
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, cognizance 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.