages of port reform with the establishment of the NPA and the NPOD in 2001. It has since become clear that the economic impact of Durban's inefficiencies need urgent attention. Thus, we aim to fast-track the inclusion of the private sector in the operations of the Durban Container Terminal whilst the land and port estate remains under state ownership'.

Ministerial Foreword

Commercial ports play a crucial role in South Africa's transport system and its economic development, and are therefore treated as strategic entities by this policy, Combined with the strategic geographical position of South Africa's coastline, the port system can have a multiplier role on the economy of the country and the Southern African Development Community (SADC) region. From a strategic perspective, the pursuit of this policy is to ensure an internationally competitive port system. Efficient ports are known to be catalysts for increased trade, and thus provide a comparative advantage for international trade.

The White Paper on National Transport policy mainly deals with commercial ports from a transport perspective. The impact of ports extend far beyond their contribution to transport costs. The strategic goals of this national policy on ports will reflect not only the transport perspective, but also the industrial (trade and manufacturing) and the market (consumers and suppliers), and the national political system.

The purpose of this policy is to ensure affordable, internationally competitive, efficient and safe port services based on the application of commercial rules in a transparent and competitive environment applied consistently across the transport system.

There should be an increase in infrastructure investment and service delivery levels where appropriate, based on user needs. The government's commitment to safe transportation should express the need for a clean environment and service designated areas. The government must maintain its commitment to meeting all constitutional obligations as well as facilitating the expansion of international trade, tourism in general and export activity in particular.

Today, globalisation pressures make it essential that nations integrate their transport systems into the global logistics network. Ports are naturally being incorporated into this changing system and have to adjust to the new challenges and environment.

Government recognises the strategic value of the commercial ports system in South Africa, in the context of international trade initiatives and the changing global transport environment. It is for this reason that it needed to formulate this policy in support of the efforts to improve the functioning of commercial ports.

Acknowledgements

Cabinet has been fully consulted on the White Paper on National Commercial ports Policy and has approved it.

The Department of Transport gratefully appreciates the contribution made by the Department of Public Enterprises and other departments like the Department of Trade and Industry and the National Treasury. We would also like to extend our appreciation to Transnet, the National Port Authority (NPA) and South African Port Operations (SAPO).

The submission of comments and assistance of the following stakeholders in Public Consultation meetings is also gratefully acknowledged.

Association of Shipping Lines & Association of Ships Agents & Brokers of South Africa
Chamber of Mines of South Africa
City of Cape Town
Coega Development Corporation
Competition Commission
Conceptual Report on Port Restructuring In South Africa - Dr G De Monie
CSIR [Environmentek]
Department of Minerals And Energy
Department of Public Enterprise
Dock and General Workers' Union
East London Shipyard (Pty) Ltd
Eastern Cape Department of Transport
Economic Development Department - Durban Unicity
Engen Petroleum Limited
Ferro Alloy Producers' Association [FAPA]
Fresh Produce Exporters' Forum
Fresh Produce Terminals
Hillside Aluminium
Kumba Resources
Mondi Ltd
National Agricultural Marketing Council
National Port Users Forum
P & O Ports
Port Programs Transport Canada
Rail Road Africa
Richards Bay Coal Terminal Company Limited [RBCT]
Road Freight Association [RFA]
Sasol
South African Transport and Allied Workers' Union Congress of South African Trade Unions [SATAWU/COSATU]
South African Association of Shipbuilders and Repairers
South African Federated Chamber of Commerce [SAFCOC]

South African Sailing
South African Shippers' Council
South African Tank Container Association [SATCA]
Southern Africa Transport Investment [SATI]
Dr HC Van Niekerk
Toyota SA Marketing
Transnet Limited
Worldwide African Logistics and Training (Pty) Ltd

Table of Contents

Section 1: Background and context

- 1.1 Introduction
- 1.2 Policy Environment

Section 2: Policy goals and objectives

- 2.1 Vision for the National Commercial Ports Policy
- 2.2 Goals of the National Commercial Ports Policy
- 2.3 Objectives of the National Commercial Ports Policy
- 2.4 Basic Principles of the National Commercial Ports Policy

Section 3: National commercial ports policy statement

3.1 Institutional Arrangements and Governance of the Commercial Ports System

- 3.1.1 The Ministry and Department of Transport
- 3.1.2 The Ministry and Department of Public Enterprises
- 3.1.3 National Ports Authority of South Africa
- 3.1.4 Port Operations
- 3.1.5 Port Regulatory Framework

- 3.2. National Commercial Ports System
- 3.3. Development of Commercial Ports
- 3.4. Construction of Commercial Ports
- 3.5. Closure of Commercial Ports
- 3.6. Improving the competitive position of South Africa's
- 3.7. Trade Facilitation and Integration
- 3.8. Supporting an Integrated Industrial Strategy
- 3.9. Sustainability and Viability

- 3.9.1 Environmental Sustainability
- 3.9.2 Economic Sustainability and Viability

- 3.10 Human Resource Development
- 3.11 Communication and Consultation
- 3.12 Other Roles and Responsibilities

- 3.12.1 Other Institutions
- 3.12.2 Port Security
- 3.12.3 Planning

- 3.12.3.1 Transport Planning
- 3.12.3.2 Integrated Development Planning Commercial Ports

Section 4: The way ahead

- 4.1 Implementation of this policy
- 4.2 Interim Arrangements

- Appendix
- Explanations of terminology
- Comments on the Draft White Paper on National Commercial Ports Policy
- List of Abbreviations

Section 1 Background and Context

1. Introduction

In his opening address to Parliament, the President committed to improving national competitiveness through liberalising the transport sector with the objective of lowering costs and enabling technological advances and innovation throughout industry. Cabinet confirmed the President's views at a 'Lekgotla' in January 2001 when Action Plans for the Economic Cluster were approved.

These Action Plans highlight the transport sector as a key contributor to South Africa's competitiveness on the global markets and also acknowledge various export sectors as a major thrust for growing the economy. Infrastructure development, which clearly includes seaports, is also considered as an essential component of the Integrated Framework approved by Cabinet. Clearly, therefore, this Ports Policy supports this commitment in laying out a broad but decisive policy for the future governance of commercial ports in South Africa.

The South African government is committed to building the economy. The basis for pursuing a national commercial ports policy is the recognition that trade, distribution, transport and logistics are among the most vital facets of the South Africa economy and should play a crucial role in the realisation of sustainable economic development, both as a link in the value chain of businesses and because of their own economic significance.

Ports are integrated and crucial nodal points in a transport system, and play a strategic role in the country's economic growth and social development. By being part of the transport network, port activity facilitates the meeting of the demand of the international market with means of production available in the country. In other words, the ports system, by virtue of being nodal points in the transport system, facilitates trade, which in turn fosters greater national economic activity. To maximise these benefits, the aspects of efficiency and effective management have to be introduced to the transport system.

2. Policy environment

This section describes the policy environment underpinning the formulation of this national policy on ports. This policy has to be consistent with, and complement, the Government's broad developmental, strategic, economic and social objectives. For this reason, it is necessary to consider the broad policy framework within which this policy

has been formulated. Broad government policy is contained in various policy documents, and implemented through various Acts of Parliament.

The following four policies had a major impact on the formulation of this policy:

- constitutional policies;
- social and economic policies of Government;
- the national transport policy; and
- the restructuring policy of the Department of Public Enterprises.

The Government's policies on social and economic aspects are contained in a number of documents, some of the more salient being:

- Reconstruction and Development Programme (RDP), 1994;
- Development Facilitation Act, 1995 (Act No. 67 of 1995);
- Discussion Document by the Government of National Unity on the Consultative and Implementation Framework for the Restructuring of State Assets, July 1995;
- Proposal for a National Spatial Development Framework, August 1995;
- National Framework Agreement, February 1996;
- White Paper on the Development and Promotion of Tourism in South Africa, June 1996;
- Growth, Employment and Redistribution: A Macro-economic Strategy (GEAR), June 1996;
- National Strategic Vision, 1996;
- Towards a National Growth and Development Strategy, 1996;
- White Paper on National Defence, 1997;
- White Paper on the Environment, August 1997;
- Competition Act, 1998 (Act No. 89 of 1998);
- Skills Development Act, 1998 (Act No. 97 of 1998);
- National Environment Management Act (Act No. 107 of 1998) (NEMA);
- Municipal Structures Act, 1998 (Act No 117 of 1998);
- Public Finance Management Act, 1999 (Act No. 1 of 1999);
- National Land Transport Transition Act, 2000 (Act No. 22 of 2000);
- Municipal Systems Act (Act 32 of 2000); and
- White Paper on Spatial Planning and Land Use Management (2001).

The White Paper on National Transport Policy reflects the Government's transport priorities in the context of its broad social and economic policies. Ports are critical and integral key nodes in any transport system; and, to this end, a more detailed summary of transport policy objectives and principles is presented later in this section. The recently passed National Land Transport Transition Act, No. 22 of 2000, is also an important document, especially in the context of integrating land transport planning processes.

The following transport related legislation has also been taken into consideration during the drafting of this policy:

- Merchant Shipping Act 57 of 1951;
- Sea Fishery Act 12 of 1988;
- Legal Succession to the South African Transport Services Act, 9 of 1989; and
- Harbour Regulations; and
- South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998).

Due to this importance, relevant provisions in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), are discussed in more detail in the following section.

The Constitution of the Republic of South Africa

The Constitution of South Africa, which came into effect on 4 February 1997, provides for the supremacy of the Constitution and states that any law or act inconsistent with its provisions of the Constitution shall be of no force and effect to the extent of such inconsistency. Attention is given to the provisions of the Constitution as far as it has an effect on this policy. The Constitution specially refers to shipping matters when allocating functions to national, provincial and local governments. Furthermore, some of the other functions allocated to the various spheres of government, in terms of the Constitution, also impact on commercial ports.

Provisions of the Constitution

Schedule 4 of the Constitution lists functional areas of concurrent national and provincial legislative competence. The functions which impact on ports include environmental management; industrial promotion; pollution control; disaster management; nature conservation; policing; public transport; regional planning and development; road traffic regulation; tourism; trade; and urban and rural development.

In terms of the Constitution of the Republic of South Africa, commercial ports fall within the exclusive competence of National Government and its structures. Commercial ports also do not fall under the concurrent national and provincial legislative competence. The power to control commercial ports is excluded from the jurisdiction or powers of local authorities.

Nevertheless, there are indeed aspects in the administration of commercial ports that impact on both the Provincial and Local Government spheres, and it is obviously in the public interest and in accordance with both the letter and spirit of co-operative government, that these aspects be meaningfully addressed. The Constitution stipulates that all spheres and all organs of Government must co-operate with one another in mutual trust and good faith by fostering friendly relations, assisting and supporting one another, informing one another of, and consulting one another on, matters of common interests.

Chapter 11 of the Constitution refers to the role of the security services. In Particular, the South African National Defence Force (SANDF) is tasked to defend and protect the Republic. This role of the SANDF affects this policy and needs to be considered.

Social and economic policies of Government

The Growth, Employment and Redistribution strategy (GEAR) and the Reconstruction and Development Programme (RDP) are government's primary policies and strategic frameworks outlining its socio-economic plans. The RDP is an integrated, coherent socio-economic policy framework. It seeks to mobilise all the people and resources of South Africa and represents a vision of fundamental transformation. Five key programmes underpin the RDP, namely:

29. meeting basic needs;
30. developing human resources;
31. building the economy;
32. democratising the State; and

33. implementing the RDP.

In support of the RDP, the GEAR strategy seeks to place the South African economy on a higher growth path that will ensure a competitive and fast-growing economy that promotes exports and investment. GEAR also intends to promote redistribution by creating employment opportunities and reallocating resources through the budget.

This ports policy seeks to contribute to the attainment of the objectives of both the RDP and GEAR, particularly those that relate to building the economy, promoting exports and investments and developing human resources.

The National Transport policy

The vision for the South African transport system in the White Paper on National Transport Policy is that of system which will: "Provide safe, reliable, effective, efficient, and fully integrated transport operations and infrastructure which will best meet the needs of freight and passenger customers at improving levels of service and cost in a fashion which supports government strategies for economic and social development whilst being environmentally and economically sustainable."

The following strategic transport goals were identified as prerequisites to the realisation of this vision:

34. Support for the Reconstruction and Development Programme for meeting basic needs, growing the economy, developing human resources, and democratising decision making;
35. Enabling customers requiring transport for people or goods to access the transport system in ways which best satisfy their chosen criteria;
36. Improving the safety, security, reliability, quality, and speed of transporting goods and people;
37. Improving South Africa's competitiveness and that of its transport infrastructure and operations through greater effectiveness and efficiency to better meet the needs of different customer groups, both locally and globally;
38. Investing in infrastructure or transport systems in ways which satisfy social, economic, or strategic investment criteria; and
39. Achieving the above objectives in a manner that is economically and environmentally sustainable, and minimises negative side effects.

Of particular pertinence to this policy, is the mission for transport infrastructure, which is:

"To provide an integrated, well-managed, viable and sustainable transport infrastructure meeting national and regional goals into the 21st century, in order to establish a coherent base to promote accessibility and the safe, reliable, effective and efficient movement of people, goods and services."

The Restructuring Policy of the Department of Public Enterprises The Policy Framework for an Accelerated Agenda for the Restructuring of State- Owned Enterprises reflects Government's vision and objectives in the restructuring of state-owned enterprises. It outlines the importance of the developmental role of the state and the need to create sustainable economic and social development. At the level of the industry, restructuring aims at enhancing the efficiency and effectiveness of State-owned enterprises. The promotion of competition in the economy is bly supported.

Restructuring also supports Government's broader economic objectives - like reducing the state debt and attracting foreign direct investment. Government also aims to promote wider ownership and participation in the economy, improving service delivery and human resource development.

Section 2 Policy Goals and Objectives

1. Vision for the National Commercial Ports Policy

South Africa's commercial ports system should be globally competitive; safe and secure, operating at internationally accepted levels of operational efficiency, in a manner that supports the goals and objectives of the RDP and GEAR. Additionally, it should serve the economy and meet the needs of port users in a manner that is economically and environmentally sustainable.

Vision

"A system of ports, seamlessly integrated in the transport network, that is jointly and individually self-sustainable through the delivery of high levels of service and increasing efficiency for a growing customer base, enhancing South Africa's global competitiveness and facilitating the expansion of the South African economy through socially and environmentally sustainable port development."

The term "port", as used in this policy, is defined as "interfaces between the various transport modes and are typically combined transport centers. In addition, they are part of multifunctional trade and industrial areas where goods are not only in transit, but also handled, manufactured and distributed. In fact, ports are multidimensional systems which, to function adequately, must be integrated into global logistic chains".

An efficient port requires not only adequate infrastructure, superstructure and equipment, but also good communications and information technology (IT) systems, and especially a dedicated and skilled management team with a motivated and trained work force.

A National Commercial Ports System has been identified that will comprise a set of financially self-sufficient for ports vital to domestic, regional and international trade. All the existing commercial ports - Richards Bay, Durban, East London, Ngqura, Port Elizabeth, Mossel Bay, Cape Town, Saldanha Bay, Port Nolloth - and offshore cargo handling facilities as well as all future ports and offshore cargo handling facilities to be constructed, will be managed and administered by the National Ports Authority (MA). This will instill commercial discipline in South Africa's major ports and pave the way for the efficiency gains necessary for ports and users to become competitive in the global economy.

The principal operational and administrative functions of a port are:

Services provided to vessels and cargo

- Provision and maintenance of basic port infrastructure, i.e. breakwaters, channels, turning basins, quay walls;
- Provision and maintenance of lights, buoys and other navigational aids;
- Pilotage;
- Towing, i.e. tug services;
- Berthing services, i.e. mooring/unmooring;
- Opening/closing of vessel holds (stevedoring);

- Stowing of cargo on board a vessel (stevedoring);
- Handling of cargo ashore;
- Transport to and from storage/to and from the quayside;
- Provision and maintenance of superstructures, i.e. sheds, warehouses, workshops, offices, etc.;
- Provision and maintenance of equipment;
- Fixed equipment (ship-to-shore cranes, conveyor belts, etc.);
- Mobile equipment (straddle carriers, forklifts etc.); and
- Delivery/reception of cargo to/from the storage area.

Other services provided to vessels are:

- Radio, radar, fire-fighting, security, medical services, supplies (water, telephone, bunkering, stores), waste disposal, repairs (dry docks, syncrolifts), equipment hire, port policing, administrative and commercial documentation,

Other services provided for cargo are:

- Transshipment, temporary storage, security, tallying, insurance, customs clearance, processing, storage and distribution, administrative and commercial documentation.

2. **Goals of the national commercial ports policy**

In order to deliver on this vision a number% broad goals need to be pursued, These are:

- To invest in port infrastructure, superstructure, equipment and system in ways which satisfy social, financial, economic or strategic investment criteria;
- To improve the safety, security, reliability, quality and speed of port operations and services;
- To enable port users to access the port system in the most efficient way possible;
- To promote good employment practices and standards;
- To achieve the above goals in a manner which is economically and environmentally sustainable, and minimises negative externality impacts on non-users; and
- To promote intermodalism.

3. **Objectives of the National Commercial Ports Policy**

The objectives of the National Commercial Ports Policy are to:

- Ensure safe affordable, effective and efficient port services;
- Encourage fair competition based on transparent rules applied consistently across the transport and port system;
- Improve infrastructure and service levels where appropriate, based on user needs;
- Ensure safe transportation, a clean environment and service to designated areas;
- Establish appropriate institutional arrangements and legislation to support the governance of ports;
- Promote the development of an integrated regional production and distribution system in support of government industrial policies;
- Facilitate and enhance the expansion of international trade and tourism in general, and export in particular;

- Promote the development of an efficient and productive South African port industry capable of competing in international markets;
- Establish an appropriate regulatory framework that is also flexible and responsive;
- Ensure high quality training and development of human resources;
- Promote increased international relations;
- Ensure cost effective and efficient port management and operation;
- Ensure proactive integration of social, economic and biophysical environmental aspects during the early stages of port planning and throughout the port development cycle including the planning, design, construction, operation and decommissioning of port developments;
- Ensure proactive communication and consultation with port stakeholders early on in the port planning stages;
- Ensure that strategic port planning is closely aligned with the integrated development planning process of the associated city; and
- Promote Black Economic Empowerment and Small, Medium, and Micro Enterprises.

4. **Basic principles for a National Commercial Ports Policy**

The following principles were formulated to focus the policy and to ensure that it is in line with government policies:

1. National needs, aspirations and requirements shall be of primary consideration;
2. Consideration of user and other stakeholder needs and views;
3. Port system development, management and enhancement will primarily remain a national function;
4. Regulation should be kept to a minimum, without compromising national aspirations, safety, health, security, efficiency and environmental sustainability;
5. Participants in the market should be treated equally and fairly;
6. The principle of user pays or cost recovery, benchmarked against international best practise to ensure that the costs are globally competitive will be applied as far as possible, including an appropriate return; and
7. Strategic port planning will include the integration of social and biophysical aspects at the earliest stages to ensure sustainable port development.

The basic principles and strategic objectives listed above are accepted as the guiding framework for this National Commercial Ports Policy.

Section 3 National Commercial Ports Policy Statements

1. Institutional arrangements and governance of the commercial ports system Transnet Limited currently owns the real estate of South African ports. The port authority function is delegated to the National Ports Authority, a division of Transnet.

Services within the ports are provided by either the National Ports Authority, the Port Operations, another division of Transnet Limited, or private enterprise. Having a national ports authority function as part of a transport company has resulted historically in the formation of several undesirable conditions that have detracted from the primary purpose of ports, skewing prices, misallocating port revenues and creating suspicion in the maritime and transport industries about the impartiality of the port entity within a transport company.

There exists a legacy of fragmented private sector involvement in ports relating to land allocation and leasing terms. Several private terminal operators carry out commercial

activities related to cargo traffic management and handling. Certain port users are captive in several monopolistic private sector terminals.

At this stage the Port Operations Division of Transnet Limited is the major terminal operator, handling nearly 100% of containerised, 80% of break-bulk and 30% of the bulk cargoes in the South African ports.

The White Paper on National Transport Policy has defined the policy in addressing these challenges. Four fundamental port policy guidelines were recommended. These are briefly:

- Establishment of the National Ports Authority;
- Establishment of the Independent Port Regulator;
- Separation of the port authority and port operations functions; and
- Promoting low cost, high level of service, and shipper choice in the port operations by creating a competitive environment in the commercial ports system.

The key guiding principles underlying the new port dispensation are:

5. The current National Ports Authority within Transnet will be positioned outside Transnet in accordance with the restructuring programme of Transnet, as approved by the Minister of Public Enterprises;
6. The National Ports Authority post Transnet end-state will then be established as a new State-owned corporate entity;
7. The 'National Ports Authority' will be the landlord of the South African ports and will own all the land and the port infrastructures within the port estates;
8. Greater private sector involvement in operations will be sought through leases and concessions;
9. The allocation of leases or concessions will be open to competitive bidding; and
10. The bidding process will be transparent and based on a set of clearly stated objectives/targets, criteria and measurable deliverables.

Policy

1.1 The Ministry and Department of Transport

The Ministry and Department of Transport bears the responsibility of ensuring that efficient and effective, seamless inter-modal transportation is achieved in the national interests of South Africa.

With regard to the commercial ports, that responsibility is fulfilled by:

- Developing and maintaining the national commercial port policy;
- Developing and maintaining the port regulatory framework;
- Developing and maintaining the port legislative framework;
- Appointing a National Ports Forum to advise the Minister of Transport on national commercial port policy matters to ensure openness and transparency in the port policy reviewing process. The Minister will consult with stakeholders in the ports industry, such as the National Ports Authority, Port Operation Division, other spheres of government, academics, organised business, cargo owners, other relevant port users, labour and municipalities, to recommend revisions of the ports policy so as to ensure that the objectives of the policy are realised; and

- Exercising a monitoring role in terms of the above-mentioned points.

The National Department of Transport will also be responsible for the following aspects.

The establishment and enforcement of norms and standards covering the following:

- Safety regulation and port security;
- Environment (on a macro level as provincial governments are also responsible for environmental legislation and control);
- The co-ordination of relations with SADC member states and international bodies, including consultation with the provinces; and
- An obligation to inform and consult provincial authorities where matters are likely to have a direct impact upon provinces all other government departments, and all relevant role players in respect of the NDOT's responsibilities and functions.

1.2 The Ministry and Department of Public Enterprises

The Ministry and Department of Public Enterprise will facilitate the implementation of this policy together with other relevant policies.

The National Ports Authority, in as far as it reports to Transnet, will be accountable to the Department of Public Enterprise through Transnet.

The Department of Public Enterprises will develop guidelines to enable concessioning of the port operations and ensure that concessioning schemes are based on international open, transparent, objective and non-discriminatory bidding processes in order to attract the widest possible response and warrant the selection of the best proposal. Labour issues will receive a high priority in the conduct of the restructuring process.

As part of the restructuring of Transnet Limited, on a date to be fixed by the Minister of Public Enterprises, by notice in the Government Gazette, such property, rights, liabilities and obligations relating to the ports division of Transnet Limited, as determined by the Minister of Public Enterprises, shall be transferred to the envisaged National Ports Authority, as a new State-owned Enterprise.

1.3 National Ports Authority of South Africa

The National Ports Authority will be responsible for the management of the national commercial port system. In order to become a landlord type of port authority, the National Ports Authority will not be engaged in port operations (e.g. stevedoring and terminal operations). The National Ports Authority will own the land. However, the terminal infrastructure such as terminal buildings, workshops, substations, surfacing, rail sidings and terminal services and utilities (e.g. water, lights, power, sewerage and telecommunication) and cargo handling equipment required such as cranes could be purchased and/or constructed, operated and/or maintained by the terminal operators in terms of a concession or leasehold contract with the National Ports Authority. This also implies that the National Ports Authority will not employ the cargo handling labour.

The general corporate characteristics of the envisaged National Ports Authority shall be:

20. A State-owned corporate entity, created in terms of an envisaged Ports Act. As a State-owned enterprise, the National Ports Authority shall be firmly managed in terms of the Public Finance Management Act, 1999;

21. The National Ports Authority shall also operate as a company in terms of the Companies Act, with the State being the only shareholder;
22. The current National Ports Authority within Transnet will be positioned outside Transnet in accordance with the restructuring programme of Transnet, as approved by the Minister of Public Enterprises; and
23. The National Ports Authority will apply the principle of subsidiarity and thus will delegate substantial power for day-to-day management and decision making to the individual port branches.

The National Ports Authority shall be responsible for the landowner, control and other functions detailed below.

The landowner functions entail:

24. Owning, developing and managing the port property portfolio;
25. Advising on, and implementing national port policies and development strategies;
26. Providing and maintaining port infrastructure (e.g. breakwaters, seawalls, channels, basins, quaywalls and jetties);
27. Providing or arranging road and rail access to port facilities;
28. Providing or arranging services and utilities (water, lights, power, sewerage and telecommunications) to be accessible to terminal operators;
29. Co-ordinating port marketing and promotional activities; and
30. Maintaining the sustainability of the ports and their environs.

The control functions entail:

31. Providing vessel traffic control and navigational aids;
32. Licensing concessioning of terminal operations and/or related services;
33. Safeguarding port users' interests against port operation and/or service monopolies;
34. Monitoring and ensuring compliance with applicable laws and regulations;
35. Ensuring that the orderly, efficient and reliable transfer of cargo and passengers between sea and land is provided by operators (stevedoring, and terminal operations);
36. Ensuring that safe, adequate and secure warehousing and storage is provided by operators within the ports on a commercial basis;
37. Review, organise the structure current and future land and port facility usage with a view to the creation of a level competitive and efficient playing field between terminal operators and related services; and
38. Monitor the performance of terminal operators.

The implementation of a concession/lease agreement imposes on the part of the National Ports Authority a requirement to review the current and future land and port facility usage and an agreed level of supervision of the operational activity and operational results of the contract's execution.

The aims of such supervision are:

To ensure that the operator uses the potential of the facilities to their fullest capacity in the most efficient manner. To ensure that the National Ports Authority generates market related returns on its land and assets; and To obtain confirmation that the port users will receive services which offer a degree of quality and effectiveness that commensurate with the demands of international trade.

In essence, the above control functions of the National Ports Authority include the licensing and concessioning of operational activities within the port confines. These control functions will involve substantial powers given by the State to the National Ports Authority, the majority of which will be by appropriate port legislation.

Other functions

The National Ports Authority will also be entitled to prescribe the limits, within which and the levels to which dredging may be carried out.

Off-shore cargo handling facilities impact on, and form part of, a country's role of assisting foreign trade through the ports. For all practical purposes a future off-shore cargo handling facility can be used for the transfer of bulk liquids or any other cargo to or from the land/to or from the vessel. v.

Therefore, from a landlord type of port authority's perspective, the planning, provision and control of an off-shore cargo handling facility, alongside the coastline of South Africa, is part of the National Ports Authority functions, whilst the operations of these facilities can be performed by commercial operators.

Off-shore cargo handling facilities mean any off-shore facility situated within the internal or territorial waters, including a single buoy mooring and a pipeline, which is used or intended to be used for the transfer of any cargo to and from a vessel.

The National Ports Authority will plan, provide and control all off-shore cargo handling facilities along the coastline of South Africa.

1.4 Port Operations

It is the Government's prime responsibility to focus on policy and on substantive regulation. There is a need to provide South African importers and exporters with more efficient and higher quality of port services. The Government, through Transnet, will reduce and phase out its direct involvement in terminal operations where feasible.

By doing this, the Government will allow for a more competitive environment to ensure that efficiency is achieved in the port operations.

In this process, contracts linked to a lease and concession agreements will constitute the two main instruments to give the private sector operators a larger role in port operations.

In order to enhance port efficiency, the distinction between cargo handling on board a vessel (stevedoring), and cargo handling in the terminals, needs to be reformed.

The National Ports Authority will not be engaged in the port operations (e.g. stevedoring and terminal operations). As owner of the land, the National Ports Authority shall ensure that the licensees (including the Port Operation Division) and concessionaires provide adequate, efficient and affordable terminal operations and port services to all port users.

This also implies in a later phase that marine services such as tug services and berthing services provided by the National Ports Authority could also be licensed out.

Transnet and Port Operations Division will apply the principle of subsidiarity and thus will delegate substantial power for day-to-day management to the individual port terminals.

1.5 Port Regulatory Framework

It is considered expedient to introduce some form of regulatory oversight to the National Ports Authority to ensure that the strategic essence of our ports, the competitive thrust of port development and reform, and the competitiveness of South African commercial ports and businesses, particularly exporters, are not compromised in any way.

Port regulation needs to distinguish between technical, environmental and social oversight on the one hand and economic oversight on the other.

The following basic guiding principles with respect to port regulation are necessary:

avoidance of regulation where the market can freely operate and the playing field is level without regulatory intervention; and formal separation of the responsibilities for economic regulation from port management and operations; The required regulation at the port level could apply at three distinct levels.

The first level: Overseeing the compliance regulation will ensure the compliance by all service providers of pertinent national and international laws, conventions and agreements concerning operational ship and cargo handling activities, safety and security aspects, protection and safeguarding of the environment and employer-employee relationships. This will adhere to the new mandate to establish the National Ports Authority as a landlord type of authority.

Hence, all technical, environmental and social oversight within the port estate should be the responsibility of the National Ports Authority or other authorities regulating various aspects in terms of existing legislation.

For example, the regulation of the existing and future off-shore cargo handling facilities, that are used or can be used to offload crude oil, any substance used in the manufacture of petroleum products, or petroleum products, and includes any pipeline used for the transport of such oil, substance or petroleum product between the off-shore cargo handling facility and the storage facility, will fall under the regulatory ambit of the envisaged Petroleum. Pipeline Regulator in consultation with the National Ports Authority.

The second level: Economic Regulation

Regulation will consist of the economic regulation of all service providers operating within the port estate. The need for this regulation can be significantly reduced (and thereby makes the remaining regulation more effective) if market forces are allowed to come into play and if licence and concession contracts contain suitably rational and transparent clauses regarding the control of the pricing levels, the minimum levels of service to be offered and the avoidance of anti-competitive practices. Whatever ' economic regulation would then still be required, the National Ports Authority in its supervisory capacity could carry it out as an unbiased and neutral entity overseeing all commercial activity in the port estate.

The third level: Competition Act

The National Ports Authority has the responsibility of regulating the sector on a day-to-day basis on sector-specific issues, whilst the Competition Authority/Commission has powers of oversight on .questions of anti-trust issues.

2. National Commercial Ports System

This policy is based on a holistic view of the South African commercial ports system. Each commercial port in the country is part of this system. Each port has natural and strategic advantages and disadvantages. Working from a system perspective, the intention of this policy is to maximise the strategic advantages of individual ports for greater national and regional benefits.

A National Commercial Ports System has been identified that will be financially self-sufficient for ports vital to domestic, regional and international trade. All the existing commercial ports - Richards Bay, Durban, East London, Ngqura, Port Elizabeth, Mossel Bay, Cape Town, Saldanha Bay, Port Nolloth - and offshore cargo handling facilities as well as all future ports and offshore cargo handling facilities to be constructed, will be managed and administered by the National Ports Authority (NPA). This will instill commercial discipline in South Africa's major ports and pave the way for efficiency gains necessary for ports and users to become competitive in the global economy.

The present trends in the world of ports is a growth in the number and size of ports, globalisation of trade, focus on total transport logistics, diversity of available sea routes and diversity of forms in which commodities are shipped. The developments in transport technology and the effects of economies of scale have led to main ports and feeder ports.

The different forms of competition possible are:

Competition between whole ranges of ports or coastlines. There is a diversity of main routes for vessels on a global scale. For example, for container trade the main arterial route between the East, Europe and the east coast of the Americas through the Suez Canal or the African range of ports (such as Dakar, Accra, Walvis Bay, Cape Town, Port Elizabeth, Durban, Maputo, Beira, Dar-es-Salaam, Mombasa) in between; competition between ports in different countries. For example, between South African ports and Maputo and Walvis Bay;

Competition between individual ports in the same country; and Competition between the operators of facilities or providers of services within the same port. (Two areas - services and pricing).

Restructuring of the world economy has redefined the strategic location of ports on a global scale. Through globalisation the strengthening of the entire logistics and industrial network of ports, connections and corridors is of importance. There is a diversity of available main routes for vessels on a global scale. A port has a more competitive advantage when strategically located on the main maritime routes on a global scale.

Policy

The national ports policy aims to achieve long-term benefits for the country as a whole. The Government aims to increase the private sector's participation in the operational aspects of the ports and will allow for inter- and intra-port competition.

The different operators of port terminals will compete on the basis of:

- a. Quality of service ship turnaround time; port operational and financial/technical services;
 - reliability or risk; and intermodal integration model costs and model efficiencies.
- b. Facility and operational effectiveness utilisation; and technology.

The National Port Authority should give more prominence to the need for greater client orientation and better logistics support through proper organisational arrangements for strategic management, planning and pricing.

3. Development of commercial ports

There is a world-wide trend to greater co-ordination of port administration and development as a result of rapid changes in the port industry. This makes the need for coordination of port infrastructure developments critical in order to prevent wasteful duplication.

The National Ports Authority will manage the commercial ports of South Africa on a national commercial port system basis.

Policy

The National Ports Authority will provide sufficient and appropriate port infrastructure to ensure that the ports adequately respond to the market or to changes in the market. The National Ports Authority will avoid the unnecessary and unjustified duplication of port infrastructure that would amount to wasteful usage of scarce resources.

The South African port system will remain financially autonomous and Government funding will not be available for the National Ports Authority, except in the following cases:

- a. Where Government needs to address social needs on infrastructure and services;
- b. Where the National Ports Authority, on request of the Government, must perform activities; and
- c. Cease to perform activities in circumstances where the National Ports Authority considers that it is not in its commercial interests.

Port development cannot be considered in isolation, but should be integrated into any national, provincial and local economic and spatial development initiatives, and also support the RDP. There should be synergy among port development, and national and provincial economic and development strategies. Long-term location planning for ports should run parallel with provincial and regional economic development plans.

The development of commercial ports must be integrated, with port facilities being planned together with other elements of the transport system. The planning and integration of port facilities into the broader transport network should be co-ordinated at the appropriate sphere of government.

The port's national development framework plans should inform, and be included in, a provincial transport plan which, in turn, should form part of an economic development plan for the province. Naturally, they should also conform to any national spatial, economic and other initiatives. Proper integrated planning must be done to ensure greater efficiencies are delivered by the transport system.

This policy advocates port and city co-operation through planning structures that will be facilitative and enabling of that particular intent. This shall be achieved by:

Having the national port authority established as a planning and development co-ordinating body;
and

Ensuring that the planning of each port is localised as much as possible to allow for flexibility and rapid response to changing market conditions and customer demands within the context of the national commercial port development framework and stakeholder consultation through the local port consultative committee.

4. Construction of commercial ports

It is common practice that no new port may be built, or an existing port extended beyond its limits, without the promulgation of a special Ports Construction Act of Parliament approving such building or extension.

International practice indicates that private sector intervention is only possible to an extent in the port sector. There are limited instances where private sector involvement/investments can be made for privately constructed ports for specific cargo.

On the other hand, terminal infrastructure and cargo handling equipment could be privately provided and managed by concessions, leases and licences.

Policy

The adoption of the special Port Construction Act to build a new port or to extend an existing port beyond its limits shall be preceded by an investigation to be conducted by the National Ports Authority, which shall present a report on the matter to the Minister of Transport, to enable it to be tabled in Parliament.

As landowner, the ownership of the port infrastructure will vest in the National Ports Authority. The operating rights of existing terminals, as well as the development and operating rights of new terminals, will be transferred to the private sector where feasible. The National Ports Authority will have the powers to transfer and award the operating and development rights to the private sector, in a transparent and equitable manner in terms of licenses and concessions for the construction, management and operation of port terminals and services.

Due to the strategic importance of the commercial ports to the entire economy of the country, no person other than the National Ports Authority shall build, own or exploit any commercial port infrastructure, including future offshore cargo handling facilities to be used or intended to be used by sea-going vessels, for loading or off-loading of trade cargo or passengers.

5. Closure of commercial ports

The National Ports Authority may only after a Cabinet directive to that effect, and subject to the provisions of the legislation, close a non-viable port.

Policy

In the event that any port becomes non-viable, the National Ports Authority might close that port only after the Cabinet has issued such a directive based on the finding of an independent inquiry pertaining to the reason for such a closure.

6. Improving the competitive position of South Africa's commercial ports

Competitiveness is defined as ensuring that the port and transportation system can meet the requirements of its users. Competitiveness is a key aspect that influence South Africa's place in global markets. To compete successfully for business in domestic and

international markets, ports and other transport operators must have the ability to move people and cargo efficiently? reliably and at a reasonable cost without infrastructure impediments or congestion delays.

For exporters and importers, competitiveness translates into a demand for intermodal services that provide speedy movement through ports and terminal transfer facilities to landside transportation. It also translates into a demand for ready access to the transportation information that is needed by all parties in the various transactions involved in trade. There is a sense of urgency among some port stakeholders who maintain that there is not enough spending on construction, operations and maintenance for ports.

The future competitiveness of the port system and infrastructure will be influenced by the following capacity issues:

- land use in and around the ports;
- demand and constraints on intermodal connections;
- advances in information technologies and navigational systems;
- increasing dredging requirements; and environmental constraints.

Thus, there is a need to improve the productivity, throughput capacity and accessibility to meet the expected growth in international trade. The primary function of the port system will be, as gateways to the world, to operate with modern infrastructure provided by dependable funding sources, using optimal technology. In terms of capacity, efficiency, safety and security and environmental enhancement, the ports will be world class. The inland transportation capacity will match the ports throughput.

Policy

In order for our ports to truly become globally competitive, and thereby enhance the competitiveness of South African enterprises, the economy and the region, the port system must be encouraged to develop and progress to the status of the most modern ports internationally, within a reasonable period of time. The National Ports Authority of South Africa will pursue this agenda with vigour and Government will do all it can to support the national ports authority in its endeavours, particularly with regard to creating a unified port community, integrating the port with trade and logistics chains in the transport network and the development of world-class technologies.

This implies that ports:

- are no longer passive points of interface between sea and land transport;
- play an active role in the world transport system and promote the port concerned;
- play an active role in stimulating trade;
- will become dynamic nodes in a complex international productio4/distribution network; and
- will become integrated transport centres and logistics platforms for international trade.

7. Trade facilitation and integration

Ports needs to act as creative partners in international trade development and facilitate trade processes at sea/land interface. Policies dealing with transport infrastructure must therefore ensure that cognisance is taken of 'trade and economic policies, strategies and programmes, and

that alignment between what the economy requires and what the transport system provides are more coherent.

Policy

The logistics system needs to support trade by facilitating the efficient movement of goods by providing visibility of where goods are in the logistics chain and by providing a seamless administrative process. In facilitating trade, customs regulations and practices need to be improved and streamlined. Government will assist in facilitating the design and implementation of efficient, enhanced communication and information systems. Further, Government will assist in trade documentation harmonisation efforts. In particular, ports will be required to supply service providers with adequate technology infrastructure to enable the efficient management of trade processes.

The National Ports Authority will facilitate trade throughout the commercial port system and administration of trade information by introducing an electronic commerce portal system for all port users. This will be based on the principles of data integrity, confidentiality, accessibility and availability as well as auditability.

8. Supporting an integrated industrial strategy

Government's industrial strategy seeks to harness regional complementarities with the aim of promoting economies of scale and developing an integrated regional production system. This strategy depends on our ability to leverage knowledge and technology to integrate backward and forward linkages with production processes.

Although this strategy is relevant to all manufacturing, government has identified certain priority sectors for implementation. Integrated logistics, as a key component of the supply chain process, will play a critical role in the success of this approach.

Policy

The National Ports Authority and terminal operators will ensure, prioritise and be responsive to the infrastructure that is required to support the integrated industrial strategy.

9. Sustainability and viability

These concepts cover environmental, economic and financial issues and form the basic premise on which this policy is based. Sustainable development in its simplest form is development that will endure, whereas another definition states "sustainable development is development which meets the needs of the present, without compromising the ability of future generations to meet their own needs". Viability requires that benefits exceed costs. Benefits and costs include economic and social-economic concepts as well as the multiplier effects.

Socio-economic matters include job creation, the promotion of SMMEs, increasing the national skills base through capacity building and training of employees, and increasing trade and tourism.

9.1 Environmental sustainability

Environmental sustainability emphasises the interdependence of social and economic development and environmental protection. It is an accepted norm that all transport

infrastructure development investment decisions consider the environmental implications early on during the decision-making process and not only once the project is fully planned.

The National Environment Management Act (Act No. 107 of 1998) stipulates a range of Integrated Environmental Management (EM) tools, These tools include Strategic Environmental Assessment (SEA) used for the proactive integration of environmental issues at the policy and planning level, Environmental Impact Assessment (EIA) used for the assessment of project specific developments and Environmental Management Systems (EMS) used for the day-to-day management of the port operations.

Social and biophysical environmental aspects should be integrated into the port planning process from an early stage through the process of SEA. Project-specific development should undergo an EIA, which should assess the impact of the design, construction and operation of the facilities at an early stage. Ongoing environmental management for all existing port facilities should be founded on internationally recognised management systems to ensure a coordinated and systematic approach to the long-term environmental management of the port facilities.

The EMS should include coordinated environmental monitoring of appropriate indicators that can be used to track the level trends of sustainable port development and used as input data for strategic port planning processes.

Policy

For the National Commercial Ports Policy to be aligned with the National Environmental Management Act (Act No. 107 of 1998), SEA, EIA and EMS should be employed to consider environmental issues at all levels of port development, including policy formulation, port planning, design, construction and operation. The tools should be used to facilitate more informed decision-making leading to sustainable port development.

SEA should be used for the proactive integration of environmental issues with social and economic issues at the policy and planning level. They should ensure close alignment with the Integrated Development Planning process in the region surrounding the port.

EIA should be used for the assessment of impacts of project specific developments while EMS should be used for the day-to-day environmental management of the port operations.

Environmental management systems should include coordinated environmental monitoring of appropriate indicators that can be used to track the level trends of sustainable port development and used to improve decision-making with regard to future strategic port planning and development. The management system should promote continual improvement in environmental management.

9.2 Economic sustainability and viability

The development of ports and transport infrastructure in general coupled with the development of associated value adding industries can yield significant economic and socio-economic benefits for the region and for the country as a whole.

10. Human resource development

A large proportion of workers involved in port operations have low levels of skill and high levels of illiteracy. There is a high degree of reliance on casual labour. These factors limit the ability of the industry to adapt to technological change and improve efficiency and levels of service. The ability of the industry to adhere to internationally acceptable standards is also affected.

Policy

The Government, labour and business will, through the Sector Education and Training Authorities (SETA), emphasise the use of labour as a resource rather than a production cost. The Government will assume some responsibility for enhancing capacity and for improving the human resource pool in the transport sector.

Government commits itself to the consideration of the relevant conventions and/or recommendations of the International Labour Organisation (ILO) and supports the establishment of appropriate structures with the port reform process.

The Government, however, does not accept sole responsibility for human resource development, and looks to all stakeholders, including the private sector and labour, to assist in overcoming the challenge. Government will encourage the continued consideration by the industry of the support of the EO Port Development Programme.

11. Communication and consultation

To enable sustainable development, it is vital to have adequate consultation and discussion on the port facilities development and operations with relevant stakeholders. The processes and responsibilities for communication and consultation on port and port operation should be better defined.

International relations are the responsibility of the national Government. These include relations with SADC member states, other foreign countries and multilateral organisations. Where necessary, the provinces should also be able to communicate internationally through the NDOT.

Because of the influence of the larger ports on their environment and the important transport and economic role they fulfill, there are a number of authorities and organisations that have an interest in, or are affected by, ports and their operations.

Policy

There should be a consultative forum for such authorities and role players, where consultation could take place and information be made available. These local port consultative committees shall comprise representatives of the port users and/or ' stakeholders.

Their functions are as follows:

- to facilitate an exchange of views between representatives of the industry;
- to improve understanding regarding the needs of interested parties to assist the national ports authority in providing a targeted service;
- to advise the national ports authority regarding the utilisation of port land or facilities, including the expansion of port terminals and port facilities, an alteration in the use of a port terminal or facility; and
- to facilitate the implementation of this policy.

The National Ports Authority shall, specifically, consult the port consultative committees on the following:

- major port expansion schemes or the development of a particular port;
- substantial and/or structural alterations to National Ports Authority Tariffs; and
- any other matter as directed by the Board of Directors or the Minister of Public Enterprises.

The National Department of Transport will be responsible for the co-ordination of relations with:

- SADC member states and bodies, including consultation with the provinces where appropriate;
- foreign countries and multilateral bodies, but has an obligation to inform and consult the provincial governments where matters are likely to have a direct impact upon provinces;
- All other governments, national government departments and institutions; and
- all relevant role players in respect of the NDOT's responsibilities and functions.

12. Other roles and responsibilities

12.1 Other institutions

All Government Departments at all levels, SARS, SAPS, SAMSA and other relevant institutions should co-ordinate themselves and adapt their policies and practices so as to advance the implementation of this policy.

12.2 Port security

The State, through its security forces, has the overall responsibility for ensuring port security. The National Ports Authority shall develop policies and deploy resources in the existing and future commercial ports to enhance port security. The terminal operators are responsible for their own security within the terminal boundaries, subject to the rules and policies determined by the National Ports Authority.

123 Planning

Spatial planning in South Africa has undergone significant transformation over the past five years. Several white papers have been compiled and numerous new acts have come into force that have changed the way planning is undertaken in South Africa. These will have a significant effect on the port planning processes.

123.1 Transport planning

This will be enhanced in a holistic fashion through integrated transport planning.

Transport planning will have to be co-ordinated between National, Provincial and Local Municipal Government together with the National Ports Authority and relevant Railway Authority. This will be carried out on a regular basis in terms of Section 27 of the National Land Transport Transition Act, 2000 (No. 22 of 2000) and the Local Government: Municipal Structures Act, 1998 (No. 117 of 1998).

Integrated Transport Plans will include all modes and infrastructure, including new or amended roads and commercial developments having an impact on the land transport system, and land transport aspects of the ports. These transport plans, integrated with

the National Port Development Framework Plan, will be developed so as to enhance the effective functioning of cities, towns and rural areas through integrated planning of transport infrastructure and facilities, transport operations including freight movement, bulk services and public transport services within the context of those integrated development plans and the land development objectives.

123.2 Integrated Development Planning

In terms of the Municipal Systems Act (MSA) (No. 32 of 2000) all municipalities (i.e. Metros, District Municipalities and Local Municipalities) have to undertake an Integrated Development Planning process to produce an Integrated Development Plan (IDP).

The IDP is a single, inclusive and strategic plan for the development of the municipality which

- links, integrates and co-ordinates plans and takes into account proposals for the 'development of the Municipality;
- aligns the resources and capacity of the municipality with the implementation of the plan; and
- is compatible with national and provincial development plans and planning requirements binding on the municipality in terms of legislation (MSA, 2000).

Section 4 The Way Ahead

1. Implementation of this policy

After approval of this national commercial ports policy, a framework for the future of commercial ports will have been provided. Those elements of the new policy, which require only administrative action, will be implemented immediately. Those elements of the new policy, which require major changes from existing practice, may not be implementable immediately.

No relevant institution should embark upon the formulation of policy or the adoption of practices that run contrary to the implementation of this policy. The divisionalisation of Portnet and the restructuring of Transnet Ltd by the Department of Public Enterprises may continue to proceed towards the implementation of this policy.

The Department of Public Enterprises will facilitate the smooth transformation and implementation of this policy together with other relevant policies.

1.2 Interim Arrangements

A complicating factor in the South African port context is the arrangement that results from the 'divisionalisation' of Portnet into a National Ports Authority and a Port Operations Department, both as part of Transnet. This arrangement will remain in place until the Minister of Public Enterprises directs otherwise.

As an interim measure, while the NPA will still be located within Transnet, the Minister of Transport will establish the Port Regulatory Framework to exercise oversight responsibility over NPA.

Regulatory oversight is then required to:

1. Monitor the business relationship between Transnet Ltd. and the Ports Authority Division to ensure that Transnet does not derive an unfair advantage over other transport companies, and that revenues generated by the port authority are used to the benefit of the authority, its customers and the national economy (for as long as the port authority is located within Transnet);
2. Monitor the business relationship between the National Ports Authority and the Port Operations Division (for as long as the port authority is located within Transnet) to ensure that the Port Operations Division will not be advantaged and will have the same treatment as other port private terminal operators.

However, the National Ports Authority itself will, in its own right and as part of its landlord mandate, also provide facilities (and marine services). As it cannot act as its own regulator, it will need to be overseen by an external port regulatory body. Two options exist for this external regulatory body: the Competition Commission or a specialised Port Regulatory Body to regulate the National Ports Authority.

Government's preference is to appoint a specialised port regulatory body as long as the National Ports Authority remains part of Transnet. Once the National Ports Authority is established outside Transnet, the role of the specialised Port Regulatory Body will be disbanded.

An act of Parliament will establish the Port Regulatory Body to exercise oversight in respect of the National Ports Authority by making recommendations to the Minister of Transport. The Minister of Transport will decide upon the constitution and composition of the Port Regulatory Body mandated and accountable to government.

The Minister of Transport will:

- establish and appoint a Port Regulatory Body; and
- issue directives to the Port Regulator Body.

This Port Regulatory Body should have a distinct legal mandate, independent, although the members would be appointed by the Minister of Transport..

Its main aim would be to regulate the National Ports Authority:

1. to prevent any rent-seeking behaviour on its part;
2. to ensure impartiality and equity in the access to port services; and
3. to rule on any complaint by port users of monopoly pricing on the part of the National Ports Authority.

The Port Regulatory Body will focus on areas requiring technical expertise, but will consult with the Competition Commission on matters falling within the ambit of the Competitions Act.

The National Department of Transport is committed to the economic and social development of the South African transport system. In pursuit of the vision for the national commercial ports policy, the Department seeks to prioritise the policies contained in this policy document and translate these priorities into strategies.

Appendix

Explanations of terminology

Basin - A partially enclosed or sheltered area where vessels may be moored or docked.

Berthing services - To moor a vessel alongside a quay.

Breakwaters - Wall built out into the sea to break the force of the waves and so protect a port from the effects of bad weather

Buoy - Small floating body, anchored to the sea bed, which marks a channel or alerts shipping to dangers, wrecks or other obstructions

Channel - A navigable course through a body of water.

Concession - A type of concession is the Build-Operate-Transfer (BOT) contract by which the grantor (National Ports Authority) grants the grantee (Terminal Operator) the right to finance, build and operate a facility or an installation, for public use, for a limited period of time, after which the facility or the installation will be transferred to the grantor (National Ports Authority). The broad features of a concession agreement are that the grantee has overall responsibility for the service, i.e. operation, maintenance, management as well as capital investments.

Dredging - To remove sand from the seabed to increase the depth of water or to restore it to its former depth.

Dry dock - Enclosed basin from which all the water is pumped to enable vessels to be surveyed and repaired while out of the water

Jetty - Structure, often of masonry, projecting out to sea, designed to protect a port from the force of the waves but also used to berth vessels

LEASE - A contract by which the right of use of an asset/property is conveyed to a person for a specified period, in return for rental.

Licence - To grant permission to provide a service.

Pilotage - The act, carried out by a qualified person known as a pilot, of assisting the master of a vessel in navigation when entering or leaving a port or in confined waters.

Port infrastructure - The basic structure of a commercial port, including breakwaters, seawalls, channels, basins, quay walls, jetties, road, rail, services and utilities (e.g. water, lights, power, sewerage and telecommunications).

Quay - A solid structure alongside a navigable waterway to which vessels are moored for loading and discharging

Seawall - A wall near the shore built to protect the adjacent land from the sea

Stevedoring - To load, stow and unload cargo on board a vessel.

Terminal infrastructure - Terminal buildings, workshops, substations, surfacing, rail sidings and terminal services and utilities (e.g. water, lights, power, sewerage and telecommunication) within terminal boundaries.

Terminal operations - Handling cargo at the terminal, storing it and delivering it to the vessel at the load port or receiving it from the vessel at the discharge port, storing it and delivering it to the consignee

Tug services - Services performed by small, powerful vessels used for towing or pushing vessels in a port.

Comments on the Draft White Paper on National Commercial Ports Policy were received from the following organisations

Association of Shipping Lines & Association of Ships Agents & Brokers of South Africa
 Chamber of Mines of South Africa
 City of Cape Town
 Coega Development Corporation
 Competition Commission
 Conceptual Report on Port Restructuring in South Africa - Dr G De Monie
 CSIR (Ehvironmentek)
 Department of Minerals and Energy
 Department of Public Enterprise
 Dock and General Workers' Union@GWU)
 East London Shipyard (Pty) Ltd
 Eastern Cape Department of Transport

Durban Unicity
Engen Petroleum Limited
Ferro Alloy Producers Association (FAPA)
Fresh Produce Exporters' Forum
Fresh Produce Terminals
Hillside Aluminium
Kumba Resources
Mondi Ltd
National Agricultural Marketing Council
National Port Users Forum
P&OPorts
Port Programs Transport Canada
Rail Road Africa
Richards Bay Coal Terminal Company Limited (RBCJ?)
Road Freight Association (RFA)
Sasol
SATAWU/COSATU
South African Association of Shipbuilders and Repairers
South African Federated Chamber of Commerce (SAFCOC)
South African Sailing
South African Shippers' Council
South African Tank Container Association (SATCA)
Southern Africa Transport Investment (SATI)
Dr HC van Niekerk
Toyota SA Marketing
Transnet Limited
Worldwide African Logistics and Training (pty) Ltd