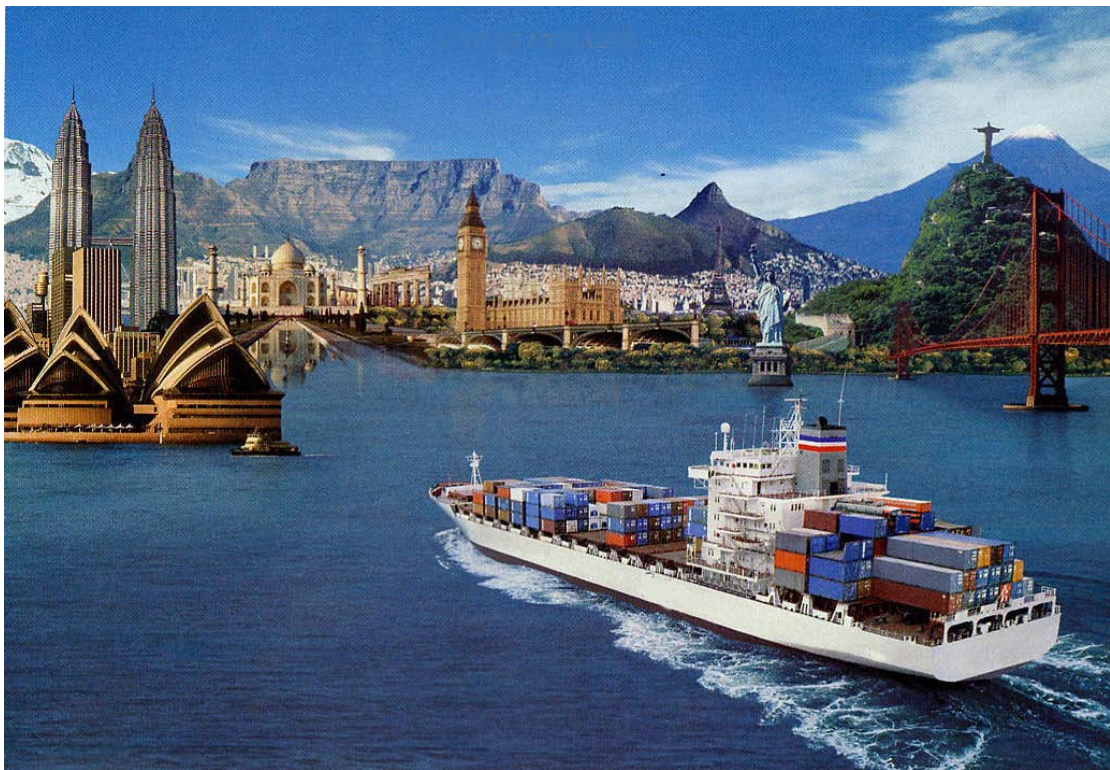


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# REGULATION OF THE INDIAN PORT SECTOR



**CHRISTIAAN VAN KRIMPEN LL.M.**

**MAY 2011**

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**EXECUTIVE SUMMARY & MAIN CONCLUSIONS**

- (i) This report sets out various options for regulatory reform of the Indian port sector. The terms of reference from The World Bank require the Author making recommendations to the Ministry of Finance (Department of Economic Affairs) with respect to alternative institutional and legal options for regulation of the port sector in India as well as analysing key considerations in the regulation of this sector and the way they are being addressed in the Indian Ports (Consolidated) Act, 2010, which has been drafted recently.
- (ii) This report is solution-oriented and focuses on day-to-day problems of Indian port management. The problems of the Indian ports (including those of tariff regulation by TAMP) are well known, thoroughly analysed, described in detail and widely discussed in the port sector. A final solution for the restructuring of the sector has not yet been found. This report is written with a view to outlining various alternatives which may help the competent authorities to make final decisions on a new/revised port sector regulatory framework.
- (iii) Analysing the various measures and law proposals taken by the Central Government during the last decennia, it becomes clear that there is no consistent national ports policy which is aimed at transforming the Major Ports into viable and autonomous undertakings which can properly function within a market oriented economy. The principle decisions of the Government aimed at structural changes have not been acted upon. The Major Ports have not been developed as autonomous, commercially oriented entities; they still function as kind of dependencies of the Ministry of Shipping. The reform measures taken to date have the character of curing the symptoms but not the illness itself.
- (iv) Until far in the 1990s many world ports had the institutional structure of Service Ports, managed by a public authority. This implied also that their

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employees, including stevedores, were civil servants or had a similar status. Since then the vast majority of this type of ports changed its structure into that of a Landlord Port. In the Landlord Port Model the port terminals including infrastructure is leased to private terminal operators and / or port related industries, such as refineries, tank terminals and chemical plants. The private operators provide and maintain their own superstructure, including buildings (offices, sheds, warehouses, Container Freight Stations, workshops, etc.) and often also terminal infrastructure such as quay walls. They install their own equipment on the terminal such as quay cranes, transtainers, conveyor belts, etc., depending on their core-activities. Stevedores (port & dock labour) are employed by private terminal operators, be it that in some ports part of the labour force may be provided through a labour pool type system.

- (v) A new Ports Act should be promulgated, distinguishing two types of ports: *National Ports and Regional Ports*. A Port Authority of a *National Port* should be managed by Board of Directors nominated partly by the Central Government, partly by the State Government of the State where the concerned port is located and, if applicable, partly by the concerned Port City, in proportion to the shareholding of each party. The old system of representation of interest groups in a port board should be abolished. A Landlord Port Authority must be a *neutral body* with its main objective the furtherance of the public interest within a commercial setting. The management of a *Regional Port* should be performed by the concerned Maritime State. The new national Ports Act should comprise provisions that allow the States to continue the system of Maritime Boards, leaving the States free to select the type of port management it deems fit in consideration of the local circumstances.
  
- (vi) A new structure of the Major Ports has been under discussion already for over a decade. Ennore was corporatized but this was not generally considered a success. However, corporatisation of the Major Ports on the basis of the Landlord Port Model still is the best institutional option for port reform in

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India. Unfortunately, the new draft Indian Ports (Consolidated) Act, 2010, basically maintains the current structure including the central role of the Ministry of Shipping. It should be mentioned here that the Ministry has advanced plans to corporatise JNPT, which means a step into the right direction.

- (vii) In principle, corporatisation in the port sector means that former statutory Port Trusts are transformed into Government owned companies. It should be noted that there are two ways to corporatise: corporatisation can be implemented either through incorporation of the concerned entity under a Commercial Code (in India the Companies Act, 1956) as a limited liability company, or as a *statutory authority* by a separate Incorporation Act under its own Articles of Incorporation. The statutory option is the most common approach for corporatising *Port Authorities* and is a suitable option for the Major Ports. It is usually supported through the application of an umbrella legislation, which regulates some common aspects of corporatised government entities, *in casu* the Port Trusts.
- (viii) Within the framework of the corporatisation process all Major Ports should be unbundled and the Trust operated *terminal/stevedoring services* corporatised *under the Companies Act, 1956*. It is clear that this unbundling is a complicated issue especially for the older ports. Therefore, the new Ports Act should allow a reasonable time for this transition process tailored towards the specific situation in each Major Port. The interests of the concerned port workers should be fully taken into consideration.
- (ix) In principle the Model Concession Agreement (MCA) is a useful management tool for the concerned Port Trust/Authority. There are three main areas where the MCA for the Major Ports should be further developed: (1) the application of revenue share should be discontinued, other types of royalties should be used in concession agreements, preferably a unit (TEU) fee; (2) the new Port

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Authorities for the current Major Ports should have the same possibilities for PPP arrangements as presently the Minor Ports (save for BOOT); and (3) the MCA does not allow termination compensation at expiry of the concession, which is unusual and diminishes its bankability.

- (x) TAMP should be transformed from a Tariff Regulator to a Competition Regulator on the basis of a *new Port Competition Act* applicable to all commercial ports in the country. It is recommended to empower the new Port Competition Regulator to investigate and make orders in relation to complaints concerning alleged anti-competitive practices or abuse of dominant position upon complaint of any port user. Tariff setting should be done by the concerned Port Authorities, terminal operators and marine services providers, respectively. Tariff regulation should be part of any concession agreement, its provisions being enforced by the concerned Grantor/Port Authority.

**Note:** The recent draft Ports Regulatory Authority Act 2011 has not been commented upon in this reports as it was published after submission of this report. However, the major part of the comments on recent port legislation also applies to this Bill.



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### **1. GENERAL**

#### **Character of this Report**

**1.1** The objective of this document is to analyse various options for regulatory reform in the Indian port sector. It should be emphasized here that the original Terms of Reference for the assignment focussed on the role and functions of the Tariff Authority for the Major Ports (TAMP) as set out in a recent draft act (Major Ports Regulatory Authority Act, 2009). This draft has (for the moment?) been withdrawn by the Ministry of Shipping. However, the current and future role of TAMP remains actual and will be discussed in this report.

**1.2** The revised Terms of Reference of the assignment include *inter alia* a review of the draft Indian Ports (Consolidated) Act, 2010 which currently circulates among the various port sector organisations. This act will, once promulgated, determine the structure of Indian port management for the next ten to twenty years. Its final version is not yet formally publicized but it is generally expected in the sector that such version will not substantially deviate from the one in circulation at the moment.

**1.3** This report deals with the various port management structures which have been developed in the Indian port sector during the last five decades. Moreover, the terms of reference of this analysis require making recommendations to the Ministry of Finance (Department of Economic Affairs) with respect to alternative institutional and legal options for regulation of the port sector in India as well as key considerations in the regulation of this sector and the way they are being addressed in the draft Indian Ports (Consolidated) Act, 2010, in particular with respect to:

- *Clarity in the role, responsibility and jurisdiction of port sector regulatory authority(ies).*

Potential conflicts / overlaps with other institutions involved in policy, regulation and monitoring in the ports sector should be highlighted. In particular, the existence of a separate regulatory framework for non-major ports (regulated by the

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states) some of which compete directly with major ports, and the effect of this on the competition framework for the major ports should be recognised.

- *Ensuring that the fundamental principles of autonomy, effectiveness and accountability of the regulator are adequately addressed.*

Is the design of the regulatory body adequate to ensure insulation from interference and capture by special interest groups? Is appropriate in-house capacity available to permit the regulatory body to perform its functions competently and effectively, including such aspects as a dedicated budget? Does the regulatory process allow for stakeholder consultation and transparency in regulation?

- *Ensuring that consumer and investor/operator interests are balanced,* e.g., international practice on approaches to tariff setting - based on price caps, rate of return regulation (or a hybrid of these) - and volume regulation.
- *Ensuring consonance and clarity between regulation through existing concession contracts in the port sector and provisions of the proposed Act.*
  - a) Mechanisms to ensure service standards through regulation, including addressing such questions as: whether/when performance standards should form part of concession contracts or be left to the regulatory authority; how best to ensure adherence to standards, including provisions for punitive action; appropriate grievance redressal mechanisms and means of dispute resolution; and, whether there should be a separate authority to regulate safety standards (and if so, how it should interact with the port sector regulatory body).
  - b) How to ensure jurisdictional clarity between the sector regulator and the Competition Commission of India. In particular, the regulatory framework should address competition issues arising out of excessive concentration of control over a range of ports serving a specific common economic hinterland (catchment area shared by more than one port). While the jurisdiction of the sector regulator versus that of the Competition Commission need not be mutually exclusive, since the latter could serve as an appellate body when

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general competition issues are involved, the distinct roles of these bodies need careful articulation within the overall context of port sector regulation.

**1.4** It is not the intention of the Consultant to produce another in-depth background document on top of the multitude of analyses and reports already available. This report is solution-oriented and focuses on day-to-day problems of Indian port management. The problems of the Indian ports (including those of tariff regulation by TAMP) are well known, thoroughly analysed, described in detail and widely discussed in the port sector. A final solution for the restructuring of the sector has not yet been found. This report is written with a view to outlining various alternatives which may help the competent authorities to make final decisions on a new/revised port sector regulatory framework. Such framework should enhance the necessary fast expansion of port and terminal capacity, strike a better balance between the interests of the Central Government and the States with respect to port development and delineate role and responsibilities of the port authorities vis-à-vis the private sector more clearly than currently is the case. It should however be noted that since one perfect, generally applicable solution does not exist, compromise will be necessary; the perfect is always the enemy of the good.

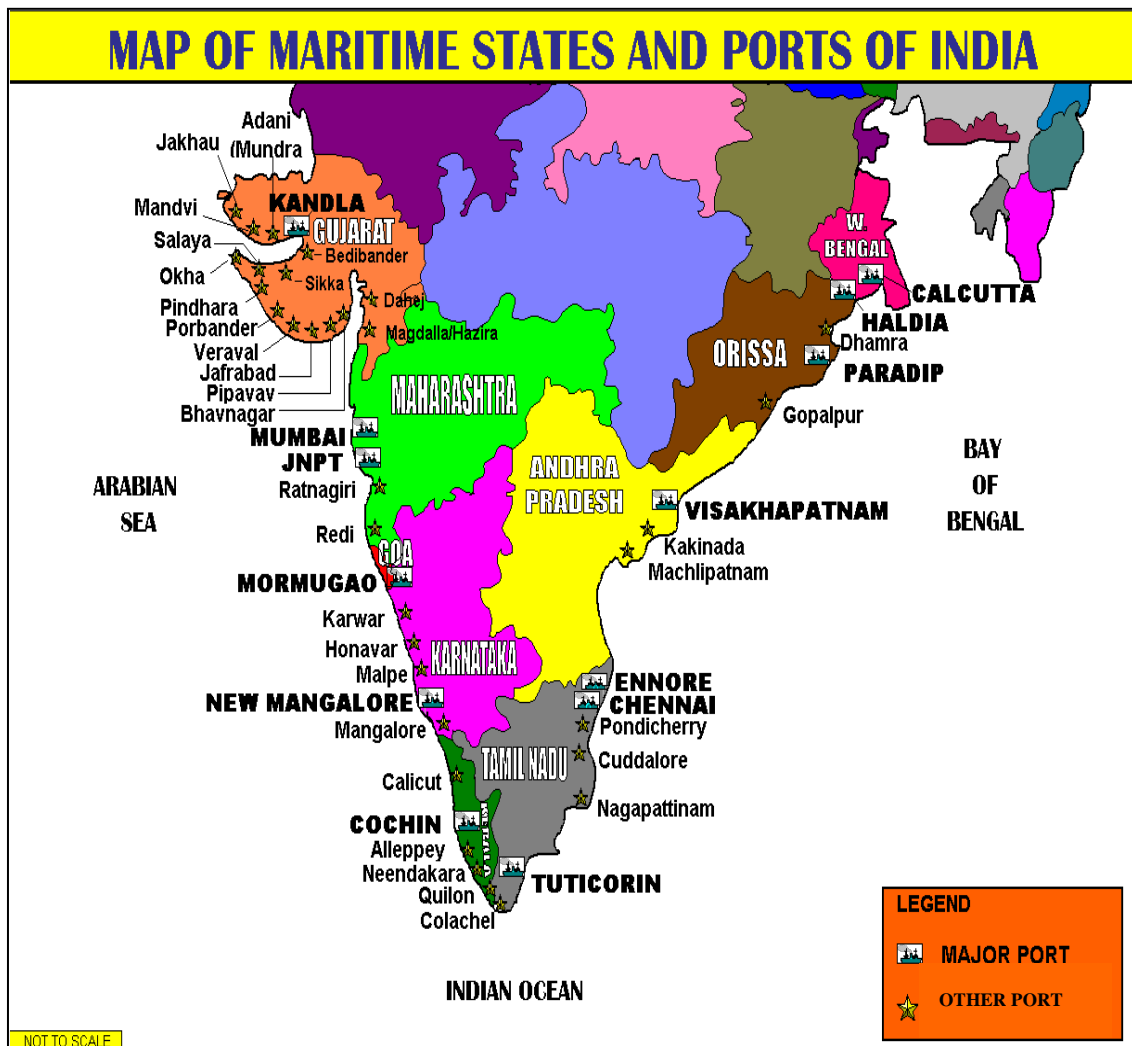
**1.5** Port reform and related changes in the regulatory framework is a long and difficult process. Necessary structural reform in the Indian port sector is late in coming. Between 1980 and the end of the century many countries have successfully completed this process. India as an emerging world power should not wait too long to modernise its port sector in accordance with international best practices and the requirements of its increasingly modernizing and expanding economy. Extensive details on how to conduct port reform can be found in the World Bank Port Reform Toolkit, 2<sup>nd</sup> edition, 2005. The terminology and notions used in this report are based on the above mentioned Toolkit. Finally, it should be emphasized that this report is written from an institutional/legal point of view. Economic analyses of the Indian port sector have been produced in abundance during recent years, displaying a sufficiently clear picture of its strategic and economic position.

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**2. PORT SECTOR POLICY AND STRUCTURE**

**Major & Minor Ports**

2.1 For a better understanding of the issues at hand, in this section a short overview is given of the current structure of the Indian port sector. All ports (Major and Non Major Ports) are regulated under the Indian Ports Act, 1908. The Act defines the jurisdiction of Central and State Governments over all ports in the country. It lays down general rules for safety of shipping and conservation of port facilities. It regulates matters pertaining to the administration of port dues, pilotage fees and other charges.



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**2.2** India has 13 Major Ports and approximately 185 Minor Ports (various names are used: non-Major Ports, Minor Ports, intermediate ports, State ports as well as private ports) located in nine Maritime States. There is one port (Ennore, a satellite port of Chennai) which has been corporatized and incorporated in 1999 under the Companies Act, 1956. Two thirds of its shares of this port are owned by the Government of India, one third by the Chennai Port Trust. The other ports, including the latest addition: Port Blair on the Andaman and Nicobar Islands, are structured as trust ports under the Major Port Trusts Act, 1963, functioning as (semi) autonomous bodies under the administrative control of the Ministry of Shipping.

**2.3** The following ports are Major Ports: Kolkata, Paradip, Visakhapatnam, Ennore (corporatized), Chennai, Tuticorin, Cochin, New Mangalore, Mormugao, Jawaharlal Nehru Port, Mumbai, Kandla and Port Blair. Major Ports are placed on the Union list of the Indian Constitution; moreover the Central Government may declare any port in India a Major Port by notification in the Official Gazette.

The Minor Ports are under the jurisdiction of the Governments of the various maritime states (Orissa, Andhra Pradesh, Tamil Nadu, Pondicherry, Kerala, Karnataka, Goa, Maharashtra, Gujarat as well as Lakshadweep Islands and Andaman and Nicobar Islands). Currently, Major Ports handle some 65% of the total cargo traffic, while Minor Ports account for 35% of the traffic. The share of the Minor Ports is steadily increasing over the years.

#### **Management of Major Ports**

**2.4** Under the Major Port Trusts Act, 1963, each port is governed by a Board of Trustees nominated by the Central Government.

- (a) Chairperson to be appointed by the Central Government;
- (b) Deputy Chairperson, if the Central Government deems it fit to appoint one; and

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- (c) such number of other Trustees, not exceeding seventeen, as that the Central Government may deem expedient to be appointed by that Government from amongst persons who are in its opinion capable of representing,-
- (i) labour employed in the port;
  - (ii) Government of the State in which the port is situated;
  - (iii) Government departments specified; and
  - (iv) such other interests as, in the opinion of the Central Government, ought to be represented on the Board.

**2.5** The Boards of Trustees are fully controlled by the Central Government while their members are in principle selected to represent various interests. The Trustees have to follow the policy decisions of the Central Government while their financial powers are limited. Port dues and port and terminal services' rates are externally fixed by TAMP. There is a ceiling for capital expenditures; amounts above such ceiling have to be approved by the Central Government.

- 2.6** The main powers of the Board are detailed in Art. 42(1) and *inter alia* include:
- (i) execution of 'works' within or without the limits of the port and provide such appliances as it may deem necessary or expedient. Such works may include or relate to reclamation of land, quays, docks, jetties, piers, roads, railways, bridges, buildings (including residential buildings), rolling stock, cranes, lighthouses, vessels, engines, dry-docks, etc.
  - (ii) erection of private wharfs within the port area;
  - (iii) performance of port and terminal services such as stevedoring, handling of passengers, delivery, transport and dispatch of goods, pilotage, towage, etc.
  - (iv) delivery and provision of infrastructure for ports.

**2.7** The law allows private operators carrying out port and terminal services. The text of the law is given below (Section 42 sub 3, 3A and 4):

*Section 42(3):* Notwithstanding anything contained in this section, the Board may, *with the previous sanction of the Central Government*, authorise any person to

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perform any of the services mentioned in sub-section (1) on such terms and conditions as may be agreed upon.

*Section 42(3A):* Without prejudice to the provisions of sub-section (3), a Board may, *with the previous approval of the Central Government*, enter into any agreement or other arrangement, whether by way of partnership, joint venture or in any other manner) with, any body corporate or any other person to perform any of the services and functions assigned to the Board under this Act on such terms and conditions as may be agreed upon.

*Section 42(4):* No person authorised under sub-section (3) shall charge or recover for such service any sum in excess of the amount leviable according to the scale framed under section 48 or section 49 or section 50 (*this refers to various scales of rates as set forth in these articles*).

*Section 46:* prohibits ‘any person’ to construct within the limits of a port or port approaches any ‘wharf, dock, quay, stage, jetty, pier, erection or mooring or undertake any reclamation of foreshore within the said limits except with the previous permission in writing of the Board and subject to such conditions, if any, as the Board may specify’.

### **Management of Minor Ports**

**2.8** Pursuant to the Indian Ports Act, 1908 the responsibility for the development of so called Minor Ports in one of the Maritime States of India vest with the concerned State Government. No permission is required from the Central Government to establish a Minor Port. They are placed in the Concurrent list of the Constitution and are administered under the Indian Ports Act, 1908. The nine maritime states control some 185 State ports and jetties, of which some sixty are truly operational. Most States have established so called Maritime Boards

At the State level, the State Maritime Boards are responsible for formulation of water front development policies and plans, regulating and overseeing the management of

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Minor Ports, attracting private investment in the development of such ports, enforcing environmental protection standards, etc.

For the Maritime States the Maritime Boards have become the dominant public port management model. The Maritime Boards have their legal basis in various State Acts such as the Gujarat Maritime Board Act, 1981 (the first Maritime Board in India) and the Tamil Nadu Maritime Board Act, 1995. The Maritime Boards are in charge of all Minor Ports in their State; they administer, control, regulate and manage the Minor Ports in the concerned State.

**2.9** Typical tasks of a Maritime Board are as follows (example Tamil Nadu):

- 1) Framing of Rules for administration and operation of ports.
- 2) To levy port dues and other charges.
- 3) To provide necessary infrastructure facilities for landing and shipping of cargoes, etc. and to maintain adequate depth in the channel for safe navigation.
- 4) Declaration of port limits and landing places at the ports.
- 5) Rendering pilotage services.
- 6) Detaining Un-Seaworthy ships.
- 7) Issuing Certificate of Entry and Clearance.
- 8) Affording assistance for communication between shore and ship with Very High Frequency (VHF) / Morse / Flag Signals.
- 9) Rendering assistance to vessels in distress.
- 10) Conducting preliminary enquiries into wrecks and casualties.
- 11) Issuing pilot licences for private pilotage at the Minor Ports in Tamil Nadu.

**2.10** The above tasks are not much different from those of a Port Trust of a Major Port. However, the various Maritime Board Acts allow private operators to manage wharves, quays and terminals and even act as a private Landlord Port Authority as is the case in Pipavav, Hazira and Mundra in Gujarat. Moreover, private operators are also allowed to construct ports and terminals under BOT/BOOT type of concessions. Maritime Boards have so far been constituted in Gujarat, Andhra Pradesh, Maharashtra, Karnataka, Kerala, Orissa and Tamil Nadu. Goa is currently also



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considering establishing a Maritime Board. Despite remnants of the old management structures in the State legislations (communication with Morse signals!?), this legal framework is much more suitable to attract private investors. The Maritime Boards exercise the powers through a landlord approach without the extensive control mechanisms under the Major Port Trusts Act, 1963 applicable to the Major Ports.

### **Ministry of Shipping, Road Transport & Highways**

**2.11** The Ministry consists of two Departments: the Department of Shipping and Department of Road Transport & Highways. The Department of Shipping encompasses within its fold the shipping and port sectors which include shipbuilding and ship repair, Major Ports, national water-ways and inland water transport and Chartering matters. The Department of Shipping is administratively divided into 7 (Seven) so called Wings. For the purpose of this report, the Ports Wing and the Development Wing are the most important. The Ports Wing is divided into 12 sections desks, covering all development and management aspects of the Major Ports. The Major Port Trusts Act, 1963, empowers the Ministry to control virtually all aspects of the development and management of the Major Ports. In Annex 1 a detailed overview is given of the structure of the Ministry and the tasks of the various departments, sections and desks related to the ports. Analysing these tasks and responsibilities it is obvious that many of these better can be performed by the respective Major Port organisations, which would allow the Ministry to concentrate on more important national tasks a responsibilities.

**2.12** For the purpose of this report, the following powers/responsibilities of the Ministry are of particular interest:

- (i) *Administration* of the Indian Ports Act, 1908 (15 of 1908) and the Major Port Trusts Act, 1963 (38 of 1963);
- (ii) The power to declare *any port* a Major Port;
- (iii) Legislation relating to and coordination of the development of *Minor* and Major Ports;

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(iv) Formulation of the *privatization policy* in the infrastructure areas of ports.

### **Ministry of Finance - DEA**

**2.13** Also the Ministry of Finance, in particular the Department of Economic Affairs (DEA), has intensive dealings with the ports sector.

The Ministry comprises of the five Departments, namely:

- Department of Economic Affairs
- Department of Expenditure
- Department of Revenue
- Department of Disinvestment; and
- Department of Financial Services.

**2.14** Port issues are mainly handled through the Infrastructure and Investment Division of DEA. Its main functions are:

1. All policy related issues in infrastructure sectors, including ports, referred to DEA by the concerned Ministry.
2. Examination of investment proposals which require approval of EFC (Eleventh Finance Commission), PIB (Public Investment Board) and the CCEA (Cabinet Committee for Economic Affairs);
3. Matters related to infrastructure financing & promotion.
4. Policy matters related to Public Private Partnerships.
5. All proposals for Foreign Direct Investment to be approved by FIPB (Foreign Investment Promotion Board).
6. Other non port related issues.

### **Planning Commission**

**2.15** The Planning Commission was founded in 1950. It was charged with the responsibility for the assessment of all resources of the country and formulating plans for the balanced utilisation of resources and determining priorities. Its first chairman was Jawaharlal Nehru. The Planning Commission developed a number of 5-year plans

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for the country with an emphasis of development of the public sector and state industries. Since 1997 the emphasis on the public sector became less and the planning process got an increasingly indicative character.

**2.16** The Planning Commission has a Transport Division with the following tasks pertaining to ports:

- Evaluation of Project Reports / Feasibility studies for consideration by the Public Investment Board (PIB), Expenditures Finance Committee, Standing Finance Committee.
- Assessing port capacities and traffic requirements of individual ports.
- Monitor port, labour and equipment productivity to ensure fulfilment of the productivity norms.
- Review of the functioning of the Major Ports with particular reference to their development programmes, financial resources and traffic forecasts.

### **Maritime States Development Council**

**2.17** To have an integrated approach for the development of both Major and Non-Major Ports, the Maritime States Development Council (MSDC) was constituted in May, 1997 under the Chairmanship of the Minister of Shipping. The Ministers in-charge of Ports in all Maritime States, Union Territories of Pondicherry, Andaman's & Nicobar Administration, Daman & Diu and Lakshadweep Islands are its members. The deliberations and decisions of the MSDC provide the institutional framework for coordinated development of Major and Non-Major Ports. Till January 2010 ten meetings of MSDC have been held. The Council functions as a policy coordinating body between the Central Government and the Maritime States.

### **Tariff Authority for the Major Ports (TAMP)**

**2.18** After independence India retained much of the former port management structures including the port related laws and regulations. In the Indian port sector the so called Service Port Model is still applied (in particular by the Major Ports). Its basic characteristic is the combination of the landlord function and the port services

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function (mainly stevedoring) within one (public) authority (for more details see Section 4.3).

**2.19** The introduction of private sector terminal operators in the ports during the 1990s brought about the possibility of a direct confrontation between the public Port Trusts and the private operators. In view of this the private sector representatives demanded a neutral organisation to regulate and control tariffs. As the Government was afraid of the emergence of private monopolies, both sides agreed to establish what would later (1997) become the TAMP. The legal basis of TAMP still can be found in the Major Port Trusts Act, 1963 (Chapter V-A). TAMP is the economic regulator (solely) for the Major Ports and is charged with fixing and revising tariffs including tariffs of privately owned terminals. It also has powers to control the efficiency of port and terminal services in the Major Ports. These powers, however, have been rarely used. The related text of the Major Port Trusts Act, 1963 has been included in Annex 2.

**2.20** Tariff regulation is effected by TAMP according to the following principles:

- Safeguarding the various port users' interests;
- Ensuring fair and just returns to port operators;
- Considering factors which encourage competition and operating efficiencies;
- Deploy established costing methodologies;
- Regard policy objectives of the Government;
- Leverage tariffs to improve operational efficiencies;
- Ensure a fair and transparent tariff fixation.

### **Port Sector Organisations**

**2.21** Two representative port sector organizations exist in India:

(i) *The Indian Ports Association (IPA)*

IPA is a consultative sector organisation representing all Indian Major Ports. It has a large database and performs consultancy projects for the Ministry of Shipping and the various Major Ports. It deals with all technical, administrative and labour issues in the

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major Ports. It also provides technical and logistical support to the Ministry for policy related issues including drafting of ports legislation and regulations.

IPA is located in New Delhi.

*(ii) The Indian Private Ports & Terminals Association (IPPTA)*

IPPTA is an association of private ports and terminal operators of container and bulk terminals. It operates as a forum of private ports and terminals to define joint strategies for the removal of difficulties and impediments in the way of their successful functioning. The association liaises *inter alia* with the various Central and State agencies to achieve its objectives.

IPPTA is located in Mumbai.

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### **3. THE CHANGING FACE OF THE INDIAN PORTS SECTOR**

#### **Current Ports Policy (National Maritime Development Programme)**

**3.1** This section deals with the way the Indian port sector is adapting itself to the fundamental changes in the socio-economic structure of the country and the globalisation of international trade. It is, however, not only this adaptation which is important; there is also a need to essentially double port capacity in the next decade within the framework of Public Private Partnerships. It is obvious that the lack of port capacity and the antiquated structure of the Indian port sector are related issues. This is not a new problem: many countries were confronted with a similar situation already in the 1980s and most of them solved it more or less successfully.

**3.2** Also in India many attempts have been made during the last two decades to modernise the port sector. Already in the 1990s plans were developed to corporatise the Major Ports and introduce the landlord port model. The Central Government recognised that port and terminal operations could not be efficient unless ports were operating on commercial lines. As part of the 1996 policy guidelines the Government took a decision that all new ports would be established as companies under the Companies Act and the existing Port Trusts would also be gradually corporatized and set up as companies. In *Vision 2000* the then Ministry of Surface Transport aimed at fully privatising the ports and not only the port terminals. However, this process has been discontinued despite all good intentions. Ennore Ltd, operating on a landlord port concept, remained an isolated case. In the beginning of the first decade plans were announced to start a serious privatisation process in the Major Ports. These plans have not been implemented. Yet many isolated initiatives have been taken to improve the situation both by the Central Government and by the Maritime States, sometimes with positive results. This section describes these initiatives and tries to analyse their effects on the development of the sector.

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**3.3** In 2009 the Ministry of Shipping formulated a comprehensive *National Maritime Development Programme (NMDP)*, which envisages various port capacity improvements and hinterland connectivity projects across the Major Ports with estimated investments about Rs 58,000 crores (US\$ 14.2 billion) over the next decade. Over 60 percent of the required funds are expected to be raised *from the private sector*, with the balance 40 percent coming from public sources. As part of the programme, the Ministry has mandated that each of the Major Ports should develop a long term business plan for the next 20 years which:

- states a long-term vision for the port that builds on its core strengths;
- establishes the goals to be achieved over the next seven years to satisfy this vision;
- describes the strategy to be followed to achieve these goals;
- provides a detailed plan of action to implement the strategy; and
- identifies sources of financing for all proposed investments.

The business plan (and its short term version of 7 years) must also provide the foundation for an annual planning process in order to be able to adjust it regularly to changing circumstances. Implementation of the plan is to be financed by private sector participation and internal Port Trust financial resources.

The main problem the Central Government tries to solve is the capacity shortfall of the ports. The total port throughput is estimated to grow to approximately 1200 million tons by the year 2015. The Major Ports handled in the 2009-2010 period 561 million tonnes, while the Minor Ports handled during the fiscal year 2008-2009 appr.230 million tonnes. The expected shortfall requires fast construction of additional port/terminal capacity of at least 600 million tons according to some estimates. In the worst case scenario major capacity shortfalls will occur across all cargo categories, with containers, coal and iron ore being the most deficient.

**3.4** A plan has been finalized for improving rail-road connectivity of major ports. This plan is to be implemented within a period of three years. Further, changes in customs procedures are being carried out with a view to reducing the dwell time and

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transaction costs. The Government has also declared its intension to delegate powers to the respective Port Trusts for facilitating speedier decision-making and implementation. At the same time, several measures to simplify and streamline procedure related to security and customs are being initiated.

**3.5** In addition, the Central Government recently announced a series of measures to promote foreign investment in the port sector as listed below:

- No approval required for foreign equity up to 51% in projects providing supporting services to water transport, such as operation and maintenance of piers, loading and discharging of vehicles.
- Automatic approval for foreign equity up to 100% in construction and maintenance of ports and harbours. However, if the total foreign equity investment exceeds \$ 0.30 billion (Rs. 15 billion), the proposal will be referred to the Foreign Investment Promotion Board (FIPB).
- Open tenders are to be invited for private sector participation on a Build-Operate-Transfer (BOT) basis. Evaluation of bids will be based on the maximum licence period will not exceed 30 years and at the end of the BOT period all assets will revert to the port in accordance with the conditions of the agreement.
- The Government has announced guidelines for private/foreign participation that permit formation of joint ventures between Major Ports and foreign ports, between Major Ports and Minor Ports, and between Major Ports and companies.

The measures are aimed at attracting new technology, fostering strategic alliances with Minor Ports to create an optimal port infrastructure and enhancing private sector confidence in the funding of ports.

**3.6** The guidelines permit the formation of a joint venture between:

- a) a Major Port and foreign ports for the purposes of constructing new port facilities within existing ports, improving productivity of existing ports, and development of new ports;



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- b) a Major Port and a Minor Port for strategic alliances where a joint venture can be established in the event that a Major Port is constrained in its economic expansion;
- c) a Major Port Trust and a company or a consortium of companies where:
  - (i) a company or a consortium of companies, selected through BOT bidding under the guidelines of private sector participation alliances with a major port trust for improving the viability of the scheme and/or to enhance the confidence of the private sector;
  - (ii). a company or a consortium of companies is selected under the scheme of innovative/unsolicited proposals;
  - (iii) oil PSUs/a joint venture company of oil PSUs are/is selected for oil related port facility as a port based industry.

**3.7** One major development has been the new *Model Concession Agreement (MCA)*, which was approved by the Union Government in January 2008. Under the new MCA regime, a Port Trust can now directly approach the inter-ministerial Public Private Partnership Appraisal Committee (PPP-AC) for final project approval without having to first acquire in principle approval. This will speed up the process of inviting bids for new projects, as well as long pending port projects.

**3.8** The Private Sector Participation (PSP) in the port sector did not take off as expected during the tenth planning period. Necessary policy initiatives in respect of management control, etc., were considered necessary to facilitate the formation of joint ventures. In case of non-Major Ports, the Viability Gap Funding (VGF) scheme of the Central Government will have to be made compatible with the requirements and the operational imperatives of the sector so as to enable the Minor Ports to access these funds. It should be noted that joint ventures on terminal basis are not very popular in the international port sector (see also Section 4.9). Moreover, in general port/terminal projects in India, provided that there is a proven feasibility, do not have

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any problem to acquire private funding. The VGF scheme should only be used in exceptional circumstances.

**3.9** The Programme does not mention any initiative to change the institutional and legal structure of the Major Ports. The policy of the Central Government, as far as expressed in the NMDP, is aimed at gradually adapting the current structure to market conditions. Indicative is the Ministry's answer to an unstarred question of November 29<sup>th</sup>, 2010 (nr. 308) by a member of the Lok Sabha stating that '*no specific organisational changes are being implemented to attract private investments in the Ports*'.

#### **Main Background Documents**

**3.10** The Indian port sector is clearly in a phase of transition. Its institutional framework on the one hand characterised by a combination of historic elements, some of which have their roots in colonial times, and on the other hand the application of modern legal instruments such as BOT (Build, Operate, Transfer) and BOO(S)T (Build, Own, Operate, Share and Transfer) concession agreements. Currently, new initiatives to modernise the sector are emerging in various stakeholder organisations while new port sector law proposals are under discussion.

**3.11** One of such proposals is the *draft Major Ports Regulatory Authority Act, 2008* (MPRAA, 2009) which has been circulated within the ports community. This Act would create a new Regulatory Authority for Major Ports which can be considered a successor of the Tariff Authority for the Major Ports (TAMP).

The main powers and function of the new regulatory Authority of the Major Ports would be:

- Fixing of rates of port and terminal services provided by port authorities/trusts and private operators in the Major Ports;
- Fixing of rates of the use of properties of port authorities/trusts.
- Determining the conditions in relation to the levy of rates referred above;

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- Laying down the performance norms and quality standards, continuity and reliability of services to be provided by port authorities/trusts and private operators and monitor actual performance and services levels provided with a view to secure compliance of such prescribed norms and standards by port operators and private operators;
- Monitoring the performance of the respective duties and obligations under the Concession agreement by a port authority/trust and the concerned private operator and decide upon any disputes between them unless the parties have agreed to refer the dispute to arbitration, as provided in the said concession agreement;
- Deciding any dispute involving the port authorities/trusts or private operators and a group of persons using the services and/or properties with reference to application of a scale of rates and/or quality of services provided.
- Although this draft Act (at the time of writing) has not been re-launched, it represents current thinking at the level of the Central Government, in particular the Ministry of Shipping (MoS). Still there is much uncertainty in the sector (including TAMP) about the way to go forward with this type of tariff regulation.

**3.12** The new Authority would be fully controlled by the Central Government. The Authority would consist of a chairperson and four member all appointed by the Central Government. The chairperson is to be selected from amongst persons who were or have been in the level of Secretary to the Central Government.

**3.13** Another recent proposal is the *draft Indian Ports (Consolidated) Act, 2010* which is currently being discussed in the port sector. As no major changes are expected, the text available on December 1<sup>st</sup>, 2010 has been commented upon.

The first initiative to modernise the Indian Ports Act, 1908 and the Major Port Trust Act, 1963 was already taken in November 1977. It should be emphasized that both these acts were modelled after the then British practice to have ports managed by a representation of various port interests such as customs, harbour master, government, chamber of commerce, etc., and carry a lot of baggage from the acts of the 19th

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century regulating the ports in the three presidencies of Madras, Calcutta and Bombay. Moreover, the Major Port Trusts Act, 1963 represents the economic ideas of the 1950s where central planning, nationalisation and state enterprises were accepted phenomena.

**3.14** The terms of reference for the committee responsible for drafting new law proposals were as follows:

- (i) To identify the provisions in the Statute which are no longer required due to changes in the maritime/port activities over the years;
- (ii) To identify the provisions which are in tune with the present needs of the ports to co-operate in a commercial climate and in harmony with the liberalisation of the economy; and
- (iii) To examine whether the existing Statutes can be unified/simplified into a single Statute.

Unfortunately, it was not specified what exactly the needs of the ports to *cooperate* would be, what is meant with a “commercial climate” or “liberalisation of the economy”. In 2003 it was decided that the Indian Ports Association would take a fresh look at the issue due to recent changes in the maritime sector. The IPA produced a report which was re-examined in 2007. New recommendations were sent to the Ministry in January 2008. After a presentation in June 2010 the Secretary (Shipping) requested the Indian Ports Association (IPA) to draft a new law *on the basis of existing legislation*, namely the Indian Ports Act, 1908 and the Major Port Trusts Act, 1963. It is evident that no structural changes in the port sector were envisaged at that time.

**3.15** Part A of the new Act would have various operative provisions, applicable to all ports in the country while Part B would deal with ownership control and management of the Major Port Trusts. The provisions related to TAMP would be de-linked from the new Act and included in a new Act (Port Regulatory Authority Act, 2008). The powers to fix rates might be left to the management of the Port Authorities or (Union/State) Government or any Authority authorised by the Government. In

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order to highlight the changes, the major differences between the Major Port Trusts Act, 1963 and the provisions related to the Major Ports in the new Act are listed below.

**3.16** Pursuant to the new Act the composition of the Board of Trustees of what is now called a Port Authority, will be as follows:

- The Chairperson and Deputy Chairperson (if any) will be nominated by the Central Government;
- Not more than 13 members, appointed by the Central Government, from time to time, representing various interests, namely:
  - o Ministry of Railways (1)
  - o Central Government (1)
  - o DG (shipping) (1)
  - o Indian Navy (1)
  - o Coast Guard (1)
  - o State Government (1)
  - o Customs (1)
  - o Labour employed in port (2)
  - o Major users and terminal operators (1)
  - o Shipowner / agents (1)
  - o Exporters /importers (1)
  - o Other interests (1)

The only organisations to be consulted by the Central Government in respect of Board nominations are the Trade Unions (if any) in the concerned port. It is clear that the representative character of the Boards is maintained in the new Act.

**3.17** The new Act also preserves the difference between Major Ports operated under the purview of the Central Government and the remaining ports (the word “Minor Port” is not used any more in the new Act) which are for the responsibility of the Maritime States.

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The definition in the Act of a Major Port is as follows: ‘Major Port means *any* port which the Central Government by notification in the Official Gazette declare, or may under any law for the time being in force have declared, to be a major port’. Although the law does not explicitly mentions the right of the Central Government to take over any non-major port from the concerned State, the above definition suggests that this might indeed be the case.

Chapter II of the new Act (*Powers of the Government*) sets out the rights of the Central Government vis-à-vis the State Governments. Each has the right to declare the limits of a port area by notification in the Official Gazette. Land and water (including reclaimed land) at any time after its establishment shall vest in the respective port.

**3.18** Part B (*Art. 79 sub 4*) sets out the right of the Central Government to corporatise a Major Port, although the concerned provision is not very specific. The text reads:

*“The Central Government may make regulations for the manner and mode in which ownership, control and management of a Major Port be vested in a company registered under the Companies Act, 1956, the constitution, shareholding and the representation in the management of such company and the terms, conditions and provision under which the same may be vested and all matters in relation to and incidental thereto”*. It should be noted here that already in 1996 the Government of India took a decision to set up all new Major Ports as companies under the Companies Act, 1956, and to gradually corporatise the existing Port Trusts. However, the only Major Port corporatised under the Companies Act is Ennore Port Limited (2001). No other Major Port has been corporatised since the establishment of Ennore. Also the 13<sup>th</sup> Major Port (Port Blair), established in 2010, has the standard port trust structure.

**3.19** The third major document influencing the functioning of the Major Ports in respect to PPP projects is the *Model Concession Agreement (MCA)*, referred to in Section 3.2 above. The first draft was discussed in June 2005. It took some time before all stakeholders were consulted. A joint group of high ranking civil servants

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trashed out the last unresolved issues in September 2007. The final version of the MCA was approved in January 2008 by the Cabinet Committee of Economic Affairs. The MCA is a very detailed and comprehensive document. It applies to all Major Ports and, according to the BKC Report, has not experienced so far any difficulty in awarding of projects, nor have any major issues been raised by bidders in pre-bid meetings.

**3.20** As regards the major contents of the MCA: all elements and issues which usually form part of an international terminal concession are included in the MCA. However, the concession has the character of a license in the form of an agreement, which is in the legal sense a complicated notion. A license is generally understood as a personal privilege with respect to some use of land and is revocable at the will of the landowner, *in casu* the concerned Port Trust. Instead of a lease payment for the terminal area the concessionaire pays a license fee for the use of the land (see remarks in Section 6.14). On the basis of the 2004 Government Guidelines no lease of port land (custom bound areas) is allowed. Royalty is paid in the form of *a percentage of Gross Revenue*. Any discounts offered to shipping lines under a Terminal Handling Agreement cannot be taken into consideration for the calculation of Gross Revenue. Using Gross Revenue as a royalty is very unusual and controversial in the port industry. Another unusual feature is the provision that *no termination compensation* is paid to a concessionaire on expiry. In the case of private terminals, if the assets are replaced during the concession period in accordance with the Concession Agreement, depreciation of the entire capital cost will be allowed over the remaining concession period if the assets would have residual life at the end of concession period.

The tariffs cannot be fixed or adjusted by the Concessionaire but are dependent on the decision of a third party (TAMP). Moreover, the inclusion in a schedule of Key Performance Indicators (KPIs) for *all* commodities, although commendable, might be too ambitious to be effective, as most of these differ from port to port due to local circumstances. It can be concluded that the MCA is a step forward, but the adoption

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of Gross Revenue as a basis for determination of Royalties may not be the best solution. This issue will be further discussed in Section 6.13.

In July 2009 an MCA based concession for the construction of a deep draught iron ore terminal at Paradip Port was agreed, being the first port project under BOT to be implemented with a fixed upfront tariff by Tariff Authority for Major Ports (TAMP).

**3.21** It is instructive to compare the Model Concession Agreement for the Major Ports with the one developed by the State of Gujarat for its (Minor) ports, already developed in 1999. Contrary to the Model Concession Agreement for the Major Ports, the Model Concession Agreement for the Gujarat ports has the following main characteristics:

- (i) A clear policy as to the applicable PPP models, either BOT or BOOT.
- (ii) Free tariff fixing by the Concessionaire/Licensee, no interference by TAMP or any state regulator, although the possibility to establish one has been kept open in the MCA.
- (iii) Land given in (long) lease (possessory interest). Concessionaire/Licensee pays lease rent on the basis of a separate lease agreement for the concession area. The land may be given in sub-lease.
- (iv) The Concessionaire/Licensee pays a waterfront royalty either in the form of a fixed fee related to the amount (tons) of cargo handled through the terminal, adjusted by 20% every three years (straight line option) or a fee notified by the Government of Gujarat along with the schedule of port charges, also adjusted by 20% every three years. In the latter case the Concessionaire/Licensee is granted a concession on the royalty payable to the Licensor till such time the Approved Capital Cost of the project is set off against the cumulative concession in royalty granted or till the end of the term of the concession, whichever is earlier (set-off option).
- (v) At terminal or expiry compensation is paid to the concessionaire/licensee for the movable assets present at the terminal.



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**3.22** A last important document comprising new ideas on the development of the Indian ports was recently issued by a Committee under the chairmanship of B.K. Chaturvedi, member of the Planning Commission (“**BKC report**”). This report deals with various important issues related to the port sector, such as the Model Concession Agreement (MCA) and related documentation as well as the position of TAMP.

The MCA was approved in January 2008 by the *Cabinet Committee of Economic Affairs of the Central Government* and has since been applied by the Major Ports for concession/BOT agreements. Although there have not been raised any major issues during bidders meetings a number of detailed issues required further deliberation. These issues were:

- (i) The definition of “(Total) Project Costs”,
- (ii) Change in Law provisions;
- (iii) Debt Due;
- (iv) The Independent Engineer vis-à-vis the Expert;
- (v) Redressal of public grievances;
- (vi) Equity holding requirement;
- (vii) Revision of tariffs and scales of rates;
- (viii) Minimum Guaranteed Cargo vis-à-vis Minimum Guaranteed Revenue;
- (ix) Interest of delayed payments;
- (x) Liability for errors in tariff rates;
- (xi) Short listing of applicants during public tenders;
- (xii) Conflicts of interest of applicants which also participate in other terminal projects.

**3.23** The BKC committee deals in detail *with the position of TAMP*. For a better understanding of the relevant issues the main tasks of TAMP as per Major Port Trusts Act, 1963 have been listed as follows:

- (i) Safeguarding the various port users’ interests
- (ii) Ensuring fair and just returns to port operators
- (iii) Considering factors which encourage competition and operating efficiencies

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- (iv) Deploy established costing methodologies
- (v) Regard policy objectives of the Government
- (vi) Leverage tariffs to improve operational efficiencies
- (vii) Ensure a fair and transparent tariff fixation.

The way TAMP operates is changing. New guidelines (2008) comprise a tariff cap which is set upfront prior to inviting bids for a PPP project. With respect to tariff increases of existing terminals a cost-plus approach was applied as per 2005 guidelines.

**3.24** The BKC commission published a number of observations which are shortly summarized hereunder:

- (a) the tariff fixing process by TAMP sometimes leads to delays which slow down the entire procurement process of PPP projects.
- (b) TAMP only exercises its authority over the 13 Major Ports only. The Minor Ports and – to lesser extent - Ennore (corporatized Major Port) fix their own tariff independently.
- (c) Their performance standards as used by TAMP for tariff fixing and those agreed between the parties in Concession Agreements may differ. Also, TAMP may receive complaints concerning the quality of service and forward its finding to the concerned Port Trust, which has to take appropriate action in accordance with the provisions of the Concession Agreement. However, this task could not be properly performed as the main emphasis of the organisation was on tariff fixing.

**3.25** The Commission proposed the following important, far reaching policy decision regarding the future of TAMP:

- (1) Short term: expanding tariff setting capabilities through in-house capacity building and streamlining of procedures;
- (2) Medium term (1-2 years): delegation of tariff setting to the Major Port Trusts while TAMP will act as appellate authority;

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- (3) Long term (after 2 years): Leave tariff setting to market forces. Port Terminals where competition is already a reality, may be left to market forces immediately.

**3.26** Analysing the various measures and law proposals taken by the Central Government during the last decennia, it becomes clear that there is no consistent national ports policy which is aimed at transforming the Major Ports into viable and autonomous undertakings which can properly function within a market oriented economy. The principle decisions of the Government aimed at structural changes have not been acted upon. The Major Ports have not been developed as autonomous, commercially oriented entities, they still are dependencies of the Ministry of Shipping. The reform measures taken to date have the character of curing the symptoms but not the illness itself.

It is surprising that 20 years after most world ports successfully adapted their structure to the requirements of the emerging market economy, the Major Ports still struggle with a port management model, based on a centralised plan economy which developed in the 1950s, flourished in the 1960s and was generally abolished in the 1980s. This is the more surprising since many other sectors of the Indian economy have been successfully modernised making India a new economic world power. Unfortunately, the current port management structure for the Major Ports will, when remaining unchanged, increasingly become an impediment for the economic growth of the country.

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## **4. INTERNATIONAL DEVELOPMENTS**

### **Various Port Management Models**

**4.1** Although the Indian Government already in 1996 decided to introduce the Landlord Port Model for the management of the Major Ports, its implementation is long overdue (see section 3.2). Some basic elements of the Landlord Port Model have been implemented for the Major Ports, such as the introduction of privately operated terminals. It can be rightly argued, however, that partial implementation of the Landlord Port Model creates more problems than it solves. For a proper understanding of this port management concept, its major characteristics are analysed below within the context of the Indian situation.

**4.2** The obvious challenge is developing an overall port management structure for India, which on the one hand safeguards the national and regional interests of the country and on the other hand makes the port sector attractive for private participation. In this structure, the way the ports are managed is only one aspect. To be successful, all elements of the “system” and the relations between the various participants must be harmonised: the competent Ministry, the ports regulator (if any), the port authorities and the private sector participants operating port terminals or performing port services. Thus, implementation of the Landlord Port Model is one of the elements of the system, albeit the most important one.

**4.3** Generally, the way ports are administrated depends on:

- the socio-economic structure of a country (market economy, open borders)
- type of governance (centralised, decentralised, confederation, etc.)
- historical developments (former colonies, etc.);
- location of the port (within municipality, etc.);
- type of cargoes handled (oil port, container terminal, etc.).

Within the context of the above a variety of port management structures have developed over time. They can be classified into four main models:

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- (i) *(Public) Service Port*, a management model where a Port Authority functions both as landlord and terminal operator. This model has become rare as it does not properly function in a market oriented economy (see Section 4.4). However, it is still applied in India;
- (ii) *Tool Port*, an (unsuccessful) combination of a Service Port and a Landlord Port where the Port Authority manages the port land and operates the terminals while labour is supplied by the private sector. The model was applied in Mediterranean countries (mainly France).
- (iii) *Landlord Port*, a model which is applied in the vast majority of world ports. This model is characterised by a strict division of tasks and responsibilities between the public sector in the form of a public Port Authority and the private sector performing terminal operations.
- (iv) *Privatised Port*, sometimes in the form of a Private Service Port. Basic characteristic is that a private port authority owns the port land. This model can be found in the UK, New Zealand and, under a BOOT concession framework, in Gujarat.

### **Demise of Service Ports in the 1990s**

**4.4** As already discussed above, until far in the 1990s many world ports had the institutional character of Service Ports, managed by a public authority. This implied also that their employees, including stevedores, were civil servants or had a similar status. Since then the vast majority of this type of ports changed its structure into that of a Landlord Port for the following reasons:

- It had become clear that in a mixed economy there was no reason for the public sector to operate and manage port terminals. In a centralised economy, all elements comprising maritime transport (vessels, cargoes, ports) were part of the state structure and coordinated at a national level. In a mixed economy most of these elements are the responsibility of the private sector.

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- Service Ports were usually less efficient, not commercially oriented and often characterised by severe over-manning, sub-standard equipment, port congestion and chronic service failures.
- All investments in port infrastructure, superstructure and equipment had to come from public sources.
- Container handling, which started dominating the breakbulk sector since the 1980s, requires considerably less personnel than the conventional method of cargo handling. Publicly managed terminals were less able to cope with the subsequent loss of job opportunities than private terminals.
- The public sector often did not have the considerable investment funds available to modernise port/terminal infrastructure, superstructure and equipment. However, private funds would only become available in the event that the terminal operations would be performed by the private sector on a long term basis.
- Ports retaining the outdated service port structure increasingly lagged behind and often only could survive by (mis)using their monopoly position. They became a burden for the national economy because of their inefficiency and high prices.
- Service Ports were prone to political interference which often stood in the way of professional port management. Frequent changes in Government also had a negative impact on the development of Service Ports, introducing an element of instability in the system.
- Service Ports are vulnerable for labour problems, often having to cope with port labour which has the power to paralyse a substantial part of the national economy when their demands are not met.

### **Origin of Landlord Ports**

**4.5** The mixed public – private character of port management is not a recent invention, contrary to what many wrongly assume. On the contrary, looking at port

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development over the ages, the Service Port Model was the (unfortunate) exception: the result of an excessive and unjustified belief in the benefits of central planning and state intervention in the economy. Forms of Landlord Ports were common in Continental Europe already in the Middle Ages (Hansa ports). Port work was organised in “bag carriers” Guilds. Port basins in the old city of in 17<sup>th</sup> century Rotterdam were constructed by what we now call the private sector: the merchants and shipowners. So called PPPs have always been an accepted characteristic of the port sector long before the term was invented.

**4.6** Ports still are considered of strategic importance to the economic and spatial development of a country, and rightly so. It is clear today (as it was in the past) that port development has direct consequences for national and regional development as well as land use, environmental impact, job creation and economic stimulation for economically blighted areas. This strategic importance still justifies government involvement in port development. However, it does not justify a public claim on terminal operations mainly comprising loading and unloading of vessels and transport of commodities. They should be performed outside the public domain.

**4.7** During the last decades it has been recognised that free trade and a market oriented economy are more suitable to improve the economic situation of a country than centralised state intervention. However, it has also been recognised that the market economy and free flow of capital on a global scale can have negative effects, if unchecked. These effects mainly manifest themselves in potential job losses which cannot be compensated directly and may create serious problems in countries where a system of social security is not yet fully developed. This important aspect must be taken into account from the very outset when structural changes are being introduced in state owned enterprises in general and in the port sector with its usually powerful labour unions in particular.

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- 4.8** Contemplating the Landlord Port Model, the following questions are relevant:
- (i) How does Landlord Port Authority represent the public interest and what is its commercial role?
  - (ii) What are the (minimum) tasks, responsibilities and obligations of the (public) Landlord Port Authority?
  - (iii) What can be its legal form?
  - (iv) What are its operational and legal relations with the private sector operators?
  - (v) How can a Service Port best be converted into a Landlord Port?
  - (vi) How should the public sector deal with port labour in a situation of structural change?

#### **Principal Characteristics of Landlord Ports**

**4.9** In a mixed economy, *neutrality of the Landlord Port Authority* is a basic requirement for fair competition between privately operated port terminals. The new Ports Authority should be neutral towards the private port service providers. It has to represent and defend the interests of the entire port community. Therefore, an important issue is the relation between the Landlord Port Authority and the port services providers, in particular the terminal operators at the port's territory. In general, it is undesirable for a public Port Authority to be *directly involved in terminal operations*. In the Landlord Port Model the port terminals including infrastructure are leased to private terminal operators and / or port related industries, such as refineries, tank terminals and chemical plants. The private operators provide and maintain their own superstructure, including buildings (offices, sheds, warehouses, Container Freight Stations, workshops, etc.) and often also terminal infrastructure such as quay walls. They install their own equipment on the terminal such as quay cranes, transtainers, conveyor belts, etc., depending on their core-activities. Stevedores (port & dock labour) are employed by private terminal operators, be it that in some ports part of the labour force may be provided through a labour pool type system (Rotterdam).



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A Landlord Port Authority should in principle *be prohibited from providing cargo-handling services* as being incompatible with its public function. The Port Authority as a shareholder in a stevedoring company may also give rise to a conflict of interest. However, the latter case is somewhat more perplexing. A Port Authority with the overall development task for the port area may sometimes require strategic investments to develop a sector of the port business. However, indirect involvement, even if it is deemed necessary, should be limited both in time and money.

**4.10** Many argue against *full privatisation* of ports, i.e. the sale of port land to the private sector. In modern times, the need for some form of government intervention in markets for port services is still justified and related to the unique economic characteristics of seaports, which make them natural monopolies, viz.:

- the provision of (basic) port & terminal infrastructure entails large fixed costs and low marginal costs;
- a relatively large minimum initial capacity of port infrastructure is required for technical reasons;
- the port infrastructure is frequently indivisible and as a result increase in infrastructure capacity can only be realized in ‘quantum chunks’;
- both initial construction and port expansion require large amounts of capital. As a result, the development of *basic port infrastructure* (such as sea locks, breakwaters, port basins, common areas, main hinterland roads, rail & pipeline connections) all at one time causes large capital investment opportunity losses as a result of underutilized capacity during the earlier phases of a port project’s lifecycle. Gradual expansion, assuming it is physically possible, however, creates also extra costs;
- basic port infrastructure has a very long life span (some 80 – 100 years). Moreover, investment in it is high risk since few alternative uses exist.

The life span of basic port infrastructure projects usually exceeds the time horizon acceptable to private investors and commercial banks (save in case of fully privatised

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ports). This is one of the main reasons for financial involvement of governments in port construction and port expansion projects.

**4.11** With respect to *terminal infrastructure* (quay walls, access of road, rail and pipeline systems to terminals, land reclamation) the situation is somewhat different. In the *traditional Landlord Port Model* the port authority is responsible for their construction and maintenance. In other words, the port authority creates the terminal area and the quay wall, while the private operator pays for the specific terminal elements such as paving, superstructure, equipment and related facilities. Costs of Port Authority investments are mainly paid for through port dues by the vessels calling at the port in respect of use of the basic infrastructure and (sometimes) the quay wall (quay dues) while land rent is paid by the terminal operator for the lease of the terminal area.

As from the 1980s so called PPP (Public Private Partnership) arrangements were applied to port development. Many port authorities concluded Concession/BOT agreements with (international) terminal operators, which can be seen as an important modification of *the traditional Landlord Port Model*. Under the BOT (Build, Operate, Transfer) system the private operator takes over the (public) obligation of a port authority to construct terminal infrastructure (particularly the quay wall and the reclamation works, if any). This relieves the Port Authority from heavy investments, but, obviously, affects the concession/lease fee which can be charged by it. Concession/BOT agreements have usually a contract period of 30 – 40 years, allowing the terminal operator to write off his investments within this period. In such case the land rent for the facility is substantially reduced compared to the traditional landlord situation.

**4.12** There are many variations *within the Landlord Port Model*. Most maritime countries have created Port Authorities as *public* entities. Some ports are part of a municipal administration, but most of them are established on the basis of a separate ports law, which endows Port Authorities with certain regulating powers, especially with respect to the use of port land, safety and security as well as protection of the

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marine environment. The main reasons for retaining Major Ports within the public domain are:

- the strategic interest of the ports for the economic development of the country and the region;
- the long term effects of port development for the spatial development of a port city and region;
- the prevention of speculation with valuable port land.

Governments have structured their Landlord Ports under various institutional settings, as the Landlord Port Model must be seen as a set of principles which can be applied to various types of organisations. There exist municipal ports, regional ports, national ports, *Ports Autonomes*, etc. But one issue should be clear: a Landlord Port Authority must ensure a level playing field among various terminal operators and other service providers. The European Union accepts the diversity of port management structures in Europe but warns against port authorities who want to play a pure commercial role: *'... port authorities cannot be both judge and interested party at the same time'*.

The European Commission emphasized that where member states finance general port infrastructure and *the concerned Port Authority is also engaged in commercial activities* there is a high risk of violating Art. 87 of the EU Treaty with respect to fair competition.

**4.13** There should be a clear definition of objectives, functions, powers and extent of autonomy of the Port Authorities in the basis of the Landlord Port Model. Such objectives, etc, are usually set forth in national ports legislation.

In general, the functions of the Port Authority are:

*Public functions:*

- planning & administration of port land and waters;
- issuance of public licenses;
- regulation of port and terminal activities by issuing Bye-Laws within the framework of applicable law;
- construction and maintenance of basic port infrastructure and common areas;

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- protection of the port environment;
- ensuring public order and safety in the port area;
- representing the entire port community.

#### *Commercial Functions*

- at a minimum achievement of full cost recovery;
- establishment of contractual (Concession, Lease) and other conditions (Public License) for private operators to provide marine or terminal services; application of transparent and open public tender procedures with clear and objective selection criteria;
- construction and maintenance of terminal infrastructure, access roads/rail and port basins;
- re-development of existing port areas which have lost their port function, in conjunction with local and regional authorities.

**4.14** The following legal requirements are usually taken into consideration in a national ports law:

- (i) Autonomy of the Port Authority with respect to financial issues. There should be a separate budget unrelated to the State budget.
- (ii) Transparency of port accounts.
- (iii) Separation of accounts with respect to public and commercial tasks of the Port Authority.
- (iv) Clear financial relation between the State (Ministry of Transport/Shipping) and the Port Authority. No hidden subsidization, no financing of terminal equipment and superstructure.
- (v) Equal treatment of all port and terminal users, be it shipping lines, terminal operators or other service providers.
- (vi) Equal access for port and terminal service providers, no monopolies for the provision of terminal services, except in case of dedicated terminal.

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- (vii) Fair competition within the ports between terminal operators and marine service providers (intra-port competition).
- (viii) Fair competition between ports, no cross subsidization by Port Authority between various traffic categories.

### **Ministerial Functions**

**4.15** As mentioned above, there should be a *clear separation of responsibilities* between the Ministry of Transport/Shipping and the Port Authorities. A Ministry should keep sufficient distance from the executive port functions and refrain from interfering in the day-to-day running of the port.

The main functions of a Ministry in charge of the port sector can be listed as follows:

#### *Planning:*

- (a) planning and development of a basic maritime & port infrastructure comprising of coastline defences (shore protection), port entrances, lighthouses and Aids to Navigation, navigable sea routes and canals;
- (b) planning and regulating port development (location, function, type of management).
- (c) planning and development of port hinterland connections (roads, railways, waterways, pipelines);

#### *Legislative Function*

This function comprises drafting and implementation of transport and port laws, national regulations and decrees. It also relates to the inclusion of International Conventions (SOLAS, Law of the Sea, MARPOL, Port-State Control, etc.) into the national legislation.

#### *International relations*

International relations are aimed at furthering the international transport capability of the country. Often, negotiations have to be conducted with respect to through-going maritime transport routes with other countries. Specialized departments of the

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Ministry represent the country in developing and executing the national policies of the Government.

### *Financial and Economic Affairs*

A Ministerial department is usually responsible for the planning, financing and budget preparation of national plans and projects. It should be able to carry out financial and economic analyses and judge the socio-economic/ financial feasibility of projects in the relation to national policies in the various sectors.

### *Enabling Executive Functions such as:*

- Shipping Inspectorate & Register of Shipping (control of ship safety and manning conditions)
- Vessel Traffic Services/Aids to Navigation outside the port areas (construction, operation and maintenance)
- Protection of the marine environment,
- Coast Guard/Search and Rescue.
- Maritime Education and Training (Maritime Academies, merchant officers exams, licensing of seafarers & pilots))
- Autonomous Port Authorities (charged with execution of national ports policy)
- Construction and maintenance of port related infrastructure (sea protection works, sea-locks, port entrances, etc.).

### **Corporatisation of Ports and Terminals**

**4.16** In principle, corporatisation in the port sector means that former statutory Port Authorities are transformed into Government owned companies. This means that the new port undertakings will have a constitution consisting of a Memorandum and Articles of Association which defines the nature of the company and the manner in which the affairs of the company will be conducted. The Memorandum and Articles of Association will be registered with the appropriate authority and a company will be created. If created under the applicable Companies Act, a separate regulatory body will have to oversee performance of the newly formed port undertaking to ensure that conditions of the company's constitution and the Companies Act are met. Under this

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model Port Authorities are established and subject to *identical regulatory regimes and legislation as any other private sector company*. This model is currently discussed in India and already applied to the port of Ennore.

However, there is another principally different type of corporatisation for state owned corporations, namely to *corporatisation by specific legislation*. This solution is often applied within the framework of the Landlord Port Model. This means that there is the potential input and scrutiny by the public sector, be it a Parliament, Ministry, Regional or Local Government. As such corporatised enterprise still is part of the public domain, the creation of a separate regulatory authority can be avoided. It also means that ‘tailor-made’ provisions, such as those relating to accountability and ministerial control, can be built into the legislation. Corporatised Port Authorities should not be listed at any stock exchange. Moreover, specific provisions must be included concerning shareholding and the ownership of assets, in particular port land.

**4.17** An important question is what exactly is the port undertaking to be privatised? In the literature corporatisation is often referred to a port as one (preferable commercial) entity, which in practice is seldom the case. A port (within the Landlord Port Model) is a combination of public and private entities. One can corporatise *an entire port* only within the framework of a Service Port Model. It is therefore necessary in the Indian context to distinguish corporatisation of a Port Authority versus corporatisation of a port service provider such as a terminal operator/stevedoring firm.

The next question is the objective of corporatisation of either a Port Authority vis-à-vis a terminal operator. In India the Central Government has formulated three top priorities:

- (i) creation of new port capacity both in the Major and the Minor Ports;
- (ii) related to the first priority: massive involvement of the private sector for financing such capacity increase;
- (iii) improvement of the efficiency of the Port Trusts.

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The first two priorities are related to the landlord function of Port Trusts, the third one to the current cargo handling activities of the Port Trusts which, within the Landlord Port Model should *separately* be corporatised or privatised. The efficiency of ports is mainly determined by efficient port operations which are in the vast majority of world ports conducted by private companies.

### **Unbundling a Service Port through Corporatisation**

**4.18** Many Service Ports have changed their management structure by corporatising their stevedoring operations on terminal basis. This process is known as “unbundling” of a Port Authority. Corporatisation, always seen as a first step to privatisation of terminal operations, is the process in which a public sector undertaking such as a port terminal, or part thereof, is transformed into a private sector company under applicable legislation. This is executed by exchanging the company’s business and assets for shares of a new company; be it that the shares are issued and owned by the government (or Port Authority). The main aim of this exercise is to decrease direct governmental control over the company and to make it more responsive to market forces. Similar to privatization processes, this process may include financial restructuring while becoming a catalyst for commercialization: corporatisation. It is, in effect, privatization without divestment. Corporatisation of terminal operations is characterised by the following:

- The Port Authority sets clear and non-conflicting objectives for the new firm.
- Management is given greater responsibilities and autonomy over day-to-day decisions on investments, revenue and expenditure, and on commercial strategy. Direct budget control and approval of investment decisions are abolished.
- As a substitute for market based-scrutiny, performance is monitored against a range of financial and non-financial criteria.
- Rewards and sanctions related to performance are introduced for managers.
- Competitive neutrality mechanisms (regulation) are applied to ensure that the corporatised firm does not have any comparative advantages (or disadvantages)



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relative to private port operators operating under similar market risks (tax, interest rates, etc.).

**4.19** During the introduction phase of the terminal corporatisation process the following principle actions are required:

- Preparation and passing of enabling legislation, if and when required. In some instances a Port Authority (Netherlands, Poland, Sri Lanka, Tanzania) has the legal power to establish daughter companies.
- Development of the Company Charter (Memorandum and Articles of Association) of the corporatised port enterprise, and its subsequent incorporation.
- Development of a Corporate Plan including traffic forecast, Profit and Loss Account and (pro forma) Opening Balance.
- Capitalisation and vesting of (part of) the assets and liabilities of the Port Authority in this new firm.
- Creation of a new labour statute, financial and social measures to cope with any excess personnel (such as pension fund, retraining, 'golden handshake', etc.) and transfer of personnel from the former public entity.
- Retraining of management and staff to increase commercial orientation and managerial procedures.

The Port Authority (or the Government) may keep 100% of the shares of the new firm and retain (indirectly) full control. This represents, however, some danger in that this type of corporatisation is merely a continuation of the old practices in another setting.

Another possibility is the Port Authority retaining the majority of shares (say 51%) whilst the remainder is offered to strategic investors or the Indian public via a public share issue. When offered to a strategic investor, it is not uncommon for this investor to manage the facility via a management contract while the Port Authority follows a hands-off approach. Moreover, sale or public issue of shares will generate substantial income for the Port Authority, which it might use for its own priorities. It is noted that

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in some countries labour is given a token share in a private company as an inducement to ensuring its success.

**4.20** As discussed above, corporatisation of terminal operations usually represents a step towards full privatisation, as required under the Landlord Port Model. Therefore the Port Authority should within a reasonable period terminate its shareholding in the corporatised firm entirely to ensure neutrality. Only when there is no competition a Port Authority shareholding may be justified. An example: the Aqaba Container Terminal in Jordan is the only container terminal of the country. The Aqaba Development Corporation, responsible for the port, has for strategic reasons retained a 49% shareholding in the company (APMT) which operates the terminal under a BOT concession.

In general the following conditions should be met:

- The corporatisation period has to be limited. After a clearly defined period the Government or ports authority should be obliged to sell all shares to private parties.
- Board and management of the corporatised firm should be free of political and bureaucratic interference. Composition of the board of directors should be balanced in such a way that the decision process is objective and transparent, with the only aim to further profitability and efficiency of the firm and its long-term growth prospects.
- During an initial period the corporatised firm should be able to receive financial assistance from the mother company (the Port Authority), for example in the form of (subordinated) loans. However, profitability of the firm should be assured after a reasonable transit period.

#### **Legal relation between Port Authority and Corporatised Terminal**

**4.21** The process of unbundling will be completed in the event that a concession agreement is concluded between the Landlord Port Authority and the Corporatised Terminal Operator. The fact that the new operator still is owned for 100% by the Port

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Authority should not play any role with respect to the contents of the concession agreement; it should be a strictly commercial issue. The basis objective is to convert the terminal into a profitable business which can be fully privatised at a later stage through the sale of its shares to a private party.

It is probable that in the initial stage of the unbundling there is interest of the private sector to operate and extend a former public terminal but there are difficulties or delays to privatise the terminal operations. In that case there is the possibility to conclude a so called Wraparound BOT (WBOT). The WBOT concept packages a BOT with the privatization process of the public infrastructure. Under a WBOT structure, an existing publicly-owned port terminal is expanded by the private sector at its own costs, while holding title only to the additional infrastructure it has created itself. Under this model, a private operating company would then:

- operate the entire port facility under a Project Development Agreement (PDA);
- manage the government owned port terminal under a Management Contract;
- expand the terminal under a Concession/BOT Contract;
- have both the Management Contract and Concession/BOT Contract wrap around the PDA, which entitles it to operate the terminal as a whole.

### **India and Europe: a Comparison**

**4.22** It is interesting to compare the ports policy of the Central Government of India with the policies of the European Commission in this field. Of course there are differences: India is a union of states within one country, Europe is a combination of independent countries bound together by a treaty. However, with respect to the port sector there are similarities in that both in India and Europe there are large ports with different institutional and legal structures, located in different countries/states, competing for the same markets.

The European Commission never succeeded in regulating the legal form of Port Authorities of the Member States. Within the Community there exists a wide diversity of port management structures. The most common model in the EU is the landlord port model, which is the preferred model by the European Commission.

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**4.23** The most important element of the European ports policy is power under the European Treaty to ensure fair competition between ports. Similarly, the Indian Government should not focus on trying to manage the ports by setting detailed rules for their tariffs, performance and operations, but ensure fair competition between them, be it Major and Minor Ports. There are two areas where harmonisation is necessary. The first area covers the rules and conditions for financial participation of the Central Government and the Maritime States in the construction of basic port infrastructure and hinterland connections which should be clearly set out in a new ports law. The second area is the harmonisation of financial accounts of Port Authorities on the one hand and those of the terminal operators on the other. The examples of how the European Commission deals with these issues might be illustrative.

**4.24** A recent EU publication is the EU Commission Staff working document (*Communication on European Ports Policy – Full impact assessment*), of 18 October 2007 which outlines actions to formulate an EU Ports policy with the objective:

- (a) to ensure that there is sufficient port capacity available to handle the growth in EU trade;
- (b) to promote greater freedom of access for port services providers;
- (c) to promote more flexible employment patterns and social dialogue;
- (d) to promote fair competition within and between ports;
- (e) to achieve a better balance between environmental protection and economic growth objectives.

**4.25** The Communication sets out the following major findings:

- There is a vast mosaic of port management models across Europe. Under EU procurement rules there are several factors that have an impact on whether a Port Authority or a port service provider is regarded as *a public service provider* acting in the general public interest or *a commercial entity* governed by the rules

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of the market place. The Commission concludes (wisely!) that it has no role in to play ‘by establishing a unique port management model’.

- The wide variety of approaches to port and terminal financing resulting from the different port management models demonstrate the need to create a level playing field for cross-border competition. *Guidelines on State Aid to ports and more transparency of port accounts are needed.*
- A level playing field among Port Authorities is needed with respect to access to port land and port services.
- Port & terminal construction projects must comply with national and European environmental legislation. There is a need for enhancing environmental management in ports.
- Port labour requirements have been changed as a result from automatisisation and containerisation. A higher level of skills and more flexible employment patterns are required, in particular with respect to health and safety, training, freedom to select port workers and negotiate conditions of employment.

**4.26** The Commission emphasized that where member states finance basic port infrastructure and *the concerned Port Authority is also engaged in commercial activities* there is a high risk of violating Art. 87 of the EU Treaty. Separation between the accounts of these two spheres is considered a *basic requisite* to ensure transparency and accountability required under EU legislation (*Transparency Directive*).

The Commission has continued during recent years its drive towards further regulating inter and intra port competition. The member states subsidies in this field amount to between 5 – 10% of all investments in transport infrastructure in the EU. It announced to publish guidelines on State Aid to ports. The broad outlines of these guidelines can be summarized as follows:

- (a) State investments in basic port infrastructure such as breakwaters, coastal protection, dredged fairways, aids to navigation is not considered State Aid and therefore allowed under EU rules;

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- (b) State investments in user specific infrastructure such as quay walls, land reclamation, etc. are allowed when these are recovered from the users at market rates;
- (c) State investments in superstructure and terminal equipment such as gantry cranes, terminal vehicles, etc. are considered 'State Aid' and not allowed.

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## **5. CONSIDERATIONS FOR PORT REFORM**

### **Is a Port a Business?**

**5.1** In order to define a new role for the Major Ports, it will be necessary to make a clear choice with respect to functions, responsibilities and expectations of the major players in the sector. The opinions in and outside the port community have changed significantly over the past decades – from a public utility, to an operator, to a landlord, to a trade facilitator and to a commercially focused business. More recently the Port of Rotterdam introduced the idea that ports are main elements in a logistic chain which they should control in order to increase their competitiveness. The changing expectations and strategies of port development in recent times makes it crucial that the Central and State Governments have a clearly thought out opinion on the functions and responsibilities of their ports will be in the future.

Not surprisingly, the opinion that ports are only businesses, that all Government interference and public sector regulation is in principle unwarranted, is often expressed by free market ideologists. However, this must be considered a one sided view of reality. The strategic importance of ports is too great to leave their development solely to the private sector. Ports may have the legal obligation to operate in a commercially driven environment; since they are part of the public sector they also have, from time to time, the obligation to deliver a ‘public good’. Therefore creation of maximum shareholder value in terms of money should not be the main objective of public port management. The problem is not that ports are performing poorly as a result of political interference but the reason behind this – the legislation and port management model set in place. Many world ports (including Singapore and Rotterdam) have been successfully developed while being directly controlled by the concerned Government. Thus: Government control does not automatically result in bad managed ports. However, excessive Government control does!

Finally, the idea that ports (Port Authorities) would be able to control their economic hinterland by managing the logistic chain has no basis in reality. Port Authorities can

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enhance their competitiveness vis-à-vis neighbouring ports by creating exclusive port infrastructure such a deep water channels and sophisticated port facilities, but logistic chain management is a function of the private sector.

All in all, despite all interesting theories, the main function of a public Landlord Port Authority is to successfully develop the port area is administers in the general interest, operating their activities in accordance with sound commercial practice while allowing the private sector to perform port and terminal services in the most efficient and competitive manner.

### **Major and Minor Ports: worlds apart!**

**5.2** It is painfully obvious that the regulatory environment which has developed within the Indian port sector over a period of time has not been homogeneous. As discussed earlier, two fundamentally different regulatory systems exist in one country: one applicable to the 13 Major Ports under the purview of the Central Government and the other one to the some 185 Minor Ports regulated by the nine Maritime States.

It must be pointed out here that the Major Ports, despite recent improvements, still rank low in terms of the enabling nature of their business environment while it is generally felt that unnecessary regulatory and financial burdens are imposed upon Port Trusts, private terminal operators and investors. The non-Major ports are being perceived as more business oriented, customer friendly, cheaper and in general more efficient. It is therefore not surprising that they are more successful in attracting private investments than the Major Ports.

**5.3** It also has become clear that the co-existence of two fundamentally different port management systems within one country is problematic and in the current form not sustainable. The Major ports have so far dominated the port sector; they have doubled their throughput from only 281 million tons in 2000, 423 million tons in 2006 till 561 million tonnes in 2009. Especially at JNP the progress has been impressive. It is surprising that the Port Trusts were able to achieve this capacity increase despite their difficult institutional and legal conditions. However, capacity demand has far



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outstripped capacity creation resulting in excessively high berth occupation rates and long delays for vessels. Also the pace of awarding PPP (BOT) projects is considered (too) slow. According to press releases only 2 of the 25 projects under bidding in May 2010 could be awarded to date (Ennore and Tuticorin), although 2011 will probably show a substantial increase in the approval rate of PPP projects.

**5.4** Spearheaded by the State of Gujarat, the Maritime States are quickly getting their act together. Most of them try to emulate the success of the Gujarat development by enacting modern, customer friendly port laws, while constituting Maritime Boards, which act as a State-wide Port Authorities. These authorities are endowed with regulatory powers to conclude concession agreements (BOT, BOOT, BOOST) with private sector operators. The Maritime States are developing ambitious plans to increase port capacity by attracting private investments under easy conditions without too much 'red tape'. Examples are in the first place Gujarat with successful port developments in ports as Sikka, Mundra, Hazira and Pipavav, achieving a growth rate of 35% in 2009/2010 (206 million tons), handling already 25% of all Indian cargoes. The Gujarat Maritime Board (GMB) plans to double its port capacity in 2015 to 508 million tons per annum. Gujarat also takes care of the ports' hinterland connections by setting up Special Purpose Vehicles for rail links between Mundra, Pipavav and the Mumbai-Delhi rail corridor.

Also the Government of Maharashtra has far reaching plans to develop new (greenfield) ports, whilst amending its Maritime Board Act, 1996 to enhance the planned developments. The Rewas-Aware port development is the largest (Minor) port project in Maharashtra to date requiring an investment of some US\$ 1.2 billion with a planned capacity of 127 million tonnes per annum. However, this project requires an access channel through Mumbai Port Trust waters, which needs permission of Mumbai Board of Trustees. Here the situation may arise that three nearby ports with approximately the same hinterland compete against each other, two Major Ports (Mumbai & JNP) and one Minor Port (Rewas-Aware). Inter-port competition is as such a positive, even necessary part of the sector development, but it

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should be conducted on equal footing. If the current development continues unabated the so called Minor Ports (Sikka is already the largest port in India in terms of throughput!) will start cannibalising the Major Ports. The most modern, efficient (and profitable) terminals will be established in the Minor Ports, gradually out-competing, (with a few exceptions such as Nhava Sheva), their counterparts in the Major Ports.

### **Control of the Major Ports by the Government**

**5.5** The Port Trusts have very limited autonomous powers, they need for almost every important aspect of their management and operations approval of the Central Government (mostly the Ministry of Shipping). Infrastructure investments and tariffs are fully controlled by either the Ministry or TAMP. The draft Indian Ports (Consolidated) Act, 2010 mentions the following approvals, sanctions or orders by:

1. Central/State Government for certain category of vessels to enter the port (3A)
2. Commissioner of Customs to declare a dock ready for operations (7.1)
3. Central/State Government for removal of obstructions (17.1)
4. Central Government for the performance of certain port services (25.3)
5. Central Government for prior approval for entering certain types of contracts (25.3A)
6. Central/State Government for destruction or permit for an illegal wharf or jetty (28.1)
7. Central Government may order cancellation or modification of a scale of rates (62.1)
8. Central Government for cooperation concerning defence purposes (74)
9. Central Government for changing the terms of employment to his disadvantage when becoming an employee of the Port Authority (78.1)
10. Central Government for nomination of Board of Trustees (91)
11. Central Government for removal of Trustees (96)
12. Central Government has the power to create guidelines for creation and sanction of staff positions (107.1)
13. Central Government for maximum of pay scale (110.b)

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14. Central Government for form and conditions of Port Trust Securities (115.1)
15. Central Government for repayment of any loans to the Central Government (119)
16. Central Government for readjustment of sinking fund (122.2)
17. Central Government for reduction of contributions to sinking fund (122.3)
18. Central Government for overdrafts and temporary loans (123)
19. Central Government for application of moneys in general account specially sanctioned (125.1)
20. Central Government for investments in any port other than a major port (125.2.e)
21. Central Government for exceeding limits set by the Government for charging expenditure to Capital (128)
22. Central Government for works above a certain limit, set by the Government (129)
23. Central Government for settlement of claims above a certain limit, set by the Government (131)
24. Central Government for budget estimates with or without modifications (134)
25. Central Government: for estimate of annual expenditures and income (134.3)
26. Central Government for emergency spending above a certain sum set by the Government (136.1)
27. Central Government to order survey of the work of the Board of Trustees (143)
28. Central Government for any regulation made by the Board of Trustees (151.1)
29. Central Government for removing difficulties in the law by special order (167)

The expression “*Central Government*” is mentioned 137 times in the draft law.

**Control of the Major Ports by a new Regulatory Authority**

**5.6** Full tariff control is exercised by TAMP for both Port Trusts and private operators in the Major Ports (except Ennore). The draft Indian Ports Regulatory Act, 2009 intends to replace TAMP by a new Major Ports Regulatory Authority with increased powers to regulate the Major Ports, not only with respect to tariffs but also

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the *quality of port and terminal services*. The draft law includes the following tariff (and other) control mechanisms:

1. Fixing of rates of services provided by Port Authorities and Private Operators (14.1.a)
2. Fixing of rates for the use of properties of Port Authorities, which include buoys, wharfs, quays, piers, land, buildings, roads, bridges, vessels, appliances (14.1.b)
3. Determining the conditions in relation for the levy of the rates (14.1.c)
4. Laying down performance norms and standards of quality, continuity and reliability of service to be provided by Port Authorities and Private operators and monitor actual performance and service levels (14.1.d)
5. Monitoring the performance of respective duties and obligations under a Concession Agreement by a Port Authority and the concerned Private Operator and decide upon disputes among them (unless arbitration provisions have been agreed in the Concession) (14.1.e)
6. Deciding disputes between Port Authorities resp. Private Operators and users of services and/or properties regarding the scale of rates and the quality of services (14.1.f)
7. Fixing of ceiling rates for pilotage and other services (17)
8. Fixing of port dues on vessels entering the port (18)

The scale of rates to be fixed by the Regulatory Authority relates to all services in respect of vessels, passengers or goods *including transshipment of goods*.

**5.7** The draft law also contains powers of the *Central Government* with respect to the following issues:

1. Cancelling or modify a scale of rates *in the public interest* (26.1) (which might be an interesting subject for litigation!)
2. Issuing policy directions (27)
3. Supersede the Authority when *the Central Government is of the opinion* that: ‘the Authority is unable to perform, or has persistently made default in the

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performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, *or has wilfully without sufficient cause, failed to comply with any direction issued by the Central Government*' (28.1)

4. The new Regulatory Authority does not have its own income and is financially fully dependent on the Central Government (29)

**5.8** The provisions of the proposed law do go well with the centralised approach to port management still applicable to the Major Ports. However, the new Regulatory Authority:

- is not independent, but an organ of the Central Government. It is for instance not feasible for the Major Ports to challenge the decisions of the Regulatory Authority as they always can be overruled by the Ministry;
- has been charged with a mission impossible to control the performance of all Major Ports as well as their public and private terminals;
- is too far distanced from the day-to-day port operations to be able to set tariffs, which is in principle a task of the respective port authorities and private operators;
- will have to act like a Super Port Authority for the Major Ports (without the corresponding responsibilities) while reducing the Port Trusts to its branch offices,

### **Port and Terminal Competition**

**5.9** The issue of port and terminal competition is complex and its occurrence depends mainly on three factors:

- (i) the location and nautical characteristics of the port/terminal;
- (ii) hinterland market access, the quality of the hinterland connections;
- (iii) the management structure of the port; with respect to the Major Ports: the ability to unbundle terminal operations in order to create competition among service providers which determines competition within the port itself (intra-port competition).

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The spatial factors and the hinterland accesses of the Indian ports are not topics of this report. However, to understand the relation between the Major and Minor Ports in terms of inter-port competition a short description will be included here.

In a recent study of the World Bank, a detailed analysis was made with regard to the spatial factors influencing inter-port competition. This study divides India's port sector into three main regional hinterlands: the western, the southern and the eastern. Port traffic in one region rarely moves through ports in another region. Within the three regional groupings nine port clusters have been identified.

S.No	Cluster	Major Ports	Minor (State) Ports
1	Kolkata	Haldia, Kolkata	Sagar, Kulpi
2	Paradip	Paradip	Dharma, Jatadhari, Gopalpur
3	Vishakhapatnam	Vishakhapatnam	Gangavaram, Kakinada
4	Chennai	Chennai, Ennore	Krishanpatnam, Pondicherry, Cuddalore
5	Cochin & Tuticorin	Tuticorin, Cochin,/Vallarpadam	Vizhinjam
6	Mangalore	Mangalore	Karwar, Belekeri
7	Goa	Mormugao	Panjim, Redi
8	Mumbai	Mumbai, JNPT	Dharmtar, Rewas, Girye, Dhopave, Dabhol
9	Gujarat	Kandla/Vadnar	Hazira/Magdalla, Dahej, Pipavav, Kodinar, Veraval, Jaffrabad, Porbandar, Okha, Mundra, Navlakhi, Sikka, Bedi

Source: The World Bank, *INDIA – Port Sector Development*, version June 24, 2010, page 31.

It is obvious that cargo movements from one cluster to another will increase in the same pace as the inter-state road and rail system improves. The Mumbai and Gujarat port clusters within the western regional grouping are given in the World Bank report as an example of this. They both serve the larger north-western hinterland, while competing for cargo

### Inter-Port Competition

**5.10** Within the port clusters Major and Minor Ports increasingly compete for regional traffic and gradually also for national traffic. This competition can be expected to increase further in view of the ambitious plans of the Maritime States to build new port facilities under creative legal and economic arrangements. From the institutional point of view, the question arises whether such competition can occur on fair and equal footing. The Major Ports are continuously losing market share to the

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Minor Ports. This is as such not alarming, especially in a situation where the demand for port services seriously outstrips the capacity on a national basis. However, when market share is lost because the Major Ports *within the framework of the current institutional structure* are unable to create new port capacity fast enough, something is wrong. One should realise that the Major Ports still have some comparative advantages over Minor Ports in terms of scale, available marine services, hinterland connections and a well established port community of shipping & liner agents, banks and port related service institutes.

### **Intra-Port Competition**

**5.11** Intra-port competition between various terminals within one port is a common situation within larger ports. Under a landlord port situation terminal services are conducted by specialised terminal operators. Landlord port authorities compete on the basis of facilities they offer such as easy access, deep water, efficient pilotage and towage services. It is unusual that they compete on tariffs (port dues). In some instances Port Authorities cross-subsidize certain traffics through port dues. In India port dues are regulated; they are fixed on the basis of actual costs. Lately, it has become increasingly common that Port Authorities which also act as pilotage authority and run towage services, are required to give guarantees to private sector operators in long term concession agreements with respect to quality and rate increases.

**5.12** It is obvious that in Minor Ports monopoly situations will occur more frequently than in Major Ports. The Minor Ports are generally smaller and more specialised. The occurrence of two terminals handling the same type of cargo is exceptional. However, as long as the Port Trusts also perform terminal services for various commodities, they are in a comfortable position as monopolist for part of the traffic. Intra-port competition is still in its infancy in India. The only port where this type of competition properly functions is JNP, where three container terminals compete for the same cargo. However, in this case the Government owned terminal is

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in an unfavourable position as its institutional framework prevents it from becoming more efficient. It is restricted by complicated government rules and approvals by the Ministry of Shipping while it cannot have (officially) a profit motive. As long as demand for terminal services seriously exceeds capacity supply, this terminal can survive (as is the case in Colombo where the Jaya Container Terminal of the Sri Lanka Ports Authority is in the same situation vis-à-vis the private South Asia Gateway Terminal), but on medium term this situation is not sustainable especially when competing terminals are constructed in neighbouring Minor Ports. Moreover, one can ask what intra-port competition means in practice where all tariffs are regulated, strangely enough resulting in rather high profits for all terminals.

#### **Transshipment**

**5.13** Currently, the main transshipment port for Indian cargoes is Colombo. The Central Government tries to develop Vallarpadam near Cochin as new transshipment centre. It remains to be seen if this new port substantially threatens the dominant position of Colombo, which at the moment develops three new deep water terminals in its South Harbour.

In the early 90's container penetration in India was low and the handling infrastructure at the Indian ports was poor. Colombo was relatively efficient and located on the main route between Europe and the Far East. It was ideally located to gather cargo from the subcontinent. There was competition from Singapore and Dubai but Colombo was better located to handle Indian cargo in both easterly and westerly directions.

During the 1990's India began to emerge with faster economic growth and container export volumes increased rapidly. With this increase in volume the new container shipping service economics in the region changed. Vessels operated by the largest carriers began to call direct, and as volumes increased the benefits of direct calls applied to more carriers and more routes. Eventually, volumes became so large that the west coast of the Indian Sub-Continent, comprising Karachi and JNP became a



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destination generating direct services in its own right. The Indian market has now developed into west, south and east segments as discussed earlier.

Similar developments are emerging on the east coast of the Indian Sub-Continent with more direct calls. However, the diversion required for large ships is significantly greater than for the west coast and the traffic volumes are smaller; so this development will take longer to reach a point at which direct calls are justified. All in all, transshipment is a risky business for the ports. It should be realised that this traffic is very foot-lose and competitive. Rates are low and only when high volumes are achieved jointly with a substantial own cargo base, success is possible. Moreover, transshipment rates should not be regulated in view of the international competition in this field.

Strategic location of transshipment ports



### **A new Management Structure for the Major Ports**

**5.14** A new structure of the Major Ports has been under discussion already for over a decade. Ennore was corporatized but this was not generally considered a success. The new draft Indian Ports (Consolidated) Act basically maintains the current

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structure including the dominant role of the Ministry of Shipping. The draft Major Ports Regulatory Act strengthens the position of TAMP (under a new name) making the Port Trusts even more dependent from the centre than they already are. The vision emanating from these proposals can be described as a full-scale continuation of the old structures, though there are certainly improvements to be mentioned.

But the ideas of earlier policies linger on. In the report of the then Ministry of Surface Transport christened *Vision 2000* it was admitted that the Minor Ports could easier be privatised than the Major Ports. The study suggested three management models for the privatisation of Major Ports.

- (i) total privatisation as was proposed for the port of by Ennore after completion;
- (ii) corporatisation of Major Ports after they had gained enough financial strength;
- (iii) continuance of the Major Ports till their closure becomes possible.

A new port company would be established under the Companies Act, 1956 which could be initially government owned and gradually disinvested as to become fully privatised after 10 – 15 years. Vision 2000 did not aim at the introduction of the Landlord Port Model but at fully privatising the *port authorities itself* through a process of corporatisation. It is not surprising that the privatisation effort was vehemently resisted by the Port & Dock Workers labour unions.

**5.15** Over the years port policy of the Central Government switched between incremental improvements of the existing port management structures as expressed in the Indian Ports (Consolidated) Act, 2010 to a privatisation approach through corporatisation. Recently plans to continue the latter process have been launched again recently while requiring the JNPT to submit a business plan for this purpose. The next in line would be Tuticorin and New Mangalore.

### **Port & Dock Labour**

**5.16** The working conditions of port labour are still governed by the Dock Workers (Regulation and Employment) Act of 1948. This Act regulates the terms and conditions of port labour employment, service rules standards and other welfare

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issues. Workers' rights are highly protected including complete job security. Under this legislation, Dock Labor Boards (DLBs) were initially set up at seven major Indian Ports (Calcutta, Chennai, Cochin, Kandla, Mormugao, Mumbai and Visakhapatnam). Establishment of a DLB, however, was discretionary, and depended upon the individual port trust and the government. For instance, JNP did not establish a DLB, which worked to its advantage later. The DLBs are *exclusive suppliers* of dock (stevedoring) labour, responsible for loading and discharging of vessels. The shore labour, on the other hand, is employed by the Port Trusts themselves. This division of labour is a remnant of former times and does not fit into modern port practices. The inter-changeability of port workers which in principle enhances efficiency of port operations required merging of the DLBs with the Port Trusts. Accordingly, an amendment to the Dock Workers Act was passed by the Indian Parliament already in 1997 for facilitating a merger of the DLBs with Port Trusts. Subsequently, most DLBs have been merged with the respective Port Trusts, the latest one in 2010 (the Calcutta DLB with Kolkata Port Trust). With these mergers the Port Trusts have also become responsible for Dock Labour which under the current legal framework cannot be reduced except by retirement or VRS (Voluntary Retirement Scheme) process.

In various cases the Port Trusts had to cope with hidden costs. The Port Trust of Visakhapatnam had to pay Rs 30 crores for income tax arrears and also had to set aside Rs 100 crores for VRS. However, it should be noted that dissolution of the DLBs is a necessary step for normalising and modernising the existing port management structures.

Port labour in the Major Ports is represented by five labour unions:

1. All India Port & Dock Workers Federation
2. All India Port & Dock Workers Federation (Workers)
3. Water Transport Workers Federation of India
4. Port, Dock & Waterfront Workers' Federation of India
5. Indian National Port & Dock Workers Federation

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### **Privatisation of Port Trusts?**

**5.17** In *Vision 2000* the Ministry of Surface Transport aimed at fully privatising the ports and not only the port terminals. It is important, however, to define what in this context the term ‘privatisation’ exactly means.

Many state that the only way to improve the performance of Port Authorities is through the process of privatization. This is because it is believed that certain characteristics of the private sector are indispensable elements to achieve commercial success.

The term ‘privatisation’ has therefore become the most mentioned strategy for port reform processes, whereas in many cases the strategy actually relates to the introduction of the private sector into what is often considered the ‘public domain’ by privatising *terminal services* under a landlord port regime.

This confusion is still witnessed today in publications, reports and discussions. Many governments have adopted other strategies than full privatisation of ports for bringing private sector characteristics into the public sector. Actually, governments can select from among a variety of strategies for improving organizational and operational performance of ports and terminals.

Privatisation generally implies that the role of the private sector in existing port facilities and services increases, as well as in the development and construction of new port facilities mainly through Concession/BOT agreements.

Therefore, to avoid misunderstanding, in this report the term ‘privatisation’ will only be used in the sense of *unrestricted and irrevocable transfer of port land from the public to the private sector*, as defined in the World Bank Port Reform Toolkit.

**5.18** Full privatisation of *ports* was introduced in the UK by the Government of Margaret Thatcher during the 1980’s and later in New Zealand. Few countries followed this example since the results of this process are not very convincing. Efficiency improvements were mainly achieved by privatising terminal services; the institutional structure of the *port authority* was of less importance. In other words, privatisation of landlord Port Authorities was not a necessary pre-condition to achieve

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an efficient and competitive situation in the port sector. Most port experts find full privatisation of main ports undesirable because of possible speculation with port land, the occurrence of private monopolies and loss of neutrality of the privatised Port Authority. In this sense port privatisation did not yet occur in India. Even the so called private ports (Mundra, Pipavav) cannot be considered fully privatised as they are constructed under a BOOT regime. Port land has to be returned to the State (GMB) after expiry of the term of the concession.

#### **Advantages of Corporatisation of Port Trusts**

**5.19** The most obvious and most important advantage of corporatisation of Port Authorities is the freedom to manage their capital investment programmes which are essential to increase capacity to meet the ever growing demand for port services and to introduce the new technologies which this entails. The corporatised Port Authorities will be free to borrow on the capital markets without the constraint of government spending limits. Thus investments can be made on the basis of the needs of the port and do not have to compete with investment proposals in other parts of the public sector.

Another inevitable outcome of corporatisation is that Port Authorities are increasingly under the necessity to take the requirements of their customers serious as the port services represent a significant cost element to the ports industry. Thus corporatised port entities are forced to concentrate on improving the efficiency of their operations, whether it is a Port Authority or a terminal operator.

**5.20** The corporatised Port Authorities and terminal operators will have increased freedom to act when separated from the formalities of government employment. Staff and labour management can become more rational, flexible and result oriented. The freedom to negotiate agreements with labour unions may result in efficiency gains, through a combination of better working practices and voluntary staff reductions. The catalyst for improvement will be freedom from government employment constraints which had previously inhibited change. For the staff, salaries may be increased

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significantly but the overall efficiency gains could result in price reductions to the port's customers along with improved service levels.

**5.21** In the specific Indian situation corporatisation of the Port Trusts/Port Authorities may have another advantage, related to the fact that the corporatised Port Authorities can diversify their shareholding. In the case of Ennore the shares are divided between the State and the Chennai Port Trust. In order to involve the Maritime States in the management of the Major Ports, part of their shares may be offered to the States where such ports are located. This proposal will be further elaborated in Chapter 6.

**5.22** Last but not least is the issue of labour. As port & dock labour will be employed by the private stevedores after unbundling of the Major Ports, the (reformed) Port Authorities can concentrate on their main mission: the development and expansion of their ports through an efficient and effective land management. Under the current regime, too much energy of the staff of the Major Ports is focused on labour management, which is especially in a period of port expansion an extra and rather cumbersome workload.

#### **Corporatisation by Incorporation Act**

**5.23** As discussed earlier, there are two ways to corporatise: corporatisation can be implemented either through incorporation of the concerned entity under a Commercial Code (in India the Companies Act, 1956) as a limited liability company, or as a *statutory authority* by a separate Incorporation Act under its own Articles of Incorporation. The statutory option is the most common approach for corporatising Port Authorities. It is usually supported through the application of an umbrella legislation, which regulates some common aspects of corporatised government entities, *in casu* the Port Trusts.

In the event that the Companies Act is used as the basis of corporatisation, all provisions regarding the safeguarding of public interests must be included in the Memorandum and Articles of Association. One should realise that the Companies Act

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gives a fixed framework for shareholder, Board and Executive Management. Moreover, the company has to adhere to all usual conditions of a private company, both in terms of reporting and accountability, and of taxation. A problem is how to ensure that the Company's management acts in the interest of the Government as owner.

Corporatisation may also be based on a statutory company with its own Articles of Incorporation. This requires a specific law, which will thus be tailor-made. The main differences between these options are the objectives of the corporatised companies. In case of the first option (corporatisation under the Companies Act) the main objective of the company is to make a profit for its shareholders. This objective may be diluted by socially oriented requirements but remains of overriding importance. In case of the statutory option, there is considerably more room to take socio-political objectives into account. This may have an impact especially on investments and expansion issues. A statutory authority allows for more government influence and the pursuance of macro economic objectives. Main question is therefore how important the concerned public interests are and how to safeguard these. For the avoidance of doubt, the private terminal operators should always pursue the usual goals of private enterprise in a competitive transport market: value creation for their shareholders by performing efficient and competitive terminal services.

**5.24** Another problem of the application of the Companies Act, 1956 is related to the ownership of assets. Depreciation rates for port projects are not defined under Schedule XIV of the Companies Act, 1956 or under the Income Tax Act, 1961. Therefore, when capital expenditures are incurred for basic port infrastructure, related depreciation cost and amortisation issues are unclear. Such issues can better be solved in a specific Incorporation (Ports) Act.

#### **Administrative Requirements during unbundling**

**5.25** During the time that the management of a (former) Major Port Trust still provides terminal services such as stevedoring activities, it must separate the accounts

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of each of its terminal service activities from the accounts of its other activities. The compilation of the accounts must accord with current commercial practice and generally recognised accounting principles to ensure that:

- (a) the internal accounts corresponding to different activities are separate;
- (b) all costs and revenues are correctly assigned or allocated on the basis of consistently applied and objectively justifiable cost accounting principles;
- (c) the cost accounting principles according to which separate accounts are maintained are clearly identified.

The report of the external auditor of the concerned Port Authority on the annual accounts must indicate the existence of any financial flows between the terminal service activity of the Authority and its other activities. The auditor's report must also be submitted directly to the Central Government without any interference of the concerned Port Authority.

#### **Safety and Environment**

**5.26** There are strong arguments to make a clear distinction between the maritime and the ports sectors, or, more clearly, between the maritime and port safety and environmental tasks, which fully belong to the public domain, on the one hand and (public) land management which may be considered an economic activity with a mixed public-private character, on the other.

A second consideration is that Major and Minor Ports increasingly compete against each other. Such competition is part of the sector characteristics, but should not extend into the domain of safety, security and environmental control. There should be specific legal provisions applicable to all ports and terminals, whether public or privately owned all over India.

The present Ministry of Shipping is currently endowed with a vast array of tasks and responsibilities, which include the traditional regulatory and executive tasks such as maritime safety, shipping inspection, welfare of seafarers, national inland waterways as well as supervision of the major ports and a number of societies/associations and



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public sector undertakings. The basis of the possible maritime reform is the Constitution of India and the specific laws pertaining to port and maritime management such as Indian Ports Act, 1908, Merchant Shipping Act, 1958 and the Major Port Trusts Act, 1963. The Indian Ports Act with its conservancy powers is the most relevant. Currently, in the Major Ports the conservancy function under section 7 of the Act is with the Board of a Port Trust while in the Minor Ports this function is with the State Maritime Boards, or in the private ports, to a private port operator. In practice, the responsibility in these matters will be vested in the office of the port's Harbourmaster.

**5.27** As the Port Trusts as well as the Maritime Boards concentrate on capacity extension, the establishment of a separate Maritime Authority should (again) be considered. This Authority could be placed under the purview of the Ministry of Shipping and endowed with the following main tasks:

- to act as conservator for every port in the Union in the sense of the Indian Ports Act, 1908;
- to appoint a Harbourmaster in every port or group of ports;
- to regulate and control navigation and the protection of the marine environment within the limits of the ports and the approaches thereto;
- to provide and maintain, or cause to be provided or maintained, adequate and efficient aids to navigation within the limits of the ports and the approaches thereto;
- to deal with any public emergency within the waters of the minor ports and the approaches thereto;
- to exercise regulatory and licensing functions in respect of marine services and facilities, in particular pilotage;
- to act as lighthouse authority;
- to control transport and storage of dangerous goods.

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### 6. REGULATION AND COMPETITION

#### **Regulation: how far do you go?**

**6.1** Regulation in the port sector means: controlling behaviour of port sector entities by rules or regulations or alternatively a rule or order issued by an executive authority, a regulatory agency or a Port Authority, having the force of law. Regulation may cover all activities of public or private behaviour (economic, social, environmental, safety and security) that may affect the development and management of ports and port terminals including their access roads, rail links, pipelines and waterways. It can operationally include taxes and subsidies of all sorts as well as explicit legislative and administrative controls over rates, entry, and other facets of economic activity. The rules laid down by regulation are usually supported by penalties or incentives designed to ensure compliance.

**6.2** Shortly summarized, under the Landlord Port Model as a minimum two government entities are active as regulators:

(i) The *Ministry* responsible for port affairs with respect to drafting and implementation of transport and port laws, national and international conventions, regulations and decrees.

(ii) The *public Port Authority* issuing bye-laws *inter alia* with respect to safety of vessels in port or at anchor, reporting and communication with vessels, berthing, securing of vessels, shifting, control of dangerous goods in ports, delivery of sewerage, obnoxious and toxic wastes, specific use of terminal areas and other specific port related issues. As part of its landlord function a Port Authority concludes rent, lease and concession agreements with private operators and port users.

Apart from generally applicable legislation by any competent authority, specific port related regulation can also be exercised by:

(iii) a *Competition Regulator* giving regulations and specific orders to prevent anti competitive behaviour in ports or abuse of dominant position by a Port Authority or private operators. Usually a competition regulator has the power to issue a tariff order.

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It might also deal with mergers of port service providers which endanger fair competition in ports.

(iv) a *Maritime Authority* in the event that the Port Authorities are deemed to be too commercially oriented. An example of a Maritime Authority is the US Coast Guard. The Authority has usually the regulating powers on a national scale *inter alia* with respect to maritime safety, vessel traffic management and aids to navigation (including lighthouses), the harbour master's function, the marine environment, search and rescue, dredging outside port areas and dumping of dredged material.

**6.3** *Tariff regulation* in general is a controversial issue in the international port sector. Obviously, the private sector usually states that the market regulates itself. That is in principle correct provided that there is a situation of perfect competition, which is not (yet) the case in India (and probably never will!). In a straight forward approach IPPTA stated in a presentation to the Tariff Commission in 2007 that the existing Tariff Model applied by TAMP '*rewards inefficient operators and encourages over-investment and under-utilisation*'. The Planning Commission, on the other hand, published also in 2007 a report about the Nhava Sheva International Container terminal (NSICT, currently owned by Dubai Ports), that the users of the country's first private terminal between 2002 and 2005 were overcharged by as much as 80%, despite tariff regulation. However, it should be noted in this context that in April 2005 the throughput of the terminal was twice the capacity estimated by JNPT during the bidding in 1995. The PSA SIGAL case concerning the tariff orders of TAMP for the Tuticorin Container Terminal kept the entire container sector in turmoil during a period of some ten years. PSA SIGAL filed a case at the Madras court to squash the tariff order of 1998 and fix the tariff in accordance with (its interpretation of) the law. This issue repeated itself with respect to TAMP's tariff order of September 2002 (cut in tariffs by 15%), August 2006 (cut in tariffs by 50%) and December 2008 (cut in tariffs by 34%). The case went to the Madras High Court which decided to squash all tariff cuts and ordered TAMP to pass new tariff orders based on guidelines indicated in the final verdict of October 15<sup>th</sup>, 2009. One of the

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main problems regarding tariff setting is the question whether royalties under a concession agreement can be considered costs, which can be passed through to the users by the concessionaire/operator. Apart from the merits of this case, it illustrates how difficult and controversial the issuance of tariff orders is for the private sector. A key issue would be the requirement that all port and terminal operators India-wide apply the same accounting and cost standards. Finally, it should be noted in this respect that proposals have been floated to remove decisions of TAMP from the jurisdiction of the civil courts and made the Competition Commission of India the appellate authority. This would obviously require an amendment to the Competition Act, 2002.

**6.4** In general there are two general strategies available to enhance port sector competition, namely ‘structural’ and ‘regulatory’. Obviously, the best strategy is the one that results in more competitors. Usually, where further terminal privatisation is contemplated, priority should be given towards structural development of port infrastructure which increases the number of competitors before resorting to the ‘regulatory’ option. Regulatory measures (particularly tariff regulation) are intended to enhance efficiency by correcting various market imperfections. They are aimed at forcing terminal operators to behave as if they were competing in a perfect market. In reality both options should be applied, since the market is never perfect. However, the better the ‘structural’ situation, the better ports and terminals can compete thus diminishing the necessity for far-reaching regulatory solutions. In India, however, there is a tendency for very detailed regulation (and control) while the structural option seems underdeveloped, anyway for the Major Ports.

**6.5** Tariff regulation in the beginning of the market reforms and privatisation of government services in Europe has traditionally been on prices or profits, the objective being to limit monopoly profits through regulation of price and rate of return. This might not be a bad choice when the market is fully developed and mature. There were in this approach few or no built-in incentives for efficiency. One may ask, however, whether this type of tariff regulation is suitable for the current phase of the

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Indian economic development which is in full expansion. The level of profits of private terminal operators, although relevant, should be only of a second order of importance. The main challenge is to increase port capacity and meet existing demand for port services. The situation is become rather urgent as the average traffic in the Major Ports reached 92% of the average available port capacity in the period 2008 – 2009. Hence, the primary objective of new port and tariff regulation should be to ensure that new port and terminal infrastructure is constructed at an accelerated pace and terminal operators should meet minimum performance standards in principle through related provisions in the concession agreements, resulting in a fast closing of the gap between supply and demand. Consumers in most countries prefer a high-priced service to no service at all. Moreover, a comparison between port dues and terminal handling charges between Major and Minor Ports shows that for many commodities these charges are rather high in Minor Ports. Such higher charges are compensated by increased efficiency. In other words, an almost obsessive attention to perceived high profits of private terminal operators might be for the time being counterproductive.

**6.6** One issue is very peculiar for the Indian situation, the competitive situation existing between private terminal operators in Major and Minor Ports and public Port Trusts which, besides their public/landlord tasks, also act as terminal operators. These Port Trusts function partly under different institutional, legal and financial conditions. Despite earlier policies, no practical steps have been undertaken to unbundle the Port Trusts. Even in the business plans which have been produced for the Major Ports in 2006/2007 unbundling of the accounts into terminal and non terminal costs was not required. Therefore Scales of Rates have to be made by TAMP for public terminals on the basis of rather arbitrary cost allocation and depreciation data. This situation violates the notion of fair competition. Moreover, both the Major Ports and the TAMP are under the authority of the Central Government, which creates an unbalanced power situation vis-à-vis the private sector.

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**6.7** The question has been raised whether tariff regulation such as exercised by TAMP should be maintained in the event of application of the Landlord Port Model, where public and private functions and responsibilities are clearly delineated and separated. The answer is *in principle* negative, there is no need for tariff regulation under a Landlord Port Model. There might be a need for *competition* regulation!

Sometimes it is difficult or impossible to divide terminals in a way that enables more than one operator to provide certain type of services within the port, particularly container terminal handling services. This gives the concerned operator monopoly status. The usual way to cure this situation is *tariff regulation by contract*: the concession agreement sets rules for initial tariffs and the way they can be adjusted.

However, TAMP has been established because the public sector (Port Trusts) and the private operators have conflicting interests. As the Landlord Port Model *has not been applied* in the Major Ports, and the former Service Port structures have partly been maintained despite a policy decision of the Central Government to the contrary, the requirement for a *neutral* regulator remains strong. The corporatisation of one Major Port (Ennore, a greenfield port) in 2001 did not yet result in a fundamental change in the port policy of the Central Government, although the plans to corporatise JNPT, are in an advanced stage. Therefore, as long as the Port Trusts continue to carry out terminal operations and directly compete with the private operators, an institute such as TAMP may remain necessary, although in a revised, more neutral role of competition regulator, independent from the Central Government, and with tariff setting powers only in case of misuse of dominant position by a port authority or terminal operator.

#### **International practices in the port sector.**

**6.8** The main aim of economic regulation in the port sector is to control anti-competitive behaviour of port authorities and terminal operators resulting from imperfect market conditions.

Economic (Port) Regulators often also have the power to adjudicate disputes between port authorities, terminal operators and/or between port users. This may be one of the

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most important functions of a regulator when a sector is liberalized and an operator tries to engage in anti-competitive behaviour. Economic regulators are normally in charge of *verifying and enforcing compliance with competition legislation*. However, monitoring compliance with terms and conditions of a concession agreement is primarily a task of a (Landlord) Port Authority as grantor of the concession and lessor of the port land. This includes also negotiating, monitoring and enforcement of so called Key Performance Indicators and operational practices in the terminal insofar such issues are not regulated in Port Bye Laws.

**6.9** Competition legislation in the port sector typically regulates the consequences of complaints of port users about alleged anti-competitive behaviour and violations of antitrust provisions. It empowers the regulator to require submittals of (proprietary) economic, financial and operational data of concerned public and private entities allowing it to exercise its legal responsibilities and impose remedies/penalties in the event that in the opinion of the regulator a violation occurs. In some jurisdictions the regulator has a legal right to start an investigation on its own initiative, without being triggered by a formal complaint of a port user.

The focus of a port regulator may differ from country to country. Regulation may focus on tariffs, subsidies, access to facilities, investment levels, bidding requirements, performance targets and so on, depending on the objectives of the regulator. Most countries use a range of regulatory instruments (including specific stipulations in concession agreements) to govern the award of concessions and/or leases.

Finally, it is advisable to give an independent tariff regulator the right to define its information requirements prior to the drafting of a concession agreement as to allow it, if necessary, to control the tariffs and have it included in such contract. This will enable it to perform tariff reviews on the regular basis.

**6.10** An important issue is the independent position of the regulator. Such independence is worth little unless it is protected against incursions by the regulated

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industry or by political powers. The problem is particularly relevant where a port regulator is established as part of the civil service in countries where this system does only allow for low or modest remuneration of the staff. A port regulator should have its own income independent from the National or State budget sufficient for an adequate remuneration of its staff as well as covering the costs of specialists to assist them in solving complicated cases. In India TAMP has been blamed for delays in issuing decisions on tariffs in particular in the case of large infrastructure projects which were in a bidding phase. One of the reasons might be the scarcity of personnel and the financial dependency on the Government budget.

#### **Tariff Regulation by TAMP**

**6.11** In 1998, in a port market which was in its first phase of liberalisation TAMP started issuing guidelines for tariff fixation. It should be noted that tariff fixation is to be considered the heaviest artillery available in a regulator's arsenal! How complicated the issues were can be read in the Order passed on September 20, 2001 regarding objections against the Scale of Rates for container handling charges by Nhava Sheva Container Terminal Ltd. Although rejecting the issues agitated by the terminal operator, TAMP recognised that 'some issues arising out of this proceeding need to be addressed further for refining the approach adopted for prospective application. The Port Sector in our country is undergoing a transition in the sense that private terminals have begun to emerge in a big way. *New models have to be developed to suit emerging requirements. In any transition situation, this will have to be a continuing exercise for sometime: it will not be reasonable to expect readymade solutions for immediate adoption*'.

**6.12** During its existence TAMP has developed three sets of guidelines, in 1998, 2005, and 2008. The first guidelines were based on fixing Scales of Rates during the period 1998-2005, under which a normative cost plus assured rate of Return on Equity (RoE) of 20% was permitted. Under the guidelines of 2005, applicable for a five-year period, the assured rate of return was based on a return on capital employed (RoCE)



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of 16% (pre-tax, current) as against the RoE rate of return. One contentious issue was solved in that the royalty cannot be considered cost anymore to be passed-through to the users. For projects bid before July 2003, royalty quoted *by the next highest bidder* was allowed as a pass-through cost, with the balance to be borne by the operator from the operating surplus.

Again, the new and improved regime drew serious flak from the private sector: determination of operating and capital cost was done on ad hoc basis and took a long time; actual tariffs could deviate from the tariffs offered in the bidding process (when a competitive situation develops, rebates have to be given by a terminal operator); efficiency gains were mop up for 50% in the subsequent review period (after three years); no clarity between standard and installed capacity for tariff fixing; as the income is computed on the basis of a depreciated asset base, tariffs will be downward sloping.

After long deliberations, TAMP published its 2008 guidelines, which are applicable only for new BOT projects, while the existing terminals continued working under the 2005 guidelines. TAMP now provided an upfront cap for starting tariffs of private terminal on the basis of capital costs, operating costs, and optimum terminal capacity, for a period of five years. The tariff will be adjusted on annual basis with 60% of the rate of inflation as expressed in the Wholesale Price Index (WPI). The policy not to consider the quoted revenue share a pass-through cost-item was maintained.

Based on this tariff, bidders are supposed to quote a (gross) revenue share payable to the Port Trusts in their landlord role as one of the main elements for the selection, while the revenue share quoted is not a pass-through item under the 2008 guidelines. These new guidelines removed earlier uncertainty for the bidders with respect to initial tariffs while the tariffs can be adjusted by annual inflation, though not for 100%. But the problem is that the simultaneous application of two tariff regimes may result in a situation where one terminal has a declining ceiling-tariff profile while an other nearby has an escalating ceiling-tariff profile under the new regime. Moreover, the latter may have to give discounts to its users to remain competitive thereby adversely affecting its profits as revenue share is computed based on ceiling tariffs

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and not actual tariffs. Finally, a terminal operator may run into losses when the revenue share exceeds the RoE/RoCE.

**6.13** It should be noted that it took more than a decade for TAMP to come up with a final approach. It also took for the Central Government almost ten years after the State of Gujarat/GMB issued its professionally structured Model Concession Agreement to come up with its own MCA. However, despite all delays, the long development in the port sector must be seen as a, sometimes painful, learning process. Much useful information has been collected and can be applied in the future.

It must also be recognised that TAMP was charged with a ‘mission impossible’ as it has limited powers and can only influence a small part of the transport chain from producer to consumer. TAMP had to fight a battle it could not possible win. Tariff fixing for 12 large ports as an isolated activity from outside the realities of day-to-day port management is difficult, if not impossible. Moreover, *in the ports industry tariff fixing is a typical task of a Port Authority, respectively a terminal operator*

The principle choice to select ‘revenue share’ made long ago as a basis for tariff fixing and royalty determination had unforeseen negative consequences. This approach does ultimately not adequately reward improvements in service quality and efficiency. It also resulted in *unusually high revenue shares* offered by bidders, resulting in considerable windfall profits for the concerned Port Trusts. As demand seriously outstrips supply the international operators were prepared to take the risk as they were sure that the terminal would be running quickly at full capacity. They miscalculated in that ultimately the revenue share was not considered ‘pass-through cost’ by the Government/TAMP for the calculation of tariffs.

**6.14** The TAMP approach is theoretically defensible, but not often used in the port sector. Most concession agreements in the international port sector do not follow this approach but determine royalties on the basis of a fixed amount per unit (TEU/tonne, etc) for a minimum guaranteed throughput (fixed royalty) and a gliding downward scale of unit prices for quantities above this level (variable royalty). The tariffs are

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revised annually on the basis of the applicable consumer index or the US\$ inflation, if applicable. Moreover, the operator gets a possessory title on the terminal area in the form of a lease agreement. The lease rent depends on the investments of concerned parties: the Grantor/Port Authority and/or the concessionaire/terminal operator. In the case of a greenfield terminal the lease rent is usually a symbolic amount.

This approach is a more straightforward and simple, and, provided that the related provisions are properly drafted in the related concession agreement, without interpretation problems. Obviously, in this approach the Royalty has the character of a pass through cost item as well as the lease rent. Legally the lease rent is a compensation for the investments of the Grantor/Port Authority in the terminal area while the royalty is a compensation for the grant of the opportunity to operate a business at that location. From a business economics point of view the revenue share is a cost for the terminal operator and is usually included in its tariffs. If that is not allowed, then the costs have to be compensated by profit, which is only possible if such profit is not too restricted. The problem here is the excessive level of the revenue share. Thus: the system results in a situation where on the one hand the Port Trusts maximise their income while in the same time trying to avoid the related costs being passed through to the users. These are conflicting objectives.

Application of revenue share has also a disadvantage in the event that the terminal operator and the shipping line are combined or related. It is easy through rebates in a terminal handling agreement to manipulate tariffs and transfer costs to another terminal of the same group. This is almost impossible to control.

Finally, the notion of a concession as a license is, as discussed earlier, confusing. To consider the Royalty as a license fee makes no sense. A concession agreement is a combination of an operational agreement, a building contract (in case of a BOT, EOT, etc.) and a lease agreement. A concession agreement can also include a license element but it is itself not a license, which must be considered a one sided Governmental legal act and can be revoked when the license conditions are not met.

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**6.15** Plans are announced to abolish TAMP's tariff setting powers and transfer this tasks to the Port Trusts and the private operators, respectively. When doing so, the following issues should be taken into consideration:

- (i) tariff setting for Port Authority services (port dues, etc.) should be done by the concerned Port Authority on the basis of long term financial sustainability (and not on the basis of maximising profits), taking into account the competitive position of the port;
- (ii) tariff regulation for terminal operations should be part of a concession agreement, the MCA should be adapted to that aim; flexible rebates to react to competition should be allowed;
- (ii) the structure of the Royalties should be as simple as possible and be based on units (TEUS, tonnes, etc) annually handled through a terminal;
- (iii) the Port Trust terminals should be gradually corporatised under the Companies Act, 1956, and should function under the same regulatory rules and principles as the private terminals;
- (iv) TAMP should be transformed into a Competition Regulator as further discussed in Section 7.9.

#### **Debate about TAMP's future**

**6.16** The position of TAMP has been subject of much debate during last year. The opinions range from doing away with this institute to strengthening its functions under a new law. As discussed in Section 5.14 the draft *Major Ports Regulatory Act, 2008* strengthens the functions of TAMP and gives it *inter alia* increased powers to control not only the tariffs but also the performance of the (private) operators. Still the final step: bringing also the Minor Ports under the authority of (the new) TAMP has not been taken. The BKC Committee on the other hand sees a diminishing role of TAMP through a three-pronged strategy but also does not take the final step: abolishing TAMP.

The basic objective of TAMP was, and still is: regulation of fair competition. It is doubtful whether the rather blunt instrument of tariff fixing as applied in India can be

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considered successful. International competition is complicated; looking at container traffic one should realise that the port costs amount to only some 2.5% of the total costs within the logistic chain. Instead of regulating competition, the emphasis has changed towards cutting down the perceived excessive profits of private operators. Admittedly, such profits should be kept within reasonable limits, but there are better and more effective instruments to achieve this than tariff fixing such as competition regulation, proper provisions in the concerned concession and full introduction of the Landlord Port Model.

### **Future role of TAMP**

**6.17** It is important for private terminal operators to react in a flexible way to changes in competition and market conditions. The provisions in the concession agreement should be the basis for a stable development of its business. Fixing of tariffs is in principle one of the prime functions of any enterprise.

TAMP's regulatory approach of 2008 in combination with the introduction of the Model Concession Agreement is a step ahead in creating a more stable environment for investments. However, once the concession agreement is concluded a terminal operator should not be confronted with frequent changes in economic and financial policies of the Central Government and/or TAMP which directly affect its operations and income. All efforts should be focussed on concluding a professional and balanced concession agreement. To conclude such agreement the Grantor/Port Authority should do its homework first, namely:

- develop traffic forecasts of the specific trade handled through the terminal;
- have a masterplan available with respect to the spatial development of the terminal, including a phasing, if applicable;
- develop a provisional lay-out of the terminal;
- assess the optimum equipment and superstructure;
- determine the structure of the royalty;
- determine the investment profile (BOT, BOOT, EOT, etc.);

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- determine starting tariffs for terminal handling charges as well as the way to adjust them during the term of the concession;
- develop realistic Key Performance Indicators;
- develop a financial model, which can be used during negotiations;
- develop professional bid documentation including a draft concession agreement.

The expertise of TAMP gathered over the years with respect tariffs including their adjustment and the applicable Key Performance Indicators will be very useful for any Port Trust intending to commence a bidding process for terminal development.

**6.18** Proposals to extend the powers and responsibilities of TAMP by giving it a greater role in setting performance standards are ill conceived. No business can seriously function in the event that both tariffs and performance are not only controlled but also established by a third party. Performance standards should always be part of a concession agreement to be controlled by the Grantor/Port Authority. Non achievement of these standards should have legal consequences including in a worst case scenario: termination.

Finally, there is a tendency in the draft Major Ports Regulatory Act, 2008 to further centralise basic port management functions into TAMP which will hamper the proper functioning of the Port Trust/Port Authorities as autonomous entities. In this way TAMP is becoming a kind of big brother for the Major Ports which will not serve any purpose. Therefore, TAMP should develop into a real *Competition Regulator* charged with preventing abuse of dominant position and anti-competitive practices. The basic characteristics of a Competition Regulator are set forth hereunder.

#### **Main Tasks and Functions of a Port Competition Regulator**

**6.19** It is recommended to determine the main tasks and responsibilities of the Competition Regulator as follows (non limitative list):

- (a) upon complaint of any port user, to investigate and make orders in relation to complaints concerning alleged anti-competitive practices or abuse of a dominant position;

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- (b) upon complaint of any port user in relation to tariffs, to investigate whether those tariffs amount to or evidence an anti-competitive practice or an abuse of a dominant position and to make an order thereon;
- (c) upon notification to the Competition Regulator prior to any merger of
  - (i) a shipping line and a terminal operator;
  - (ii) a marine services provider with another marine services provider; or
  - (iii) a terminal operator with another terminal operator in the same port or in a nearby port.

or upon complaint of any port user prior to or upon such a merger, to decide whether the merger situation is incompatible with the promotion of competition and to make an order thereon;

- (d) on the application of the Port Authority, to review the draft of a concession agreement and advise the Port Authority on whether any provisions thereof may be incompatible with the promotion of competition, may amount to an anti-competitive practice or may result in an abuse of a dominant position;
- (e) in response to a complaint of any port user, to investigate whether the occurrence of cross subsidization exists from dominant services to contestable services, and make an order thereon.

**6.20** The Competition Regulator would function on the basis of the following principles:

- (1) The Competition Regulator shall not interfere at its own initiative in the tariff setting of Port Authorities or terminal operators and/or other service providers, whether of a private or public character, carrying out such activities in a port.
- (2) The functions of the Competition Regulator as provided for under the Competition Act shall not apply to transshipment services.
- (3) Other than in the manner or to the extent set out in the Competition Act, the grant of a concession or a lease or any other rights to land or property of the

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Ports Authority shall not fall within the scope of the functions of the Competition Regulator.

**6.21** The objectives of the Competition Regulator would be:

- (1) The Competition Regulator shall exercise, perform and discharge its powers, functions and duties under the Competition Act reasonably with fairness, impartiality and independence and in a manner that is timely, transparent, objective and consistent with the Act and in a manner, which it considers is best calculated:
  - (a) to protect the economic interests of India in general;
  - (b) to encourage and promote competition between service providers, whether of a public or private character;
  - (c) to encourage and promote equity in the access to port services and marine services, and the provision thereof;
  - (d) to promote an atmosphere of confidence in the ports sector in India towards potential and existing investors in port services and marine services;
  - (e) to use best endeavours to create an environment for enhancing the market potential and the profitability of service providers and the application of best practice in the ports and shipping industry.
- (2) The phrase ‘the economic interests of India’ mentioned above, shall include the development of the competitiveness of the port services and marine services of India in comparison with similar services rendered elsewhere in the Asian region and the competitive position of national industries engaged in the import and export of goods by using the ports of India.
- (3) In discharging the functions assigned to it by or under the Competition Act, the Competition Regulator shall have regard to the particular conditions of India, the rate of return of the service providers and common practices in the ports and shipping industry both in India and in neighbouring countries in the region and



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shall act in a manner compatible with the freedom of any service provider to negotiate a specific tariff for any service it offers to port users within a port.

**6.22** Finally, the Port Competition Regulator should be independent of any Government and have its own sources of income. The Competition Commission of India might fulfil the function of appellate authority. It is not recommended to include the function of port competition regulation into those of the Competition Commission of India as the structure and characteristics of the port sector fundamentally differ from those of the telecom, electricity and railways sectors.

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## **7. CONCLUSIONS AND RECOMMENDATIONS**

### **Proposed Regulatory Framework**

**7.1** Currently, there are two law proposals submitted for deliberation:

- (i) the Major Ports Regulatory Act, 2008, and
- (ii) the Indian Ports (Consolidated) Act, 2010

The law proposals are related in that the functions of TAMP which are included in the Major Port Trusts Act, 1963, are separated from this law and included in the draft Major Ports Regulatory Act, 2008. The draft Indian Ports (Consolidated) Act, 2010 is a combination of the Indian Ports Act, 1908 and the Major Port Trusts Act, 1963 minus the provisions about TAMP. In the event that the Major Ports Regulatory Act, 2008, is withdrawn, there obviously is a vacuum with respect the provisions relating to TAMP.

Whatever the case may be, *enacting these law proposals is not recommended*. Both the Indian Ports Act, 1908 and the Major Port Trusts Act, 1963 have their roots in another stage of the economic and social development of India; the first one dates back to colonial times, the second one was the reflection of an era where the belief in central economic planning was an accepted feature in many developed and developing countries. India is now in another phase of its socio-economic development and is gradually becoming an economic world power. The country should develop an entirely new Ports Act which is *inter alia* compatible with modern insights in the functioning of a market oriented economy and the global character of the maritime transport. Furthermore, the tendency to introduce more and more control elements in the port management system is self-defeating.

### **Major and Minor Ports**

**7.2** The problems related to the division between Major and Minor Ports cannot be solved within the current ports legislation (national or state). Declarations on extending the powers of TAMP (or its successor) over the Minor Ports are not helpful

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and are viewed by many as part of a power struggle between the Centre and the Maritime States. The necessary integration between two fundamentally different institutional systems which developed over time in an entirely different manner cannot be brought about without the full cooperation of the Maritime States. Moreover, it cannot be denied that the development of the Minor Ports is in some respects more successful than that of the Major Ports. Therefore, a major element of any new, India-wide port management system should be the cooperation and participation of the concerned Maritime States. At the moment the Maritime States do not have a stake in the development and functioning of the Major Ports. Corporatisation, apart from its other advantages for port development, opens also the possibility for direct participation of the concerned Maritime State by means of acquisition of shares in the Port Authority of the port(s) located within its territory. Such shareholding should be substantial and not symbolic. In that way the State will participate in the benefits of the development and expansion of the (former) Major Ports. It is recommended to restrict the shareholding in a Port Authority (former Port Trust) by law to the Central Government, the concerned State Government and the Port City in the event that a (former) Major Port is located near a large city such as Mumbai or Kolkata.

#### **Fast corporatisation and decentralisation of Major Ports**

**7.3** Progress is required on a broad front; isolated improvements of some aspects of the present centralised port management system for the Major Ports will only delay the necessary port reform in India. Two elements are important in this respect, namely: *corporatisation and decentralisation*.

Although the Union Budget 2000–2001 has suggested the corporatisation of Major Ports, there has not been much progress into this direction, save for Ennore. Implementation is now recommencing. But contrary to the present practice, corporatisation should be performed in two different forms:

- (i) The Port Trusts should be converted into corporatised Landlord Port Authorities on the basis of a new *national* Ports Act. They should remain within the public

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domain and their shares should be publicly owned. These new Port Authorities should own the port land and act as neutral regulator vis-à-vis the terminal operators.

(ii) all Major Ports should be unbundled and the *terminal services* corporatised under the Companies Act, 1956. It is clear that this unbundling is a complicated issue especially for the older ports. Therefore, the new Ports Act should allow a reasonable time for this transition process tailored towards the specific situation in each Major Port.

The management of the new Port Authorities should be done on the basis of *decentralisation*. Most of the approval powers of the Ministry of Shipping with respect to the Major Ports should be abolished; the new Port Authorities should be allowed to have autonomous powers within the policy framework of the Central and State Governments to enable them to function efficiently within a commercial setting.

### **National and Regional Ports**

**7.4** In the new Act there would be two types of ports: *National Ports and Regional Ports*. A Port Authority of a *National Port* shall be managed by Board of Directors nominated partly by the Central Government, partly by the State Government of the State where the concerned port is located and, if applicable, partly by the concerned Port City, in proportion to the shareholding of each party. The old system of representation of interest groups in a port board should be abolished. A Landlord Port Authority must be a *neutral body* with its main objective the furtherance of the public interest within a commercial setting. Moreover, a Port Authority shall not discriminate between terminal operators and/or other port/marine service providers. It shall in particular refrain from any discrimination in favour of an undertaking in which it holds a (temporary) interest during the transition from Service Port to Landlord Port.

The management of a *Regional Port* would be performed by the concerned Maritime State. The new national Ports Act should comprise provisions that allow the States to continue the system of Maritime Boards, leaving the States free to select the type of port management it deems fit in consideration of the local circumstances. Full

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privatisation of Port Authorities should not be allowed in the sense that the ownership of port land is transferred to a private party. Minor Ports currently functioning under a BOOT system (which can be considered temporary port privatisation) should be allowed to continue during their concession term, but no new BOOT or BOO arrangements should be made by the concerned States as under these schemes land ownership if transferred to the private sector (full privatisation).

### **Model Concession Agreement**

**7.5** In principle a Model Concession Agreement is a useful management tool for the concerned Port Authority. Such model should, however, not be applied too rigidly. There are three areas where the MCA for the Major Ports should be further developed.

(i) the application of revenue share should be discontinued; other types of royalties should be used in concession agreements, preferably a unit (TEU) fee. Revenue share combined with cost plus is problematic as experience shows. Royalty calculation should be simple, straight forward and non-controversial. The proposal of IPPTA (Ceiling & Floor Model) should be taken into consideration.

(ii) the new National Port Authorities should have the same possibilities for PPP arrangements as presently the Minor Ports (save for BOOT).

(iii) the MCA does not allow termination compensation at expiry of the concession, which is unusual and diminishes its bankability. The main effect might be that during the last ten years of the concession the terminal operator will refrain as much as reasonably possible from new investments while he also may cut down on maintenance. One does not have to be as generous as the MCA applicable to Gujarat where full market value is paid, but payment on the basis of depreciation is reasonable. To avoid doubt, the depreciation periods of the major equipment should be included in the concession.

### **Investment Profile**

**7.6** An important element in a new Ports Act is the clear regulation of investment responsibilities of the various entities comprising the port sector: the Central

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Government through the line Ministry, the State Governments, the Port Authorities, the Maritime Boards and the private sector operators. This will be necessary to avoid unfair competition between various ports.

In principle the Maritime Boards/Regional Ports will be able to make their own arrangements for financing the public infrastructure. For the National Ports the financial responsibilities should be clearly determined for investments in:

- nautical accesses, dredged channels;
- access to the local and inter-state road and rail system;
- pipeline connections, if any;
- coastal protection works;
- basic port infrastructure, reclamation works (if any), port basins, common areas;
- terminal infrastructure, quay walls, terminal paving;
- terminal super structure, facilities;
- equipment, cranes, etc.

It is recommended to apply the European investment rules which allow a national government to subsidize the port accesses and the hinterland connections while the Port Authority is responsible for basic port infrastructure and the private sector is under a BOT type arrangement responsible for financing terminal infrastructure, superstructure and equipment.

### **Nautical Safety and Environment in new National Ports Act**

**7.7** The new Ports Act should also comprise provisions regarding the nautical safety of vessels in port areas, vessel traffic management, the position of the Harbour Master, framework requirements for pilotage, towage, mooring and unmooring of vessels. Other subjects will be provisions for the protection of the marine environment, handling and storage of dangerous goods, port reception facilities for slobs as well as for dangerous and obnoxious chemicals (if applicable). Furthermore the laws should comprise general rules for combating of incidents such as fires and spills. These general rules should be detailed in Port Bye Laws, which will be the responsibility of the concerned Port Authorities or Maritime Boards. The Indian Ports

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Act, 1908 should be repealed and replaced by completely new legislation. It makes no sense to try to modernise this historic law.

In the case that the Central Government would decide to establish a separate Maritime Authority the new Maritime Authority Act should also comprise the above mentioned elements.

#### **From Tariff Regulation to Competition Regulation**

**7.8** TAMP should be transformed from a Tariff Regulator to a Competition Regulator on the basis of a *new Port Competition Act* applicable to all commercial ports in the country.

It is recommended to determine the main tasks and responsibilities of the Competition Regulator as follows (non limitative list):

- (a) upon complaint of any port user, to investigate and make orders in relation to complaints concerning alleged anti-competitive practices or abuse of a dominant position;
- (b) upon complaint of any port user in relation to tariffs, to investigate whether those tariffs amount to or evidence an anti-competitive practice or an abuse of a dominant position and to make an order thereon;
- (c) upon notification to the Competition Regulator prior to any merger of
  - (i) a shipping line and a terminal operator;
  - (ii) a marine services provider with another marine services provider; or
  - (iii) a terminal operator with another terminal operator in the same port or in a nearby port.

or upon complaint of any port user prior to or upon such a merger, to decide whether the merger situation is incompatible with the promotion of competition and to make an order thereon;

- (d) on the application of the Port Authority, to review the draft of a concession agreement and advise the Port Authority on whether any provisions thereof may

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- be incompatible with the promotion of competition, may amount to an anti-competitive practice or may result in an abuse of a dominant position;
- (e) in response to a complaint of any port user, to investigate whether the occurrence of cross subsidization exists from dominant services to contestable services, and make an order thereon.

The Port Competition Regulator should be independent of any Government and have its own sources of income. The Competition Commission of India might fulfil the function of appellate authority. It is not recommended to include the functions of port competition regulation into those of the Competition Commission of India as the structure and characteristics of the port sector fundamentally differ from those of the telecom, electricity and railways sectors.

#### **Labour reform**

**7.9** Last but not least, labour reform will be one of the main issues of port reform. The problems differ from port to port. Many countries have gone through this process successfully and there is no reason to suppose that such reform is impossible in India provided that the interests of port and dock labour will be taken into full consideration during the process. A few basic rules should be applied during the reform process:

- (i) Before starting port reform the Central Government should have proposals ready on how to deal with the transition process and excess labour, if any.
- (ii) Government and Port Trusts, when undertaking reform, must recognize the legitimate and important role of the recognised port unions and should fully involve them in the reform process. The International Transport Workers' Federation (ITF) recommends that policy-makers should involve labour at all stages of port reform
- (iii) The process is necessary in the interest of the entire country. Mistrust stemming from historic disputes and the recurring conflicts between capital-labour trade-offs should be avoided.



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- (iv) Port and dock labour should accept that their working conditions will change and have to be more flexible than in the past.
- (v) Port and dock workers should have a right of first refusal to work for corporatised terminals. Excess labour should be kept employed as much as reasonably possible. The founding of labour pools should, if necessary, be considered.
- (vi) The income of port and dock labour should be at least equal compared to their previous situation.

### **The Author**

The Author has some 40 years hands-on experience of all aspects port and marine management, port privatisation, drafting of port & maritime laws and concession agreements. At the start of his career, he served as merchant marine and navy officer during a period of some eight years. He was nominated Deputy Managing Director of the Rotterdam Municipal Port Management at the age of 36. In 1981 he founded the Aruba Ports Authority Ltd, the first corporatized port authority in the Kingdom of The Netherlands and was responsible as its first Managing Director for the construction of the container terminal on the island and the modernisation of the Ports Authority. He started in 1987 a career in port consultancy and handled a vast number of major port assignments, mainly for the World Bank, the Asian Development Bank and the EU. He was involved in drafting ports and competition legislation in Latvia, Poland, Ukraine, Albania, Croatia, Tanzania, Sri Lanka and Gujarat.

Mr Van Krimpen was main author for Modules 3 and 4 of the World Bank Port Reform Toolkit, a strategic and practical guide to port reform, first published by the Bank in 2001 (revised 2005), which has been accepted by the ports industry as the most authoritative publication in this field. These Modules deal *inter alia* with port management models, drafting of port legislation as well as specific contractual arrangements in ports such as terminal concession agreements.

Mr Van Krimpen has been a member of the Dutch Senate and is the founder and past President of the Rotterdam Maritime Group (RMG).

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**ANNEX 1**

**Detailed Overview of tasks and responsibilities of the Ministry of Shipping**

(situation October 2005)

**INTRODUCTION**

The erstwhile Ministry of Road Transport & Highways and Ministry of Shipping were merged on 2nd September, 2004 into a single Ministry Shipping, Road Transport & Highways, with two Departments –Department of Shipping and Department of Road Transport & Highways.

**FUNCTIONS:**

The subjects allocated to Department of Shipping are listed below:

**I. THE FOLLOWING SUBJECTS WHICH FALL WITHIN LIST 1 OF THE SEVENTH SCHEDULE TO THE CONSTITUTION OF INDIA:**

1. Maritime shipping and navigation; provision of education and training, training for the mercantile marine.
2. Lighthouses and lightships.
3. Administration of the Indian Ports Act, 1908 (15 of 1908) and the Major Port Trusts Act, 1963 (38 of 1963) and ports declared as Major Ports.
4. Shipping and navigation including carriage of passengers and goods on inland waterways declared by Parliament by law to be national waterways as regards mechanically propelled vessels, the rule of the road on such waterways.
5. Shipbuilding and ship-repair industry.
6. Fishing vessels industry.
7. Floating craft industry.

**II. IN RESPECT OF THE UNION TERRITORIES**

8. Inland waterways and traffic thereon.

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**III. IN RESPECT OF THE UNION TERRITORIES OF THE  
ANDAMAN AND NICOBAR ISLANDS AND THE LAKSHADWEEP:**

9. Organization and maintenance of mainland, islands and inter-island shipping services.

**IV. OTHER SUBJECTS WHICH HAVE NOT BEEN INCLUDED UNDER  
THE PREVIOUS PARTS**

10. Legislation relating to shipping and navigation on inland waterways as regards mechanically propelled vessels and the carriage of passengers and goods on inland waterways.
11. Promotion of Transport Cooperatives in the field of inland water transport.
12. Legislation relating to and coordination of the development of minor and major ports.
13. Administration of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948) and the Schemes framed thereunder other than the Dock Workers (Safety, Health and Welfare) Scheme, 1961.
14. To make shipping arrangements for and on behalf of the Government of India/Public Sector Undertakings/State Governments,/State Government Public Sector Undertakings and autonomous bodies in respect of import of cargo on FOB/FAS and export on C&F/CIF basis.
15. Formulation of the privatization policy in the infrastructure areas of ports, shipping and inland waterways.

**V. SUBORDINATE OFFICES:**

16. Directorate General of Shipping, Mumbai.
17. Andaman Lakshadweep Harbour Works, Port Blair (currently established as a Major Port).
18. Directorate General of Lighthouses and Lightships, NOIDA.
19. Minor Ports Survey Organization, Mumbai.

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**VI. AUTONOMOUS BODIES:**

20. Port Trusts at Mumbai, Kolkata, Kochi, Kandla, Chennai, Mormugao, Jawahar Lal Nehru (Nhava Sheva), Paradip, Tuticorin, Visakhapatnam and New Mangalore.
21. Dock Labour Boards at Calcutta, Kandla, Chennai, Mormugao and Visakhapatnam.
22. Inland Waterways Authority of India, NOIDA.
23. Seamen's Provident Fund Organization, Mumbai.
24. Tariff Authority for Major Ports, New Delhi.

**VII. SOCIETIES/ASSOCIATIONS:**

25. National Institute of Port Management, Calcutta.
26. Indian Institute of Port Management, Chennai.
27. National Ship Design and Research Centre, Visakhapatnam.
28. Seafarers Welfare Fund Society, Mumbai.

**VIII. PUBLIC SECTOR UNDERTAKINGS:**

29. Shipping Corporation of India, Mumbai.
30. Hindustan Shipyard Limited, Visakhapatnam.
31. Cochin Shipyard Limited, Kochi.
32. Central Inland Water Transport Corporation Limited, Kolkata.
33. Dredging Corporation of India, Visakhapatnam.
34. Hooghly-Dock and Ports Engineers Limited, Kolkata.
35. Ennore Ports Ltd., Chennai.

**IX. INTERNATIONAL ASPECTS:**

36. International Maritime Organization

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### **X. ACTS:**

37. The Indian Ports Act, 1908(15 of 1908)
38. The Inland Vessels Act, 1917 (1 of 1917)
39. The Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948)
40. The Merchant Shipping Act, 1958 (44 of 1958)
41. The Major Ports Trust Act, 1963 (38 of 1963)
42. The Seamen's Provident Fund Act, 1966 (4 of 1966)
43. The Inland Waterways Authority of India Act, 1985 (82 of 1985)
44. Indian Light House Act, 1927.
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### **ORGANIZATIONAL SET UP**

The Minister of Shipping has been entrusted both the responsibility to formulate policies and programmes on these subjects and their implementation.

Secretary (Shipping) is the Administrative Head of Department of Shipping. Secretary (Shipping) is assisted by Additional Secretary & Financial Adviser, Joint Secretary (Shipping), Joint Secretary (Ports), Chief Controller of Chartering, Development Adviser (Ports), officers at the level of Directors, Deputy Secretaries, Under Secretaries and other Secretariat/Technical officers.

The Department of Shipping encompasses within its fold Shipping & Ports Sector which include Ship-Building and Ship-Repairs, Major Ports, National Waterways and Inland Water Transport, Chartering of Vessels of the various Govt. Departments and Public Sector

The Department of Shipping is administratively divided into 7 (Seven) Wings viz:

- (i) Shipping Wing
- (ii) Ports Wing
- (iii) Chartering Wing

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- (iv) Development Wing
- (v) Administrative Wing
- (vi) Finance & Accounts Wing
- (vii) Transport Research Wing

These Wings are further divided into Divisions/Sections/Desks and Units. The organizational set-up of each wing is described as under:

**(1.) SHIPPING WING**

**SHIPPING SECTOR**

Shipping Wing of the Department of Shipping deals with the matters relating to Shipping, Shipbuilding, Aids to Navigation, training of mercantile personnel, shipping services to Union Territories and Inland Water Transport. It has 2 Subordinate Offices, 5 Public Sector Undertakings, 2 Autonomous Bodies and 2 societies. Basic details relating to these are as under:

**(i) Subordinate Offices:**

1. Directorate General of Shipping, Mumbai
2. Directorate General of Lighthouse and Lightships(DGLL), Noida(U.P.)

**(ii) Public Sector Undertakings**

1. Shipping Corporation of India(SCI), Mumbai
2. Cochin Shipyard Ltd.(CSL), Cochin
3. Hindustan Shipyard Ltd.(HSL), Visakhapatnam
4. Hooghly Dock and Port Engineers Ltd. (HDPE),Kolkata
5. Central Inland Water Transport Corporation (CIWTC), Calcutta

**(iii) Autonomous Bodies:**

1. Inland Waterways Authority of India, NOIDA (U.P.)
2. Seamen's Provident Fund Organisation(SPFO) Mumbai



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**(iv) Registered Societies:**

1. National Ship Design & Research Centre(NSDRC), Visakhapatnam
2. Indian Institute of Maritime Studies (IIMS), Mumbai
3. Seafarers Welfare Fund Society, Mumbai

(SHIPBUILDING AND SHIPREPAIRS)

(INLAND WATERWAYS)

(NATIONAL WATERWAYS)

(INLAND WATERWAYS AUTHORITY OF INDIA) (IWAI)

(LIGHTHOUSES)

**(2.) PORTS WING**

**(i) Subordinate Offices:**

1. Andaman Lakshdweep Harbour Works (ALHW), Port Blair.
2. Minor Port Survey Organisation (MPSO), Mumbai

**(ii) Autonomous Bodies**

1. Kolkata Port Trust, Kolkata
2. Paradip Port Trust, Orissa
3. Visakhapatnam Port Trust, Visakhapatnam
4. New Mangalore Port Trust, New Mangalore
5. Mormugao Port Trust, Goa
6. Jawaharlal Nehru Port Trust, Nava-sheva, Mumbai
7. Kandla Port Trust, Gandhi Dham
8. Cochin Port Trust, Cochin
9. Chennai Port Trust, Chennai
10. Tuticorin Port Trust, Tuticorin
11. Mumbai Port Trust, Mumbai
12. Ennore Port Ltd., Chennai

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13. Tariff Authority for Major Ports (TAMP), Mumbai

**(iii) Public Sector Undertakings**

1. Dredging Corporation of India Ltd., Viskhapatnam

**(iv) Societies**

1. National Institute of Port Management (NIPM), Chennai
2. Indian Institute of Port Management (IIPM), Kolkata

There are 13 Major Ports in the country viz. Kolkata (including Haldia), Paradip, Visakhapatnam, Chennai, Ennore and Tuticorin on the East Coast and Cochin, New Mangalore, Mormugao, Jawaharlal Nehru, Mumbai and Kandla on the West Coast and Port Blair. All the Major Ports are administered by Port Trusts which are autonomous bodies except for the newly constructed Ennore Port which is run by a company named Ennore Port Limited registered under Companies Act, 1956.

There are two subordinate offices under Ports Wing namely Andaman Lakshdweep Harbour Works (ALHW) and Minor Port Survey Organisation (MPSO). The ALHW is entrusted with the responsibility of formulating and implementing the programme for providing port and harbour facilities in A&N Islands and Lakshdweep Islands. The MPSO carries out the task of Hydrographic Surveys in Minor & Major Ports and Inland Waterways. There are two training institutes namely National Institute of Port Management and Indian Institute of Port Management who are engaged in providing training, consultancy and research in the Port, Shipping and related sectors. They have been registered as Autonomous Societies.

**[CHARTERING WING]**

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### **FINANCE AND ACCOUNTS WING**

The Finance and Accounts Wing is headed by Additional Secretary and Financial Adviser. He is assisted by Chief Controller of Accounts, Director (Finance) and two Assistant Financial Advisers.

As per the Scheme of Integrated Finance, the Financial Adviser, associated with the administrative Department, assists the Secretary of the administrative Department in the planning, programming, budgeting, monitoring and evaluation functions of the Ministry. The Additional Secretary and Financial Adviser advises the administrative Ministry in all matters falling within the field of delegated powers.

The accounting division of the Department of Shipping is under the over all charge of the Chief Controller of Accounts who is *inter-alia* responsible for the accounting, payments, budget internal-audit and cash management functions of the Ministry of Shipping, Road Transport & Highways.

### **TRANSPORT RESEARCH WING**

The Transport Research Wing (TRW) is the nodal agency for collection, compilation and dissemination of information and data on Roads, Road Transport, Ports, Shipping, Ship-building & Ship-repairing and Inland Water Transport at the National level, the subjects with which the Ministry of Shipping, Road Transport & Highways is concerned, it collects the primary/secondary data from various source agencies, scrutinizes and validates the data and information for its consistency and comparability, compiles and brings out annual and quarterly publications in the form of booklets covering important aspects of the transport sector. TRW is fully associated with review meetings on Ports and IWT Sectors and also with the work on the policy for Maritime Sector covering Ports, Shipping and IWT modes.

### **PORTS WING**

#### **PHRD DIVISION**

1. Appointment to the posts of Chairmen.

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2. Appointment of Deputy Chairmen, HODs and others in Major Ports to which the Central Government is Appointing Authority including certifying completion of probation to the posts of HODs and others.
3. Extension of service/re-employment/employment on contract basis to posts in Major Ports where Central Government's approval is necessary.
4. Suspension, retirement, reversion, termination and levy of penalty, in cases other than those dealt within Vigilance Section in respect of Officers of Major Ports for which the Central Government is the Appointing Authority.
5. Grant of leave and other services matters of Chairman/ Dy.Chairman of the Major Port Trusts.
6. Grant of Central Government approval to the framing of various service regulations and amendments/additions thereto including adoption of Govt. orders by Major Port Trusts.
7. References from the Committee on Subordinate Legislation from Lok /Rajya Sabha on service regulations of Port Trusts.
8. References from Major Ports for interpretation and relaxation of service regulations and Govt. orders.
9. Revision of scale of pay and allowances of Class-I and Class-II officers of Major Ports.
10. Delegation of Estt. Powers to Major Ports.
11. Revision of Retirement/terminal benefits schemes in Major Ports.

**PORTS ESTABLISHMENT**

1. Appeals/review by Central Government against orders made by the Chairman of the Port Trusts in respect of employees of Major Ports.
2. Issue of Pilotage Licences to Pilots in Major Ports.
3. References from VIPs relating to appointment and service matters in individual cases of Port Employees.
4. Creation of New Posts and Upgradation of existing posts in Major Ports.
5. Continuance of temporary posts in Major Ports.

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6. Conversion of temporary posts into permanent ones in Major Ports.
7. Changes in Schedule of employees of Major Ports.
8. Training/Deputation of Port Officers in India and abroad.
9. All establishment matters of ALHW.
10. All establishment matters of the Port Department of the Union Territory of Lakshadweep, Andaman & Nicobar Administration, Daman & Diu and Pondicherry.
11. Matters relating to implementation of reservation policy in favour of SC/ST employees in Major Ports.
12. Representations/Complaints received from various sources (excluding VIPs) on appointment and service matters in individual cases of Port employees.

**UNDER SECRETARY (LABOUR- I DESK)**

1. Matters relating to workers strikes in Major Ports and Dock Labour Boards.
2. Matters relating to strikes by port and dock workers in Major Ports.
3. Industrial disputes between Port Management and their unions/workers- sending comments to Ministry of Labour on proposed references for adjudication.
4. Taking up the matter with Ministry of Labour for exemption of Major Port Trusts from the provisions of certain labour Acts such as Industrial Employment(Standing Orders) Act, 1946, Employees State Insurance Act, Minimum Wages Act etc.
5. Finalization and payment of Productivity linked Reward to Port and Dock employees.
6. Appointment of representatives of Labour Unions on the Boards of Major Port Trusts.
7. Implementation of Check Off/Secret Ballot Scheme in Major Port Trusts and DLBs for determining the membership strength of various unions for the purpose of appointment of their representatives on the Boards of Major Port Trusts.

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8. Research and Development Schemes- to sanction the amount for the approved schemes.
9. Appointing the Wage Revision Committee for Port and Dock employees and follow up action.
10. Meetings of Labour Federations with Minister(S,RT&H)/ Secretary(S).

**UNDER SECRETARY (LABOUR II DESK)**

1. References relating to increase/decrease in the rates of levy at Dock Labour Boards.
2. Special Voluntary Retirement Schemes for Major Port Trusts and Dock Labour Boards.
3. Review of working of decasualization and Listing Schemes.
4. Piece rate incentive schemes for Port and Dock Workers.
5. ILO Conventions and Resolutions.
6. Accidents and Safety in Major Ports.
7. Labour Coordination and Legislative work for the department including references from the Ministry of Labour regarding amendments to various Labour Acts and Rules.

**Desk Officer (Labour) Desk**

1. Administration of Dock Workers (Regulation of Employment) Act and Rules.
2. Amendments to all Dock Workers (Regulation of Employment) Schemes.
3. Objections by Committee on Subordinate Legislation in respect of Dock Workers (Regulation of Employment) Scheme.
4. Examinations and framing of new schemes under the Dock Workers (Regulation & Employment) Act, 1948.
5. Material of Department's Annual Report.
6. Land matters of Mumbai, Kandla & Cochin Port Trusts.
7. Implementation of Electronic Data Interchange (EDI) in all the Major Port Trusts.

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**GENERAL PORTS DIVISION**

**PORTS GENERAL (PG) SECTION**

1. Administration of Major Port Trusts Act 1963 and Indian Ports Act 1908.
2. Rules and Regulations under the above acts other than those dealt in PE Section and Labour Division legislation.
3. Reimbursement of Port Charges in respect of gift consignments to Port Trust.
4. Debentures and Ways and means loan to Port Trusts.
5. Representation against Port Charges.
6. Major Port Limits.
7. Delegation of powers other than Establishment Matters of Major Port Trusts.
8. Exhibition and celebration in Major Ports.
9. Declaration of Major Port Trust.
10. Renaming of Major Port Trusts, Docks etc.
11. Outstanding dues of Major Port Trusts.
12. Examination of Major Ports by Public Accounts Committee in respect of items pertaining to PG Section only.
13. Major Ports Administration Reforms Committee (MPARC).
14. Laying of Administration Report and Accounts of Major Ports including Audit observations/remarks thereon, on the Table of both the Houses of Parliament.
15. Reserve Funds of Major Ports.
16. Capital Debts.
17. All matters including administrative matters relating to Tariff Authority for Major Ports(TAMP).
18. C&AG Paras pertaining to PG Section.
19. Waiver of demurrage charges.
20. Coordination work of Ports Wing.

**PO DIVISION**

**PORTS OPERATION (PO) DESK**

All matters pertaining to:-

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1. Dredging Policy for Major Ports.
2. Dredging Corporation of India including all Administrative and financial matters.
3. Dredging Subsidy to Kolkata Port Trust.
4. Rail-Road Connectivity of all Major Ports.
5. Ennore Port Limited including all Administrative and developmental issues.
6. Corporatisation of Major Ports including formulation of policy and related matters in respect of specific ports.
7. WTO matters pertaining to Maritime Transport Services.
8. Comprehensive trade agreements with other countries on the issue of Trade in Maritime Services.

**PORTS OPERATION (PO) SECTION**

1. Lease/sale of immovable property by Port Trusts with concurrence of Finance Wing.
2. Induction of Central Industrial Security Force (CISF) into various Ports (in consultation with M/o Home Affairs).
3. Constitution/Reconstitution of Board of Trustees.
4. Creation of posts of CISF for Major Ports with concurrence of Finance Wing.
5. Permission to visit Ports installation.
6. Indian Ports Association Matters.
7. PIANC/IAPH Institutional bodies.
8. Customs, Excise and other Advisory Boards/Councils.
9. Handling of explosives and dangerous goods.
10. Fire, accident in Port area/property.
11. Sindhu Resettlement Corporation Ltd.
12. Disaster Preparedness and Management.
13. Security in Ports.
14. Implementation of IMO Policies.
15. Ports Chairmen Conference.



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16. Custom duty exemption on imported equipments for development of ports.
17. Issuance of Notification under Rule 16(1) of the Petroleum Rules, 2002 for import of Petroleum into India by Sea.

**PD DIVISION**

**UNDER SECRETARY (PORT DEVELOPMENT-I) DESK**

All matters relating to:-

1. Jawaharlal Nehru Port Trust including Budget.
2. Policy relating to Private Sector Participation in Major Ports.
3. Maritime Policy/NMDP/Sagar Mala.
4. Matters relating to Parliamentary Standing Committee & Consultative Committee.
5. All correspondence with Foreign Government regarding Port Development & Bilateral matters.
6. SAARC/ASEAN/ESCAP/JICA/Joint Commission Meetings.

**UNDER SECRETARY (PORT DEVELOPMENT-II) DESK**

All matters relating to:

1. Kolkata Port Trust.
2. Sethusamudram Ship Channel Project (SSCP).
3. Foreign Investments (FIPB/FIAA).

**PORT DEVELOPMENT- US (PD-III) DESK**

All matters relating to:

1. Cochin Port Trust; and
2. Visakhapatnam Port Trust.
3. Supervising the work of Accountant(PD) for Planning and Budgeting and QPR(Five Year nd Annual Plan.
4. Supervising the work of Accountant (PD) for Performance Budget.

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**PORT DEVELOPMENT- US(PD-IV) DESK**

All matters relating to:

1. Tuticorin Port Trust (TPT)
2. Mumbai Port Trust (MbPT)
3. Kandla Port Trust (KPT)
4. Mormugao Port Trust (MoPT)
5. Matters relating to Minor Ports including Central Assistance.
6. Maritime States Development Council (MSDC).
7. Miscellaneous Environment Matters.
8. Supervise the work of DA(PD) for Port Infrastructural development-PMO Returns
9. Supervise the work of Desk Attache (PD).

**Desk Officer(PD-I)**

All matters relating to:

1. Paradip Port Trust
2. Chennai Port Trust
3. New Mangalore Port Trust
4. Andaman & Lakshadweep Harbour Works
5. Tsunami Rehabilitation
6. Hydrographic Perspective Plan
7. Hydrographic Survey Committee Meeting
8. Parliament Questions/VIP References/Budget proposals relating to the above.

**Accountant(PD)**

1. Planning and Budgeting and QPR (Five Year and Annual Plan)
2. Performance Budget.

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### **Desk Attache (PD)**

All coordination matters relating to PD Division and O&M Returns. Port Infrastructural development-PMO Returns. DA(PD) will report to Under Secretary(PD-IV) and submit files through him.

### **DEVELOPMENT WING**

Development Wing is headed by the Development Adviser (Ports) and is the technical organization dealing with the subjects of port development and renders technical advice on matters relating to the development of major ports, harbour projects, Andaman Lakshadweep Harbour Works and Dredging Corporation of India, etc. This Wing also renders technical advice to other Ministries in the case of fishing harbours and also Maritime State Governments as and when requested regarding Minor Ports.

The Development Adviser (Ports) is supported by 2 officers at the level of Director, 2 officers at the level of Deputy Director and 4 officers at the level of Assistant Director. The work of the Development Wing is distributed among the Directors as follows:

### **DIRECTOR (WEST COAST)**

1. Matters referred by Ports Wing for technical advice in respect of plan schemes referred by Major Ports for Government sanction, Land Lease cases, Audit Para's etc.
2. Monitoring of Major Ports' Projects and preparation of monthly updates (both Civil as well as Mechanical).
3. Monitoring of Capacity Yielding Schemes at Major Ports and analysis of port capacities
4. Follow-up actions pertaining to references received from Ministry of Statistics and Programme Implementation about the status of the Projects costing Rs.100 crores and above
5. R&D Schemes and matters relating to R&D Committee of the Ministry.

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6. Planning (both Annual Plans and Five Years Plans).
7. Parliament Questions relating to subjects handled.
8. Matters pertaining to Committees and Sub-Committees pertaining to subjects handled.
9. Empowered Committee of the Ministry for monitoring the progress of Central Sector Projects costing Rs.100 crores and above.
10. Preparation of Material for Annual Report and Economics Editor's Conference, etc.
11. Processing of M.O.U. of Cochin, New Mangalore and Paradip Port Trusts for getting the approval of the Competent Authority.
12. Matters relating to Hindi Committee.

**DIRECTOR (EAST COAST)**

1. Proposals relating to investment decisions from Major Ports located in East Coast.
2. Proposals relating to Pondicherry Port.
3. All proposals from Maritime States.
4. Schemes relating to Andaman Lakshadweep Harbour Works.
5. Sethusamudram Ship Canal Project.
6. Technical Advisory Committee (TAC) on River related schemes of Kolkata Port.
7. Permanent International Association of Navigational Congresses (**PIANC**) matters.
8. External Aided Projects.
9. Parliament Questions relating to subjects handled.
10. Matters relating to Committees and Sub-Committees pertaining to the subjects handled.
11. Bureau of Indian Standards (Civil Engg. Including Ports & Harbours).
12. Study Team on prototype studies of discharge through river Hooghly.
13. Parliament Consultative Committee meetings.

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14. Matters relating to Department of Ocean Development.
15. Fishing Harbours attached to Major Ports.
16. Maintenance Dredging in Major Ports.
17. Modernization of Port Equipments and Flotilla.
18. Proposals relating to investment decisions on Port Equipments and flotilla for all Major Ports.
19. Acquisition and replacement of Dredgers by DCI.
20. Census of port equipments and flotilla of Major Ports.
21. Short-listing of vendors for equipment and flotilla for Major Ports.
22. Matters referred by Shipping Wing in respect of Ship-building and Ship-repair.
23. Mechanical proposals from ALHW and UT of A&N Islands.

**(FINANCE AND ACCOUNTS WING**

**TF-I Section)**

**(BUDGET SECTION)**

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**ANNEX 2**

**Provisions on TAMP in the Major Port Trusts Act, 1963.**

More in detail, the current Major Port Trusts Act, 1963, comprises the following main provisions on TAMP:

*Section 49: Scale of rates for use of property of the Board of Trustees of a Major Port.*

(1) The Authority shall from time to time, by notification in the Official Gazette, frame a scale of rates at which, and a statement of conditions under which, any of the services specified hereunder shall be performed by a Board or any other person authorised under section 42 or in relation to the port or port approaches:

- (a) transshipping of passengers or goods between vessels in the port or port approaches;
  - (b) landing and shipping of passengers or goods from or to such vessels to or from any wharf, quay, jetty, pier, dock, berth, mooring, stage or erection, land or building in the possession or occupation of the Board or at any place within the limits of the port or port approaches;
  - (c) carnage or portage of goods on any such place;
  - (d) wharfage, storage or demurrage of goods on any such place;
  - (e) any other service in respect of vessels, passengers or goods,
- (2) Different scales and conditions may be framed for different classes of goods and vessels.

*Section 49A: Fees for Pilotage and certain other services.*

- (1) Within any port, fees may be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels, at such rates as the Authority may fix.
- (2) The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by sub-section (1).
- (3) The Central Government may, in special cases, remit the whole or any portion of the fees chargeable under sub-section (1) or sub-section (2).

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*Section 49B: Fixation of Port Dues*

- (1) The Authority shall from time to time, by notification in the Official Gazette, fix port-dues on vessels entering the port.
- (2) An order increasing or altering the fees for pilotage and certain other services or port-dues at every port shall not take effect until the expiration of thirty days from the day on which the order was published in the Official Gazette.

*Section 54: Power of the Central Government*

- (1) Whenever the Central Government considers it necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefore, instruct the Authority to cancel any of the scales in force or modify the same, such period as that Government may specified in the order.
- (2) If the Authority fails or neglects to comply with the direction under sub-section (1) within the specified period, the Central Government may cancel any of such scales or make such modification therein as it may think fit, provided that before so cancelling or modifying any scale the Central Government shall consider any objection or suggestion which may be made by the Authority during the specified period.
- (3) When in pursuance of this section any of the scales has been cancelled or modified, such cancellation or modification, shall be published by the Central Government in the Official Gazette and shall thereupon have effect accordingly.