



NATIONAL DEPARTMENT OF TRANSPORT

DRAFT WHITE PAPER

ON

NATIONAL COMMERCIAL PORTS POLICY

OCTOBER 2001

INVITATION FOR PUBLIC COMMENTS

The public is invited to respond to the Draft White Paper on National Commercial Ports Policy of South Africa. Written responses should reach the Department of Transport at the address below not later than 31 October 2001.

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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 port extends 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.

The financial burden for port infrastructure should be shifted from the general taxpayer to the port user. There should be an increase in infrastructure investment and service delivery level 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 towards 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 recognizes 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 needs to devise this policy in support of the efforts to improve the functioning of commercial ports.

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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 African economy and should play a crucial role in the realization 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 virtue of 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 the benefits alluded to above, 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 these were:

- 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);
- Public Finance Management Act, 1999 (Act No. 1 of 1999); and
- National Land Transport Transition Act, 2000 (Act No. 22 of 2000).

The White Paper on National 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, 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
- 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, 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 Reconstruction and Development Programme (RDP) and the Growth, Employment and Redistribution strategy (GEAR) are government's primary policy 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:

1. meeting basic needs;
2. developing human resources;
3. building the economy;
4. democratising the State; and
5. implementing the RDP.

In support of the RDP, the GEAR strategy seeks to place the South African economy onto 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 the above-mentioned vision:

1. Support for the Reconstruction and Development Programme for meeting basic needs, growing the economy, developing human resources, and democratising decision making;
2. Enabling customers requiring transport for people or goods to access the transport system in ways which best satisfy their chosen criteria;
3. Improving the safety, security, reliability, quality, and speed of transporting goods and people;
4. 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;
5. Investing in infrastructure or transport systems in ways which satisfy social, economic, or strategic investment criteria; and
6. 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 strongly supported. Restructuring also supports Government’s broader economic objectives like reducing state debt and attracting foreign direct investment. Government also aims at promoting wider ownership and participation in the economy, improving service delivery and promoting 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 jointly and individually is self-sustainable through the delivery of high levels of service and increasing efficiency from a growing customer base, enhancing South Africa's global competitiveness and facilitating the expansion of the South African economy and creating a better life for all".

The term "port", as used in this policy, is defined as a "transport node with a defined area and facility developed and maintained wholly or in part for the purpose of launching, beaching, mooring, berthing and facilitating the safe and efficient inter- and intra-modal transference and transiting of passengers and goods between the maritime and any other transport mode, and includes any building, installation or equipment within any such area which is intended to be so used".

A port, as defined above, is a transport node in the logistic chain, where such a logistics chain can be described as all physical (transport, distribution and warehousing) information and financial flows from the point of supply to the final consumer. National benefits only accrue from the investment and management of ports to the extent of the value added to the national trade undertaking. Ports may be logistical and transport nodal points of multi-functional trade and industrial complexes where goods are not only in transit, but also handled, manufactured and distributed. Underlying the port system is the national, provincial and local transport planning effort, to reduce the transport cost component of goods and services to the nation and the region.

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 maximize the strategic advantages of the individual ports of greater national and regional benefits.

2. GOALS OF THE NATIONAL COMMERCIAL PORTS POLICY

In order to deliver on this vision a number of 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; and
- To achieve the above goals in a manner which is economically and environmentally sustainable, and minimises negative externality impacts on non-users.

3. OBJECTIVES OF THE NATIONAL COMMERCIAL PORTS POLICY

- Ensure affordable, effective, efficient and safe port services;
- Encourage fair competition based on transparent rules applied consistently across the transport and port system;
- Shift the financial burden for port infrastructure system from South African taxpayers to users;
- 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 exports 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;
- Promote increased international relations; and
- Ensure cost effective and efficient port management and operation.

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. The national government will retain its regulatory role to ensure the unbiased regulation of safety and quality in accordance with

- international, regional, national, provincial and local expectations and standards;
5. Regulation should be kept to a minimum, but without compromising national aspirations, safety and efficiency;
 6. Participants in the market should be treated equally and fairly; and
 7. The principle of user pays or cost recovery from direct users will be applied as far as possible, including an appropriate return.

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 Portnet, an operating arm of Transnet, and services within the ports are provided by either Portnet or a private enterprise. The incorporation of such a pseudo port authority into a transport company has resulted in the formation of several undesirable conditions that has detracted from the primary purpose of ports, skewed pricing, misallocated port revenues and created a suspicion in the maritime and transport industries about the impartiality of the port entity and its extensive integration with a transport company.

There is at present no external port regulatory and monitoring authority. Portnet, through Transnet, enjoys a natural and legally structured monopoly and also acts as a regulator.

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 Port 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.

Government will reduce its direct involvement in operations to allow for a more competitive environment.

Government, through the Port Authority, will ensure unbiased regulation of safety and quality in general; control of market access where this is necessary, and to regulate excessive tariffs in cases of monopolies.

The institutional positions of non-governmental statutory bodies, such as Transnet are still under review as part of the process of restructuring state assets, and their policy direction will be finalised in the near future.

Policy recommendation***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; and
- Exercising a monitoring role.

1.2 The Ministry and Department of Public Enterprises

The Ministry and Department of Enterprise will facilitate the smooth transformation and implementation of this policy together with other relevant policies. The National Port Authority will remain within Transnet Limited until Transnet's restructuring is completed.

1.3 National Port Authority of South Africa

The National Port Authority is a body that will be responsible for the management of the national commercial port system

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

1. A State-Owned corporate entity, created in terms of an envisaged National Ports Authority Act. As a State-Owned enterprise, the National Port Authority shall be firmly managed in terms of the Public Finance Management Act, 1999.
2. The National Ports Authority shall also operate as a company in terms of the Companies Act, with the state being the only shareholder.

The National Port Authority shall be directed and controlled by a Board of Directors answerable to the Minister of Public Enterprises.

The Minister of Public Enterprises shall appoint the National Port Authority and its Board of Directors.

The National Port Authority shall be responsible for the landowner, control, utility and quasi-regulatory functions detailed below.

The *landowner functions* entail:

1. Owning, developing and managing the port property portfolio;
2. Advising on, and implementing national port policies and development strategies;
3. Providing and maintaining port infrastructure (breakwaters, channels, berths, etc.);
4. Providing or arranging road and rail access to port facilities;
5. Providing or arranging services and utilities (water, lights, power, sewerage and telecommunications);
6. Co-ordinating port marketing and promotional activities; and
7. Maintaining the sustainability of the ports and their environs.

The *control functions* entail:

1. Providing vessel traffic control and navigational aids;
2. Licensing/concessioning of terminal operations and/or related services;
3. Safeguarding port user's interest against port operation and/or service monopolies; and
4. Monitor and ensure compliance with applicable laws and regulations.

The above control functions of the National Port Authority entails amongst other things that the National Port Authority is entitled to monitor the performance of the terminal operators. Why?

The implementation of a concession/lease agreement imposes on the part of the National Port Authority an agreed level of supervision of the 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 obtain confirmation that the port users will receive services which offer a degree of quality and effectiveness that is commensurate with the demands of international trade.

In essence, the above control functions of the National Port Authority represent regulation of operational activities within the port confines. All activities within the ports, particularly terminal operations, will be 'regulated' by the National Port Authority directly.

The port control functions will involve substantial powers given by the State to the National Port Authority, the majority of which will be by appropriate port legislation.

The *port utility functions* entail:

1. Ensuring the physical transfer of cargo and passenger between sea and land (stevedoring and terminal operation services);
2. Provision dredging, tug, piloting and berthing services; and

3. Ensuring that adequate warehousing and storage is provided within the ports on a commercial basis.

The *quasi-regulatory functions* entail:

1. marine environment;
2. leasing; and
3. land planning and development of ports.

2. NATIONAL COMMERCIAL PORTS SYSTEM

The extensive public investment in port infrastructure does not provide an adequate return to port users and taxpayers, therefore Government will concession port operations to enable users of the system to have more say in how they work.

A National Commercial Ports System has been identified that will be financially self-sufficient ports vital to domestic, regional and international trade. All the existing commercial ports, i.e. 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 facilities to be constructed, will be managed and administered by the National Ports Authority (NPA) and it will instill commercial discipline in South African major ports and pave the way for efficiency gains necessary for ports and users to remain competitive in the global economy.

Policy recommendation

It is necessary for the National Commercial Ports System to be guided by the Consultative committees, which will be made up of representatives nominated by user groups and various levels of government. Government funding will not be available for the National Ports Authority.

3. NATIONAL DEVELOPMENT STRATEGY FOR COMMERCIAL PORTS

The commercial ports of South Africa will be operated on a national commercial port system basis, with the ports complementing each other rather than competing with each other. Government encourages beneficial intra-port competition between port operators within a port.

Policy recommendation

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 to provincial and regional economic development plans.

The development of commercial ports must be integrated in nature, 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. FINANCIAL ELEMENTS OF PORT USAGE

The White Paper distinguished between elements of “economic” infrastructure and operations which are able to provide a measurable economic or financial return, and elements of infrastructure and operations which cannot, or should not, be paid for by the user, but which provide social benefits. The first category includes infrastructure, such as primary roads, railways, airports and ports, where the principle of user pays or cost recovery from direct users will be applied as far as possible, which would include a fair return.

Policy recommendation

The Government will, in the case of such infrastructure and services, strive to prevent any actions from distorting pricing. In the case of socially necessary infrastructure and services, the Government will contribute or guarantee financing. It will also strive to level the playing fields in this case, and may promote competition where appropriate.

5. CONSTRUCTION OF COMMERCIAL PORTS

Policy recommendation

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

6. CLOSURE OF COMMERCIAL PORTS

Policy recommendation

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

7. 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 translate into a demand for intermodal services that provide speedy movement through ports and terminal transfer facilities to landside transportation. It also translate into a demand for ready access to the transportation information that is needed by all parties to 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; and
- Increasing dredging requirements.

Thus, there is a need to improve the productivity, throughput capacity and accessibility to meet the expected growth in international trade.

The port authority's tariffs in future should be based on the principles of user pays, cost-based tariffs and adequate return on capital employed. The South African port system should remain financially autonomous and not require subsidisation from the State.

As the policy aims to achieve long-term benefits for the country as a whole, government encourages beneficial intra-port competition but cautions against destructive competition.

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 recommendation

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 Port Authority of South Africa will pursue this agenda with vigour and Government will do all it can to support the port 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 complex international production/distribution network; and
- will become integrated transport centers and logistics platforms for international trade.

8. 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 taking 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 recommendation

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 harmonization efforts. In particular, Ports will be required to supply service providers with adequate technology infrastructure to enable the efficient management of trade processes.

9. 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 recommendation

The Ports Authority will ensure that the National Ports Development Strategy and that individual Ports will prioritise and be responsive to the physical and technology infrastructure that is required to support the integrated industrial strategy. In particular, the Authority will prioritise the provision of infrastructure to those manufacturing sectors that government has identified as strategic.

10. 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, increasing trade and tourism.

10.1 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 through a process that entails the identification of the factors, and assessment thereof. For new projects, these assessments should be done at an early stage and should influence the design of individual projects. For existing port facilities however, this process is ongoing at agreed upon frequencies and when significant shifts due to growth are experienced.

The Government's new policy for environmental management indicates that all development that might have an impact on the environment, will have to follow the Integrated Environmental Management (IEM) process, thereby providing sufficient information to decision-makers as to the impact of the development on the environment. Different tools may be used to ensure IEM, which could range from Strategic Environmental Assessments and Plans, which take place on a more strategic level, to Environmental Impact Assessments (EIA), which are more project specific assessments.

Policy recommendation

This policy on commercial ports is in line with government's policy on environmental management, as indicated above, and asserts that the environmental sustainability of ports should be assessed as a prerequisite, whether on strategic planning level or for individual projects, using the appropriate tool. The new EIA regulations list ports as an activity for which an EIA will be compulsory in any case.

Any development of a new port, or major developments at an existing commercial port, will have to be environmentally sustainable and conform to the norms, standards and regulations of national and provincial environmental policies and legislation. Environmental assessments will take into account national and provincial legislation, the regional effects and induced economic impacts, as well as the potential consequences of broad economic conditions.

10.2 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.

11. HUMAN RESOURCE DEVELOPMENT

The majority of workers in the port operations are unskilled with a high level of illiteracy, thereby limiting their ability and the industry to adapt to technological change and improve efficiency and levels of service.

Policy recommendation

The Government will, through the Sector Education and Training Authorities (SETA), move towards a culture in which labour is seen as a resource and not merely a production cost. The Government will assume some responsibility for enhancing capacity and for improving the human resource pool in the transport sector. The Government, however, does not accept sole responsibility for human resource development, and looks to all stakeholders inclusive of the private sector and labour to assist in overcoming the challenge.

12. 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. At present 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 organizations. 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 recommendation

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 of representatives of the port management and port based institutions whose elected members should comprise port, province, city and local business interests.

The Port 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 Port Authority Tariffs;
- 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.

13. ALLOCATION OF ROLES AND RESPONSIBILITIES

In determining relative roles and responsibilities of government and other institutions, it is important to consider both existing legislation and location of expertise. While considerable expertise will have to be developed in South Africa, cognicance must be taken of the need to meet obligations in the short to medium term. Appropriate plans must be put in place to ensure that adequate skills are developed.

Policy recommendation

13.1 National Government

NDOT will be responsible for national policy, legislation and strategy formulation with regard to the national port system. NDOT 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;
- Has 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;
- Ensuring the economic regulation of the National Ports Authority, as and when necessary, through the Port Regulatory Body.

In performing its functions and responsibilities, NDOT will consult with stakeholders. NDOT may delegate some of the operational aspects of the above to an appropriate institution.

13.2 National Port Authority

In discharging this responsibility, the National Port Authority will perform landowner, control and port utility functions so as to ensure safety, security, operational efficiency and environmental sustainability; and contribute to the growth of the economy and the achievement of the RDP objectives.

13.3 Other Institutions

The Department of Public Enterprises, Department of Environmental Affairs and Tourism, Department of Minerals and Energy, Provincial and Local Councils, 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.

13.4 Port Operations

It is the Government's prime responsibility to focus on policy and on substantive regulation. The Government will reduce its direct involvement in operations and in the provision of infrastructure. In so doing, the Government will allow for a more competitive environment to ensure that efficiency is achieved in the port operations in the interest of the entire national commercial ports system and international trade logistic chain.

13.5 Port Security

The State, through its securities, has the overall responsibility for ensuring port security. Port security needs to be enhanced further by various means. The National Port Authority shall develop policies and deploy resources in the existing and future commercial ports to enhance port security.

13.6 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 Port Authority and relevant Railway Authority. This will be carried out in a regular basis in terms of Section 27 of the National Land Transport Transition Act, 2000 (Act No 22 of 2000) and the Local Government: Municipal Structures Act, 1998 (Act 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.

SECTION 4: THE WAY AHEAD

1. KEY POLICY RECOMMENDATIONS

1. The basic principles and strategic objectives listed above are accepted as the guiding framework for this national commercial ports policy.
2. This policy establishes guidelines for the South African port system which include all existing commercial ports, i.e. 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 facilities to be constructed.
3. There is an obligation on government to ensure that all stakeholders are consulted on a regular basis, including port operators, service providers and users.
4. The National Port Authority of South Africa is given a clear mandate to set a strategic direction for the management and development of the ports that will ensure all our ports to become effective and efficient over time.
5. Ports should establish consultation forums to allow for consultation and an exchange of information between stakeholders and authorities on the development and operation matters that include customer service issues.
6. The National Port Authority of South Africa, as a public entity established by the Minister of Public Enterprise through legislation shall be responsible for the management and integration of all the ports into the national transport system.
7. The Port Regulator as a statutory body established by the Minister of Transport shall safeguard port users' interest.
8. The Department of Public Enterprises, Department of Environmental Affairs and Tourism, Department of Minerals and Energy, Provincial and Local Governments, South African Revenue Services (SARS), South African Policy Services (SAPS), South African Maritime Safety Authority (SAMSA) and other relevant institutions should co-ordinate themselves and adapt their policies and practices so as to advance the implementation of this policy.
9. Due to the restructuring policy, the National Port Authority will remain within Transnet Limited until the Minister of Public Enterprises directs otherwise.
10. The Government will reduce its direct involvement in operations.

11. The Government will allow a more competitive environment to ensure that efficiency is achieved in the port operations in the interest of the entire national port system and international trade logistic chain.
12. The State, through its security agencies, has the overall responsibility for ensuring port security and to also enhance it further by various means.
13. Transport planning must be seamless and have unhindered access of the port by road and rail transport is an essential factor for effective operations in a port.
14. Commercial ports are to be economically viable and environmentally sustainable.

2. 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.

2.1. Interim Arrangements

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 Enterprise will facilitate the smooth transformation and implementation of this policy together with other relevant policies. The National Port Authority will remain within Transnet Limited until the completion of its (Transnet's) restructuring.

Interim Regulatory Framework

The Minister of Transport will:

- Establish and appoint a Port Regulatory Body;
- Appoint the Board of Directors of the Port Regulatory Body; and
- Issue directives to the Port Regulator Body.

The Role of the Port Regulatory Body

The National Port Authority shall have considerable power and influence over all commercial ports of the Republic. It is considered expedient to introduce some form of regulatory oversight 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.

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

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

Appropriate regulation of the Port Authority is necessary therefore in order to:

- Prevent the abuse of monopoly power and to ensure equity of access to the ports and to the provision of port services.
- Monitor the business relationship between Transnet Ltd. And the Port 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 its contribution to corporate and social debt (for as long as the port authority is located within Transnet)

The key objectives of the independent port regulator will be to ensure:

- non-occurrence of rent-seeking behaviour by the national port authority via economic regulation;
- acceptable levels of service to tenants and port users;
- impartiality and equity in the access to port services and the provision thereof; and
- an avenue of recourse should the port authority be implicated in anti-competitive behaviour.

Accepted role of the Port Authority post Transnet's restructuring is:

- Landlord function;
- Policy making and planning function;
- The regulatory, supervisory and surveillance function;
- Monitoring and promotion function; and
- Port-training function.

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

LIST OF ABBREVIATIONS

Environmental Impact Assessments (EIA)

Growth, Employment and Redistribution strategy (GEAR)

Integrated Environmental Management (IEM)

National Department of Transport (NDOT)

The Reconstruction and Development Programme (RDP)

Southern African Development Community (SADC)

South African Maritime Safety Authority (SAMSA)

South African National Defence Force (SANDF)

South African Police Services (SAPS)

South African Revenue Services (SARS)

Sector Education and Training Authorities (SETA)