



MARITIME TRANSPORT POLICY WORKING GROUP

REPORT TO PLENARY #2

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Table of Contents

1. INTRODUCTION
2. GOAL & OBJECTIVES
3. SCOPE
4. ECONOMIC PRINCIPLES
5. TRADES & CARGOES
6. SHIP FINANCING, REGISTRATION AND THE FISCUS
7. SHIPPING
8. PORTS
9. EMPLOYMENT
10. SALVAGE
11. SAFETY
12. ADMINISTRATION

SCHEDULE 1

List of names and addresses of members of the Maritime
Transport Policy Working Group

SCHEDULE 2

Documents consulted



Chapter 1 INTRODUCTION

This Report has been prepared by a Working Group appointed under the auspices of the Minister of Transport as part of the Department of Transport's Policy Review initiative. It follows the first Report to Plenary in June 1995 which identified the issues pertaining to Maritime Transport which may benefit from a policy examination and review. The first Report to Plenary was confirmed at the Plenary held on July 1 1995, and the Working Group members thereafter set about a consultative process amongst themselves and with interested third parties, from which process this Second Report is distilled.

A list of the participants with their contact addresses is attached as the first Schedule. Documents made available to the Working Group are listed in a second Schedule. In the First Report to Plenary, all persons interested in the review of Maritime Transport Policy were invited to contact any member of the group with ideas which may fuel the process. The Group has made contact with many interest groups and individuals within the shipping industry during the consultative process. ***This report should not be construed as in any way implying the consent or approval of persons consulted.***

The Group has aimed for consensus where possible. ***All Group members however reserve the right to express views contrary to those expressed in this full report which is intended to be a discussion document.*** While each Group member contributed to the drafting of this report, ***the Group Chair takes full responsibility for the editing of the report.***

Chapter 2 GOAL & OBJECTIVES

The aim of the Working Group was to review present policy relating to maritime transport, and, where appropriate, to tie in with the other working groups engaged in the process of reviewing policy relating to other transport modes. In so doing, the Group examined and consulted upon fundamental elements of maritime policy which aim at the promotion of the national interests of South Africa within the framework of the country's macro and micro economic policies. These policy recommendations include:

- That maritime policy should facilitate and enhance the expansion of international trade and tourism in general, and exports in particular. To achieve this, the development and maintenance of international liner services complemented by tramp shipping should, therefore, be promoted.
- That economic decisions should, as far as possible, be left to market forces, subject to general competitive principles applicable to all industries; with the view to maximising consumer choice and need satisfaction.
- That the development of an efficient and productive South African maritime industry should be promoted in a manner which requires that the State accept that one of its strategic objectives is to develop an export sector which is capable of competing on international markets.
- That control over the maritime services should be maintained within a well defined regulatory framework that is flexible enough to cater for changing needs and circumstances and to ensure orderly, safe, affordable and reliable maritime transport services to and from South Africa.
- That international relations with other countries and international organisations involved in maritime activities should be promoted.

1 The objective of maritime policy recommended by the Group should be designed to nurture
2 the coastal and foreign-going Maritime Transport Industry in a manner which will:

- 3 • develop a Maritime culture for South Africa;
- 4 • create and foster an economic environment for the Maritime Transport Industry which
5 will allow it to compete on at least an equal basis with the maritime carriers of other
6 nations and South African land-based carriers;
- 7 • release the full potential of the maritime industry in South Africa, with particular reference
8 to the RDP and to the modernisation of shipping administration in South Africa.

10 Chapter 3

11 SCOPE & TERMS OF REFERENCE

12
13 The Maritime Working Group considered its terms of reference to be as follows:

15 Terms of Reference

16 *An investigation and review of policy relating to or affecting coastal and foreign-going*
17 *maritime transport, to identify and prioritise policy issues and to recommend action for the*
18 *implementation thereof, with particular reference to the Reconstruction and Development*
19 *Programme and to the modernisation of shipping administration in South Africa.*

20
21 The policy goal of the Working Group was considered broad enough to allow enquiry into
22 issues which may at this stage not strictly be part of the Department of Transport's
23 jurisdiction. Incursions therefore into the field of Port Administration (Department of Public
24 Enterprises), taxation allowances and incentives (Department of Finance) and trade
25 incentives (Department of Trade & Industry) were considered appropriate to the extent that
26 they affect the successful and efficient working of Maritime Transport.

27 Prime areas addressed by the Working Group were:

- 28 • **Economic policy:**
 - 29 • efficiency
 - 30 • the consumer perspective
 - 31 • competition and development
 - 32 • government intervention
- 33 • **Trades & Cargoes:**
 - 34 • Concerns of cargo owners
 - 35 • Terms of shipment
 - 36 • ancillary industries
- 37 • **Ship financing registration and the fiscus:**
 - 38 • ship financing
 - 39 • ship mortgages
 - 40 • alternative register options
 - 41 • taxation and fiscal incentives
- 42 • **The operation of ships:**
 - 43 • coastal shipping
 - 44 • foreign going shipping
 - 45 • liner shipping
 - 46 • bulk shipping
- 47 • **Ownership & operation of ports**

- 1 • port ownership
- 2 • port administration
- 3 • ancillary port services
- 4 • **Employment and training of mariners:**
- 5 • developing a maritime culture
- 6 • employment of seafarers
- 7 • education and training of seafarers
- 8 • other employment opportunities
- 9 • **Salvage:**
- 10 • the provision of salvage services on the SA coast
- 11 • Government incentive:
- 12 • Government participation:
- 13 • Competition from private and Quasi government sources
- 14 • **Safety at sea:**
- 15 • navigation
- 16 • communication, search and rescue
- 17 • port state control
- 18 • law enforcement
- 19 • **Administration:**
- 20 • international conventions
- 21 • regulations
- 22 • operation of Chief Directorate: Shipping - national & regional issues
- 23 • **Ancillary services**
- 24 • developing shipping support services
- 25 • developing the shipbuilding, repair & shipbreaking industries
- 26

27 The Working Group considered that a discussion of the following issues was outside its
28 immediate terms of reference:

- 29 • The role of the Navy in maritime administration;¹
- 30 • The establishment of a coast guard ;
- 31 • Hydrography (save that the Working Group recognises the necessity of SA
32 providing a level of hydrographic services which will ensure vessel safety)
- 33 • The fishing fleet (except insofar as its vessels are subject to administrative
34 control)
- 35 • Exploitation of marine resources
- 36

37 In addition, there are issues relating to maritime transport which warrant a co-ordinated
38 investigation with the Land Freight Transport Working Group. These issues include the
39 following:

¹ There has been considerable debate in many quarters about law enforcement at sea, and especially in SA's newly proclaimed Economic Zone. The roles of the SA Navy, of Pentow Marine as the operator of the KUSWAG fleet, the Department of Sea Fisheries, and even of the NSRI have been examined. There have been numerous calls for rationalisation of maritime law enforcement and search and rescue in a national Coastguard. The Working Group has not entered this debate, but it considers it essential that the issues be urgently and thoroughly aired and that a decision be taken. It is the view of the Group that the national government should appoint a Committee charged specifically with the task of examining the options of maritime law enforcement, and that such a committee should comprise representatives from *inter alia* the Department of Transport, The Department of Defence and the SA Navy, the Sea Fisheries Division, Pentow Marine, the Aviation Transport Working Group, and this Working Group.

- Rationalisation of fuel costs for maritime and land transport modes on an equal basis;
- Intermodal legal regimes catering more specifically for a combination of transport modes in one carriage contract - which could include road, rail, air and sea carriage.

Reports & analyses reviewed:

Attached as Schedule 2 is a list of the main reports, documentation and analyses of which the Working Group has been given copies for study purposes. The Report of the Floor Committee is the single most important comparative document, and one of main functions of the Working Group was to re-visit the Floor report in the light of the political changes which have taken place in SA since it was published. This report will make cross references to the Floor Report and, where appropriate, recommendations of the Floor Report will be endorsed.

Chapter 4

ECONOMIC PRINCIPLES UNDERPINNING MARITIME TRANSPORT POLICY

4 Introduction

With few exceptions, the demand for transport services is a derived demand; transport services are demanded not for their own sake, but rather because transport has the ability to add value to commodities by moving them from areas of lower utility to areas of higher utility. The fundamental purpose of transport is therefore to bridge the gap between producers and consumers, and the more successfully transport fulfils its role, the smaller that gap will be. Consequently, the main thrust of transport policy in all transport modes should be to ensure that transport services are able to function in as efficient and effective a manner as possible. The primary goal of maritime transport policy should thus be to ensure the provision of the appropriate quantity and quality of vessel space, and the appropriate range of port facilities at minimum cost. A further important but secondary goal is to secure for South African interests an equitable stake in the seaborne commerce of the region, and fair access to international cross trades.

Economic theory suggests that the transport sector can function most effectively if four basic economic principles are adhered to. These principles are:

- Freedom of transport users' choice across and within transport modes.
- Reliance on a free enterprise system in which market forces operate in as unconstrained a fashion as possible.
- The removal wherever possible of market imperfections, such that markets operate on the basis of the correct price signals
- The equal treatment of all transport modes.

These principles underpin the treatment of all the economic issues dealt with later in this section.

4.1 Economic Efficiency

When economic resources are allocated in a manner that maximises the aggregate welfare of producers and consumers, economic efficiency can be said to prevail. An implication of

1 economic efficiency is that no further re-allocation of scarce resources can effect an
2 increase in aggregate welfare. Such a situation is generally associated with the operation of
3 competitive markets, where the resultant "market clearing" prices and quantities leave both
4 consumers and producers satisfied that their collective plans have been realised.

5
6 In practice, markets will generate efficient outcomes only if they receive the correct
7 allocative price signals. Efficiency requires that:

- 8
9
- 10 • prices reflect real social opportunity costs
 - 11 • market imperfections such as monopoly elements are absent
 - 12 • consumers and producers are fully informed of costs, prices and product quality

13 Where these criteria are not satisfied market failure may result, and under conditions of
14 market failure, government intervention may be desirable to improve efficiency and welfare.

15 16 17 4.1.1 The high road to efficiency: marginal cost pricing

18
19 If market forces rely on price signals in order to allocate scarce resources, what price
20 signals are necessary to secure efficient patterns of allocation?

21
22 Economic theory has an unambiguous answer: efficient patterns of allocation and
23 production result where price is equated with marginal social costs, in both the short-run
24 decision-making period (when productive capacity is fixed) and in the long run (when all
25 factors of production may be varied). A regime of prices based on marginal costs must
26 therefore be seen as the "first best" or ideal competitive market outcome.

27 28 29 4.1.2 A practicable road to efficiency: cost-related pricing

30
31 Few real-world market structures conform to the perfectly competitive norms required by
32 economic theory, hence an uncritical application of marginal cost pricing rules frequently
33 presents severe problems.

34
35 In particular, marginal cost pricing is difficult to reconcile with economic activities or
36 industries where strong economies of scale are present. Where unit costs fall over
37 significant ranges of output, two major problems emerge. These are:

- 38
39
- 40 • A limit on the number of producers sharing the market. The limiting case is that of natural
41 monopoly, where economies of scale are so powerful that concentration of production in
42 the hands of a single producer is the only sensible solution; and
 - 43 • Constraints on profitability. Where unit costs are falling, marginal costs are axiomatically
44 below average costs, hence any equation of price to marginal cost condemns producers
45 to a loss-making situation.

46 Under these circumstances, a regime of marginal cost pricing is simply impracticable, and
47 a "second best" equation of price to average cost ("full cost pricing") is the most efficient
48 sustainable outcome. This solution also produces the highest level of output and the lowest
49 costs and prices that are consistent with profitable operations in falling cost industries in
50 falling-cost industries.

51 52 53 4.1.3 Applicability of efficient pricing rules to sea carriers

54

1 The sea transport industry is characterised by strong economies of scale, and is
2 consequently not an immediate candidate for marginal cost pricing. This applies most
3 particularly to liner shipping, where the maintenance of regular, scheduled services
4 produces a high incidence of fixed costs, falling average costs, and low and relatively
5 constant marginal costs.

6
7 It is this basic cost structure that provides the most powerful rationale for the organization of
8 the liner industry around Conference or consortia arrangements, since the equation of price
9 to marginal cost that would emerge from a context of unfettered competition is inconsistent
10 with overall profitable activity. Full cost pricing is the only viable long term solution.

11
12 Moreover, since the sea transport industry is controlled by private enterprise motivated by
13 the pursuit of profit, regulation of the industry in accordance with pre-determined pricing
14 norms is generally neither possible nor desirable. The recent track record of the industry
15 has also been exemplary, in the sense of providing services of the requisite quantity and
16 quality at prices that, in nominal terms, have remained virtually constant for the last decade.

17
18 All that economic efficiency principles point to is a watchdog role for the State to monitor sea
19 carriers' pricing behaviour, in an endeavour to identify and sanction abuses of monopoly
20 power, as recommended in Section 5, below.

21 22 23 4.1.4 Applicability of efficient pricing rules to ports

24
25 The major ports and harbours of South Africa have historically been administered in the
26 public sector, as autonomous state enterprises by the South African Railways and Harbours
27 Administration (subsequently the South African Transport Services), and more recently on a
28 commercial basis by the public company Transnet Ltd, of which the State is the sole
29 shareholder.

30
31 Particularly with regard to their function as providers of marine and cargo-related
32 infrastructures, a significant portion of port costs are also of an essentially fixed nature,
33 hence economies of scale are highly likely to result. Ports thus have the characteristics of
34 natural monopolies, and their pricing under the normal efficiency criteria of expanding output
35 until price equals marginal cost would be problematical for private profit-seeking port
36 authorities. Port authorities are consequently good candidates for administration as state
37 enterprises, where the appropriate pricing rules can be imposed.

38
39 This was indeed the case in South Africa, where the SAR&H and the SATS were required
40 by statute to set tariffs at levels sufficient only to cover costs, although these strictures do
41 not apply to Transnet. In practice, the requirement to set overall tariffs in line with costs was
42 always interpreted to apply to the Transport Services as a whole, and not to individual
43 modes, nor to individual ports or port services. The consequent imbalances between
44 revenue and cost within transport modes manifested itself in widespread cross-
45 subsidisation, whereby profitable port and pipeline services supported loss-making rail
46 activities. This cross-subsidisation served severely to distort South African transport
47 markets by placing subsidisation burdens on discrete groups of transport users. Such an
48 approach is inefficient and distorting in economic efficiency terms.

49
50 For efficiency to be secured, cost-related pricing should be applied to individual transport
51 modes, and where possible to individual ports and port functions.

52 53 54 **4.2 Competition**

1
2 Economic theory indicates that welfare is likely to be maximised and efficiency secured in
3 markets that operate, wherever possible, according to competitive principles.
4 Consequently, maritime transport policy should attempt to foster and maintain a competitive
5 climate wherever practicable.
6

7 8 4.2.1 Competition in international sea transport 9

10 International shipping is generally conducted in a highly competitive environment. This
11 applies particularly to the wet- and dry-bulk trades where vessels are fixed in an open
12 market in which market participants possess excellent information. The liner shipping
13 market, particularly those segments that are organised in terms of the Liner Conference
14 System or consortia arrangements, is less overtly competitive, but in the absence of
15 barriers to entry carriers face potential or actual competition from independent operators.
16

17 The principal market imperfections that exist in international sea transport are not the
18 creation of private shipowners and operators, but stem from the protectionist policies of
19 certain nation states seeking to reserve cargoes for their national carriers. South Africa has
20 never practised shipping protectionism, but has permitted the industry to organise itself on
21 laissez faire lines.
22

23 South African maritime transport policy should continue to foster a climate of competition on
24 the deep-sea trade routes serving the Southern African sub-continent by avoiding any
25 protectionist maritime practices and by maintaining an "open ports" policy.
26
27

28 4.2.2 Coastal sea transport and inter-modal competition 29

30 As a domestic transport mode, coastal sea transport competes with land-based road, rail
31 and pipeline transport. Efficiency in domestic transport can be secured if all modes are able
32 to compete on a level playing field, and where the real comparative cost advantages of all
33 modes are fully reflected in the set of prices and tariffs faced by their users. Any distortions
34 that skew prices from social costs introduce inefficiencies and misallocate scarce
35 economic resources.
36

37 This requires that the prices paid for infrastructural facilities by all modes should reflect
38 social opportunity costs, and that no hidden subsidies be made available to any transport
39 modes. In this way, road users should pay fully and equitably for the road infrastructure, and
40 for damage inflicted on that infrastructure; rail users should face cost-related tariffs; and
41 coastal sea carriers and cargo owners should pay equitably for port facilities and services.
42

43 Transport policy generally, and not merely maritime transport policy, should ensure that
44 domestic transport modes receive equal and equitable treatment, and that user prices
45 reflect social opportunity costs in all modes.
46
47

48 4.2.3 Competition among and within ports 49

50 In the context of a nation's ports, a clear distinction must be drawn between the provision of
51 basic marine and cargo-related infrastructural facilities (such as breakwaters, channels,
52 turning basins, quays and cargo surfaces) and other port services (such as towage
53 services, cargo-handling facilities and cargo services). The former are clearly community
54 assets and should be administered by an appropriate national, regional or local port authority

1 structure that acts as a custodian of those assets. The latter are amenable to provision by
2 the public or private sector, or may be served by a mix of private and public enterprises.
3

4 The degree of competition between individual port authorities will be determined by national
5 ports policy, and may be negligible in a situation where ports are centrally administered as
6 national assets; or it may be intense in a situation where ports are administered as regional
7 or municipal assets. Whatever the administrative parameters deemed appropriate, welfare
8 will be maximised where port authorities price port infrastructures in terms of efficiency
9 criteria. In South Africa, our major ports have since 1910 been administered as national
10 assets, with all ports adhering to a unitary tariff structure for basic infrastructural services,
11 and with little or no interport competition. This confers upon Portnet, the ports division of
12 Transnet Ltd, a monopoly position with regard to the provision of South African port facilities.
13 Such a situation is not necessarily against the public interest, and may also be efficient if
14 economies of scale in port provision are powerful enough to generate a situation of natural
15 monopoly, and provided that any potential monopoly power in tariffing is mitigated via cost-
16 related regulated prices.
17

18 The situation with regard to port services is significantly different. Economic theory
19 suggests no good reason why cargo-handling, cartage and other discrete services should
20 be provided solely by the public sector, and several compelling reasons why a climate of
21 competition between the private and public sectors should prevail. A natural monopoly
22 argument is difficult to apply to such services, hence the present position in which Portnet
23 also enjoys a virtual monopoly over cargo- and marine-related port services introduces a
24 hazard of potential monopoly power that could be avoided by a greater degree of
25 competition.
26

27 The application of simple microeconomic principles suggests that provision and
28 administration of basic port infrastructures should be effected in the public sector through an
29 appropriate port authority (with competition determined by national ports policy), but that port
30 services should be provided on a competitive basis in which both the private and public
31 sector may of necessity compete.
32
33

34 4.2.4 Competition in ancillary industries 35

36 The efficiency of maritime transport is not determined solely by the activities of sea carriers,
37 port authorities and providers of direct port services, but is also affected by the economic
38 performance of many other ancillary industries associated with sea transport.
39

40 These include the clearing and forwarding industry, private stevedoring, land-based
41 transport used on an intermodal basis, ships' agencies, shiprepair services, bunkering
42 services and many others. In all cases, the efficiency of the sea transport industry is likely
43 to be enhanced by the promotion of competition and the removal of market imperfections in
44 these related industries.
45
46

47 **4.3 Sea transport and economic development** 48

49 South Africa is an "open" economy in which aggregate visible and invisible imports and
50 exports (excluding gold) typically constitute about 50 per cent of Gross Domestic Product.
51 Despite its growth and diversification, South Africa retains the classic trading profile of a
52 developing economy, in which our matrix of exports is dominated by primary products,
53 benefited primary products and relatively low-valued manufactures, while our imports
54 (other than oil) are dominated by capital goods, transport components, and other relatively

1 high-valued finished goods. Within our foreign merchandise trade, the position of sea
2 transport is dominant, as well over 90 per cent of import/export volumes are transported by
3 sea.
4

5 6 4.3.1 The primary goal of transport in economic development 7

8 The primary goal of transport in general, and sea transport in particular, is to provide
9 transport services of the requisite quantity and quality at minimum cost. Given sea's
10 dominance in the carriage of the lion's share of South Africa's foreign trade, sea transport
11 has a pivotal role in securing the competitiveness of South African exports, and in mitigating
12 imported inflation by minimising the landed cost of imports.
13

14 Since the welfare of South Africans is so critically dependent on our ability to maintain and
15 increase export earnings, sea transport has a particularly vital function in stimulating
16 exports, since export competitiveness is determined not by costs of production, but rather
17 by final user costs in foreign markets.
18

19 A basic goal of maritime transport policy should be to provide adequate sea transport and
20 port services at minimum cost, but with particular importance placed upon the continued
21 competitiveness of South African exports.
22

23 24 4.3.2 The nature of South African exports 25

26 The fact that the bulk of South African exports comprise primary products reinforces the
27 importance of sea transport as a pivotal determinant of competitiveness. For relatively low-
28 valued tradables, sea transport costs typically constitute a significant proportion (on average
29 approximately 20 per cent) of final value. Consequently, demand is relatively sensitive to
30 changes in transport costs, and reductions in transport cost are thus able to secure
31 significant improvements in competitiveness. In the case of higher-valued products,
32 transport charges represent a considerably smaller proportion of final value, hence demand
33 is less sensitive to changes in transport cost.
34

35 The dominance of low-value primary products in South African merchandise exports
36 reinforces the pivotal role that sea transport plays in affecting export competitiveness.
37
38

39 4.3.3 The sea transport industry as an exporter in its own right 40

41 Although South African shipowners and operators control a relatively small proportion of the
42 sub-continent's aggregate export and import volumes, the South African sea transport
43 industry is a substantial exporter in its own right, since freight earnings generated by South
44 African carriers and operators on southern African trades and international cross trades
45 contribute significantly to the "invisible" services account within the current account of the
46 balance of payments. Not all freight earnings should be reflected as net balance of
47 payments gains, since locally controlled transport enterprises also incur foreign exchange
48 costs, and the servicing of South African as opposed to foreign vessels in South African
49 ports foregoes potential foreign earnings, but the net improvement in the balance of
50 payments effected as a result of the activities of the South African shipping industry have
51 been estimated to be in excess of R800 million annually.
52

1 Maritime transport policy should recognise the South African shipping industry as a fully-
2 fledged exporter whose activities considerably strengthen the South African balance of
3 payments.
4

5 6 4.3.4 The strategic importance of the South African sea transport industry 7

8 In addition to its activities as an exporter of services, the national sea transport industry
9 confers other external benefits on the wider economy. During the course of its activities, the
10 shipping industry inter alia acts as a crucible for the development of scarce skills through
11 the training of seafarers who may later find employment on foreign vessels or in shore-
12 based ancillary industries; it forges economic linkages with shiprepair enterprises and heavy
13 engineering industries; it gives domestic interests a voice in influencing freight rates on
14 mainstream sea routes; and it reduces an otherwise exclusive reliance on foreign carriers.
15

16 Maritime transport policy should recognise the strategic importance of the South African
17 shipping industry and the external benefits it bestows on the wider economy.
18
19

20 **4.4 Government intervention** 21

22 In response to instances of market failure, in the maintenance of standards of safety, or in
23 pursuit of objectives such as regional development or equity in income distribution, the
24 government may at times legitimately intervene in the workings of the free enterprise
25 system.
26
27

28 4.4.1 Intervention in South African transport markets 29

30 Intervention in transport markets takes many forms, including taxes, subsidies and the
31 provision of services (such as the monitoring of safety standards on vessels) that would not
32 be provided by pure market forces. Where such intervention occurs, it should be effected in
33 a manner that distorts cost and price signals as little as possible, and consequently does
34 minimum damage to market forces.
35
36

37 4.4.2 The financing of intervention 38

39 The main source of distortions from government intervention arises from the manner in
40 which they are financed. In cases where intervention is necessary to rectify negative
41 externalities (such as pollution or road infrastructure damage), those responsible for the
42 actions should bear the resultant costs. Similarly, in cases where intervention generates
43 benefits for particular interest groups, a fundamental principle of public finance holds that
44 those interests that benefit should also bear the associated costs. Where no specific
45 offenders or beneficiaries can be identified, but where intervention is nonetheless deemed to
46 be in the public interest, the costs of intervention should be borne by the community as a
47 whole, and not by specific sectors or interests. Distortions arise when the costs of
48 intervention are shifted onto other discrete sectors or economic actors.
49

50 A few examples may help to clarify this important point. If the imperatives of regional
51 development dictate that an uneconomic minor harbour be operated on a subsidised basis,
52 the associated costs should be borne by the wider community, and not by users of
53 economic ports. Similarly, if the provision of maritime safety monitoring is deemed to be in

1 the public interest, it should be financed jointly by safety offenders and by the fiscus, but not
2 by healthy vessels or their users.
3

4 5 **Chapter 5** 6 **TRADES & CARGOES** 7

8 This section is structured as follows:
9

- 10 • A brief summary of the key issues, including salient problem areas, and
- 11 • As part of the discussion, the recommended new policy.
12

13 **5.1. The Current Situation** 14

15 After considerable discussion with interested parties, it has generally been agreed that the
16 primary concern of cargo interests is the efficiency of the transport chain from point of sale
17 to point of consumption. A significant part of this chain depends upon the efficiency,
18 suitability, regularity and costs of shipping services to, from or between South African ports.
19

20 In particular, special consideration was given to the following key issues:
21

22 **KEY ISSUE ONE** 23

24 **Current policy seems to ignore the role of cargo interests.**
25

26 **BACKGROUND** 27

28 One of the main features of the National Maritime Policy as proposed in the August 1993
29 report was:
30

31 *"South Africa is a maritime country which must use its maritime resources in the*
32 *strategy of restructuring the economy. This means that the difficulties confronting*
33 *South African shipowners in international markets which are characterised by the*
34 *protection or subsidisation of their competitors, should be recognised, and measures*
35 *by the Government to improve their competitiveness should be introduced."*
36

37 It also states that:
38

39 *"The purpose of a national shipping policy is to promote a country's foreign trade or*
40 *rather to increase its net foreign earnings through the development of its merchant*
41 *fleet "*
42

43 The Working Group is concerned that this seems to lose sight of Adam Smith's definition in
44 his 'Wealth of Nations' where he says:
45

46 *"The principle benefit of foreign trade is not the importation of gold and silver, but the*
47 *carrying out of surplus produce for which there is no demand and bringing back*
48 *something for which there is."*
49

50 This is particularly the case when measures are adopted which in effect protect the
51 business of shipowners from competition without regard to the consequences for the
52 country's international trade and balance of payments.
53

1 CONCLUSION

2
3 Without the cargo there can be no trade.

4
5 POLICY STATEMENT 1

6
7 The Working Group recommends the following as a broad policy statement:

8
9 ***It is in the long term economic advantage of the Republic to recognise the vital***
10 ***role of South African cargo interests by actively advancing their involvement in***
11 ***international trade***
12

13
14 KEY ISSUE TWO

15
16 **To what extent should cargo owners be permitted to negotiate carriage of cargo**
17 **with a shipowner, operator or agent of their choice?**
18

19 BACKGROUND

20
21 Cargo reservation laws and other discriminatory practices are nothing new. From 15th to
22 18th Century particularly, they were used as instruments of imperial policy. The Conference
23 system, which is a recognised system world wide, is in effect a modern, more practical
24 application of these principles, primarily designed to facilitate and enhance maritime trade
25 between two or more Nations. In order to understand the system it is important to
26 acknowledge the difference between Liner shipping and Tramp shipping.
27

28 A Liner Trade is one in which vessels call at predetermined ports on a regular round trip
29 basis in terms of a fixed, published schedule. The vessels used in the trade are generally
30 purpose built for that trade only. The trade is normally governed by long term contractual
31 obligations between the shipping company and importers and exporters of the trading
32 Nations concerned. In cases where the volume of trade is too great for a single carrier, two
33 or more carriers may join together to form consortia. Where the Governments of the trading
34 Nations support the consortia, a conference is formed. Conferences are involved in every
35 major sea trade in the world, and by far the greatest part of sea borne liner cargo is carried
36 in conference bottoms. The trade between South Africa and its major trading partners is no
37 exception. Freight rates are generally negotiated for fixed periods and tend to be relatively
38 stable.
39

40 Tramping is where a single vessel is induced to call at one or more specific ports for a
41 specific cargo, normally homogeneous, for carriage to one or more discharge ports on a
42 single voyage basis. The voyage is normally of a one-off nature. The vessel is traded
43 wherever cargo presents itself, to any destination and very seldom in any fixed pattern.
44 Freight rates are negotiated for each voyage, are seasonal and tend to be very volatile.²
45

46 CONCLUSION

47
48 Regular shipping services are essential for the promotion and preservation of fixed trade
49 links between trading Nations. These services can be both liner services and tramp
50 services.

² There is a derogatory connotation to the term "tramp" shipping which is both unwarranted and inaccurate: tramp shipping is a vital supplement to scheduled liner services, being more flexible to answer to cyclical demand and supply.

1
2 POLICY STATEMENT 2.1
3

4 In the light of the critical nature of liner shipping in international trade, the Working Group
5 recommends the following policy statement:
6

7 ***The Government is committed to the promotion and continued development of***
8 ***regular shipping services between South Africa and its major trading partners***
9 ***within a well defined regulatory framework, complemented where necessary by***
10 ***tramp charters***
11

12 From the early days of shipping, certain principles have survived which recognise the fact
13 that shipping is a "joint venture" and that shippers should share in the cost of shipping.
14 Freight rates payable have therefore always been based on each shipper's contribution to
15 the total cost of the voyage. Risk attributable to the transport of freight by ship has always
16 been an important factor in the determination of freight costs mainly in order to spread the
17 risks involved.
18

19 Major changes have taken place in the international maritime industry. The globalisation of
20 the industry through greater co-operation between carriers through mergers and reciprocal
21 exchange of equity, and the formulation of trade blocks as exemplified by the unification of
22 Europe and North America has led to the formulation of important power blocks. Shipping
23 was originally intended to move the goods of trade between import and export Nations. The
24 more recent trend has been towards the formation of global conglomerates which move
25 cargo between hubs on massive vessels on a "round the world" voyage with smaller
26 vessels distributing from these hubs.
27

28 At the same time there has been a move towards the liberalisation of the industry with
29 greater emphasis placed on market forces throughout the world and the increasing
30 withdrawal of governments from direct involvement in shipping.
31

32 CONCLUSION
33

34 The free enterprise system is the major driving force for international trade and should be
35 encouraged within the Republic's macro and micro economic interests.
36

37 POLICY STATEMENT 2.2
38

39 The recommended policy statement is:
40

41 ***The Government recognises that commercial decisions should as far as***
42 ***possible be left to market forces to be resolved and accordingly, subject to***
43 ***general economic principles applicable to all industries, cargo interests be***
44 ***unhindered in freight negotiations***
45

46 KEY ISSUE THREE
47

48 **Under what circumstances may the State intervene in the National Interest?**
49

50 BACKGROUND
51

52 For a variety of reasons South Africa has generally been excluded from recent international
53 developments which has inevitably led to its maritime industry being placed in a severely
54 disadvantaged position vis á vis the large international groups. Ironically this has generally

1 also excluded the major international players from South African trades other than where
2 they are, or in some cases were, involved in these trades.
3

4 The Conferences which serve the South African trade, particularly those which continued to
5 protect South African interests when most were desperately avoiding commitment, are not
6 so much interested in protection, as a more comprehensive and profitable arrangement with
7 Portnet and other State enterprises which will recognise their commitment and importance
8 to South Africa as opposed to a simple commercial involvement.

9 While it is generally acknowledged that the free enterprise system is by far the most efficient
10 regulator of the economy and all economic activity, it is also recognised that every form of
11 economic activity is to a greater or lesser degree subject to some form of government
12 intervention. This is in most instances deliberately done to protect either general public or
13 national interest.
14

15 It should also be remembered that every State is sovereign and has the right to protect its
16 own interest and that of its citizens.
17

18 There are circumstances in which intervention in the market by South Africa would be in the
19 public interest. They are:
20

- 21 • When a bilateral sharing agreement sharing cargo equally with a trading partner will
22 enable South African shipowners to participate in a market from which they otherwise
23 would be excluded, while the effect of such participation does not raise shipping rates,
- 24 • Where the lack of such intervention would result in the lack of, or absence of service in
25 cases where the scale of the project is so large or the risk so great as to outweigh
26 normal commercial benefit,
- 27 • Where the co-ordination of cargo interests will lead to a more efficient utilisation of
28 resources or reduction in freight costs,
- 29 • Where the disparity between cargo interest groups is so pronounced that the larger
30 groups tend to dominate the smaller groups to the disadvantage of the smaller groups
31 and/or the general public interest, and
- 32 • Where foreign governments adopt discriminatory measures against South African trade
33 or shipowners.
34

35 36 CONCLUSION

37
38 There are circumstances in which the State must interfere in the free market system but
39 these must be limited to those instances necessary to protect either general public or
40 national interest.
41

42 POLICY DECISION 3

43
44 ***While recognising the obvious advantages of the free enterprises system, the***
45 ***Government is convinced that control should be maintained over maritime***
46 ***services within a well defined regulatory framework to ensure general public***
47 ***and national interest***
48

49 KEY ISSUE FOUR

50
51 **To what extent should the terms of trade be stipulated?**
52

53 BACKGROUND

1
2 Terms of trade can and do exercise considerable influence over the benefit the country
3 receives from the maritime industry. Buying Free on Board (FOB) and selling Cost
4 Insurance Freight (CIF), allows the trader to nominate the carrier. The implication being that
5 the South African trader would use this advantage to nominate a South African carrier. The
6 freight income would therefore theoretically be repatriated to South Africa.

7
8 There is however in SA no culture of *Shipping South African*. Indeed the politics of the past
9 decades have made such an ideal almost impossible. In the long term, the economy would
10 benefit greatly from securing a greater share of particularly the bulk cargo movements to
11 and from the country for SA operators. What is needed is a pro-active public relations
12 exercise to educate both importers and exporters to the benefits of using their own carriers,
13 and of structuring their international trade deals to accommodate this ideal.

14 15 CONCLUSION

16
17 Whilst there is no question of the Government stipulating terms of trade, it should take a pro-
18 active role in encouraging the use of SA operated vessels..

19 20 POLICY STATEMENT 4

21
22 ***While the Government should encourage South African cargo interests to***
23 ***nominate South African carriers to carry their cargo, but any attempt to***
24 ***statutorily stipulate terms of trade would constitute an unwarranted***
25 ***interference in trade***

26 27 KEY ISSUE FIVE

28
29 **What legislation exists domestically and internationally which may effect the terms**
30 **and conditions of carriage and trade and to what extent does South African**
31 **legislation have to be harmonised to avoid unnecessary conflicts with international**
32 **law?**

33 34 BACKGROUND

35
36 Virtually every aspect of trade is regulated to a greater or lesser extent by legislation, both
37 local and international. Much of this legislation was designed and intended to protect the
38 interest of certain specific parties. Historically the sovereign right of Nations has often been
39 abused, particularly in the application of quality, health and phytosanitary regulations which
40 have tended to be used as restrictions to trade. Ironically, the recent move to greater
41 freedom of trade in terms amongst others by the General Agreement on Tariffs and Trade,
42 has in some cases, and certainly in the case of South Africa led to considerable increases
43 in products being dumped to the detriment of the South African economy in general and
44 certain sectors of agriculture and industry in particular.

45 46 CONCLUSION

47
48 Domestic and International legislation has a profound effect on the ability of cargo interests
49 to freely engage in trade.

50 51 POLICY STATEMENT 5

52

The Government recognises that international relations with other countries and international organisations to a large extent are regulated in terms of domestic and international legislation and agreements

GENERAL RECOMMENDATION

The Working Group is of the opinion that the intricacies of domestic and international legislation requires specific investigation in order to protect South Africa's competitive position and would strongly recommend the creation of a specialised investigative group in this regard.

Chapter 6 SHIP FINANCING, REGISTRATION AND THE FISCUS

6.1 Ship financing and Mortgaging

There are three main general issues relating to the financing of ships intended for the South African register:

- The ability of South African shipowners to raise finance at a satisfactory interest rate on overseas financial markets;
- The facility and security given by the South African ship registration and mortgage provisions of the South African Merchant Shipping Act; and
- The fiscal allowances and incentives given to South African shipowners by the South African Income Tax Act.

Shipowners wishing to register their ships in South Africa would have to overcome the above issues and those which follow, all of which can be directly or indirectly influenced by policy generally, and more specifically by maritime transport policy and financial policy.

Access to Capital Markets

Ships are US Dollar denominated assets and therefore require USD financing. USD finance is available from offshore lending banks/institutions and as such, these transactions are regulated and controlled by the South African Reserve Bank in terms of its ruling foreign exchange regulations. What little domestic ship finance market there is, is largely limited to the small craft market. The continued existence of foreign exchange controls in this capital intensive area constitutes an inhibitory factor in the financing operations of shipowners in South Africa.

Cost of offshore finance

Once access to finance has been achieved, the foreign lending bank will determine its loan risk and thereby the cost of finance to the prospective shipowner. There are three main issues affecting the assessment of that risk and each could adversely impact on the cost of the finance for South African flag vessels.:

- The personal debt rating of the borrower;
- The South African sovereign political risk (South African has a BBB rating);
- The existing shortcomings of the South African ships mortgage, which may be summarised as
 - the method of creation of a South African mortgage

- the inconsistencies between the priorities given a mortgage by the South African Admiralty Jurisdiction Regulation Act and the Insolvency Act;
- the choice of law applicable to ship s mortgages; and
- the ranking of a ship s mortgage in terms of the Admiralty Jurisdiction Regulation Act.

Practical difficulties

When considering the possibility of existing South African tonnage now registered offshore being transferred onto the South African register, the situation is further complicated by complex ownership and financing structures at present acceptable to the lending banks. The cost of untangling the existing arrangements is high and in some instances prohibitive. The potential benefit of policy changes would therefore lie in the future more with new vessel acquisitions.

6.2 Taxation and Forex

Likely fiscal policy issues are more the province of the Department of Finance than the Department of Transport, but the Working Group believes it essential to review fiscal policy in order to promote well-being in the maritime industry.

As seen under paragraph 4 above, the international trend is for government policy to support and encourage (rather than protect) shipping by way of indirect financial measures and concessions as opposed to more direct support. Shipping by its nature is capital intensive, and government support thus manifests itself through taxation exemptions and concessions. Regional co-operation within SADC also needs to be examined.

The object of maritime policy here should be to ensure a *level* playing field for the domestic shipowner/operators vis-à-vis foreign competitors. Policy should therefore take into account international trends and take cognisance of the following issues:

- Seafarers should be (and are) exempt from income and social security taxes. This should be extended to the coastal trades.
- Attention should be given to a tax dispensation in which international shipping operations are exempt from normal income tax, in line with over 70% of the world fleet. This could be coupled with a tonnage tax system.
- Domestic shipowner/operators should be free to access international finance markets and should not be forced into unfavourable credit terms. In order to achieve this, policy should provide for favourable credit terms if such terms are not available to domestic owner/operators in the international market. Such support could include guarantees and/or the provision of finance at OECD credit terms through the operation of government agencies.
- The feasibility of a local ship financing market should be studied. Such a market would provide capital to the domestic industry as an alternative to the international market.
- The issues raised and recommendations made by the Floor Report on fuel tax and import duty on spares should be implemented.
- Foreign Exchange controls should be removed as they are onerous on the domestic shipowner/operator and increase operating costs as well as decreased operating flexibility.

6.3 The Registration of South African ships: Current Legislative Environment

1 Far reaching changes in SA legislation regulating the registration of ships has been drafted
2 and is in circulation for comment³. The draft legislation aims at achieving, as a matter of
3 policy, the following elements:-
4

- 5 • internationally benchmarked safety standards and manning regulations⁴
- 6 • relevant international conventions⁵ applicable to the registration of ships and the efficient
7 administration of a ships register
- 8 • registration and qualification requirements that ensure a genuine link between the
9 vessels flag and ownership of the vessel
10

11 In order to formulate the desired policy; there are specific areas of the existing regulatory and
12 legislative framework that require review:
13

- 14 • a reworking of section 10 and 11 of the Merchant Shipping Act 57 of 1951(MSA) diluting
15 the nationalistic element therein, making it less absolute.
- 16 • removing the ambiguity created in section 13 of the MSA by the reference to obligatory
17 registration.
- 18 • assessing the relevance and applicability of the treaty country concept contained in
19 these sections
- 20 • assessing the costs of registration in order to ensure that they are not onerous or
21 gratuitous when seen against changes to the fiscal policy, as it may affect the shipowner
- 22 • assessing the option of creating a Chartering In Register (CR), as a second register for
23 vessels on bareboat charter
- 24 • qualification requirements that require a disponent owner to have disponent owning or a
25 managerial presence in South Africa
- 26 • the existence of the Underlying Flag of Registry (UFR) and the encumbrances registered
27 there, must be catered for in dealing with the issues of notice to third parties and the
28 recognition and enforcement of those encumbrances
29

30 31 Mortgages 32

33 The priority currently given to a mortgagee (the holder of a South African Maritime mortgage)
34 in relation to other creditors who have claims against the vessel over which the mortgage is
35 registered, is at odds with current international practise, resulting in a negative inference
36 being drawn about the effectiveness of registering securities over South African flagged
37 ships. This situation is aggravated by insolvency provisions that currently do not give any
38 preference to a duly registered mortgage in relation to concurrent creditors against an
39 insolvent estate, into which the mortgaged vessel falls.
40

41 As a result it is of prime importance that maritime transport policy incorporates changes to
42 both section 11 of the Admiralty Jurisdiction Regulation Act 105 of 1983 and relevant
43 changes to the Insolvency Act 24 of 1936, so as to resolve the situation, bringing South
44 Africa in line with current international practise in this area.
45

46 47 Administration 48

3 Comments were due by 15 January 1996 and have now to be processed.

4 As a full member of IMO SA is likely to adopt the manning standards prescribed by the IMO

5 The International Convention on the Registration of Ships is not yet in force: SA should take cognisance of international norms, but devise a regime which is acceptable to the maritime industry.

1 The authority that administers the policy that is determined in this document, must, as a
2 prerequisite for the successful implementation thereof, embrace without reserve, both in
3 spirit and meaning, the whole policy. Its ability to run the Register in a user friendly, non-
4 bureaucratic manner, with emphasis on the maintenance of safety standards, with flexibility
5 and efficiency in administration, is of utmost importance to the ultimate success of the
6 policy implementation.

7 8 9 **Chapter 7** 10 **SHIPPING - The Operation of Ships**

11 12 **7.1 Introduction**

13
14 7.1.1 Shipping is an international activity carried out in a highly competitive environment. It is
15 highly cyclical and ship owners and ship operators must be able to adapt their fleets to meet
16 continuously changing circumstances.

17
18 Almost without exception successful ship owning nations have promoted the following:

- 19
20
- Private ownership of vessels.
 - Minimal state interference in the purchase, sale, financing or operation of vessels.
 - The removal of fiscal disincentives to ship owners.
 - No import, export, or transfer duties or taxes on vessels as this inhibits fleet renewal.
 - Legislation which is up to date.
 - An efficient administration.
- 26

27 7.1.2 South Africa is a maritime country but is confronted by difficulties in international
28 markets. Because a large percentage of the world's ship owners are free to finance, flag,
29 crew, manage and trade their vessels from wherever they wish, the shipping market is
30 characterised by liberalism. A great many countries however (both developed and
31 developing) practice protectionism and subsidisation to improve their competitive position in
32 an effort to retain or build up their national fleets

33
34 South African shipowners do not enjoy the same competitive advantages as many foreign
35 carriers operating to and from this country, and accordingly often lack the competitive edge
36 necessary for them to take a larger share of the carriage of the country's international trade
37 cargoes.

38
39 7.1.3 The benefits of greater participation by indigenous fleets in the carriage of import and
40 export cargoes are, *inter alia*, an increase in the country's net foreign earnings through
41 freight earnings, employment of locals both at sea and in shipping offices ashore, greater use
42 of local supply and repair facilities and the use of other elements of the total national
43 infrastructure.

44
45 7.1.4 South Africa's shipping policy as reflected in the legislative, administrative and
46 economic measures adopted by Government, embodies a spirit of laissez faire whereby the
47 sea transport sector has largely been left to its own devices. This has meant also that the
48 local fleet has received little or no special fiscal dispensation which in turn has put South
49 African shipowners at a disadvantage in relation to many foreign operators. It is a factor
50 which has contributed to most of the local fleet now being registered on foreign flags⁶. The

⁶ Of the approximately 65 foreign going vessels operated by South African companies, only 4 vessels are flagged on the local register.

1 trials of having to make contingencies to overcome sanctions, and the need to seek more
2 fiscally advantageous regimes under which to register their ships, has however led to South
3 African ship owners and operators emerging as both efficient and competitive. But the SA
4 fleet (comprising SA owner or operated ships registered both here and on foreign registers)
5 only carries a small percentage of South Africa's sea-borne trade and there is capacity for
6 substantial growth. A fiscal and administrative regime which makes the SA flag attractive to
7 its nationals would ensure that the country shares in such growth to the full⁷.

8 9 10 **7.2 Coastal Shipping**

11 12 **7.2.1 Benefits of Coastal Shipping**

13
14 Coastal shipping provides a strategic alternative to road and rail transport for inter-port
15 cargoes. It is more fuel efficient than road transport and helps to reduce congestion on and
16 damage to the road infrastructure. Hazardous cargoes pose less risk to human life when
17 being transported by sea than on land.

18 19 **7.2.2 The competitive Environment**

20
21 Coastal Shipping competes directly with road and rail in a very competitive environment. It is
22 only economic to ship heavier cargoes with the origin and destination being relatively close
23 to the ports. In terms of true economic cost (i.e. the costs of resources utilised) coastal sea
24 transport is also the lowest cost domestic transport mode. The coastal trade is different
25 from the foreign trades in that the shippers of the cargo have the immediate alternatives of
26 road and rail if delays are experienced or if service levels are deficient.

27 28 **7.2.3 Reliance on SA Harbours**

29
30 Coastal shipping is reliant on Portnet for the provision of berths, shore stevedoring, cargo
31 handling in the terminals and harbour cartage for the collection and delivery of most cargo.
32 During periods of congestion or due to the lack of labour or equipment in the ports Portnet's
33 levels of service deteriorate. Cargo is immediately lost to the competing modes.

34 35 **7.2.4 Competition from Roadhaul Operators**

36
37 SA's legislated gross vehicle mass (GVM) was 48 tonnes up to 1991. The norm in
38 industrialised countries is around 40 tonnes. During 1991 and 1992 SA's GVM was
39 increased from 48 to 56 tonnes at the behest of the roadhaul lobby and against the advice of
40 rail, coastal shipping and provincial roads sectors.

41
42 This increase in GVM permitted a payload increase of 29,6% on certain heavy vehicle types
43 and there was a consequent loss of cargo from rail and coastal shipping to road.

44
45 A recent study⁸ has established that if the TOTAL fuel tax and licence fees paid by heavy
46 vehicles are considered as their contribution towards the maintenance of roads, there is a
47 considerable under-recovery on the damage they cause to the road infrastructure. The
48 shortfall was estimated at R3 872 million in 1994 made up of a subsidisation by light motor
49 vehicles of R3 016 million and a shortfall of R865 million.

50

⁷ See the recommendations of Chapter 6 "Ship Financing, Registration & The Fiscus" below.

⁸ Aspects of Cost Recovery of Vehicles on SA Rural Roads: P Jordaan - August 1995

1 It should be noted that the fuel tax which makes up 89% of the deemed contribution is a
2 general tax on which only a portion is applied to road maintenance. This indicates an under-
3 recovery of massive proportion.
4

5 The use of the rural road network (ie excluding towns and cities) by heavy vehicles is
6 consequently underpriced leading to over utilisation of the network. This situation needs to
7 be rectified to create equality between the modes.
8

9 **7.2.5 Competition from Foreign Going Vessels**

10
11 Both local and foreign owned vessels on the international trades to and from South Africa
12 are free to carry South African coastal cargo. This they can do at slightly more than the
13 marginal cost. All of these vessels have some or all of the benefits mentioned below which
14 are denied to South African coastal shipping:
15

- 16 • All foreign-going vessels obtain fuel at the international price. Coastal vessels pay the
17 local price which in the case of diesel fuel includes an element of taxation for road
18 funding and funding for the Multinational Motor Vehicle Assurance Fund . It is most
19 unusual for coastal shipping to pay a different price for bunkers from that paid by
20 international shipping.
- 21 • With some foreign-going vessels seafarers are exempt from income tax if certain
22 conditions are met .
- 23 • Foreign-going vessels do not pay import duties on spares.
- 24 • Most foreign going vessels are registered in low tax or no tax regimes or the owners are
25 in receipt of subsidies of some sort.
26

27 **7.2.6 Cabotage⁹**

28
29 South Africa has never had legislation in place to reserve coastal cargo for South African
30 ship owners. Foreign ship owners are therefore free to trade between South African ports
31 and foreign going ships enjoy the competitive advantages mentioned in the previous
32 paragraph.
33

34 Legislation restricting such cabotage is in place in nearly every country which has a
35 substantial coastline including Australia, Brazil, Finland, France, Germany, Greece,
36 Malaysia, USA etc. but this is slowly starting to be repealed.
37

38 Cabotage provisions can take two forms: either the coastal state totally prohibits the
39 carriage of coastal cargoes (or categories of cargoes, such as state owned goods) by
40 vessels other than those registered on the national flag or those operated on charter to
41 domestic shipping companies; or the coastal state imposes fiscal disincentives such as
42 additional wharfage charges on coastal cargoes carried by foreign vessels.
43

44 Whilst there are arguments in favour of cabotage protection in circumstances where foreign
45 players jeopardise the local coastal trade, the Working Group is of the opinion that in the

⁹ The term “cabotage” refers to the practice of some states to reserve to their own flag vessels the carriage of cargoes between ports within that state. The most ardent protagonist of cabotage has been the USA, though the Clinton government is reviewing the practice. The Floor Committee recommended the adoption of cabotage protection legislation, but the deferring of its application unless essential. The Group does not support this view.

1 current international environment of dismantling such protectionist measures, cabotage
2 legislation would be inappropriate¹⁰.

3
4 Much of the disadvantages suffered by the local coastal carriers would however be removed
5 if the cost of damage to the road infrastructure caused by the road haul industry is borne by
6 that industry (or the cost of that damage is reduced by reducing the GVM), and if bunker
7 prices, seaman's taxes and customs duties are brought into line with the foreign-going
8 market.

9 10 **7.2.7 Conclusions**

11
12 It is concluded that :

- 13
- 14 • Coastal shipping is of benefit to the country.
- 15 • The subsidisation of the roadhaul industry should cease
- 16 • Coastal shipping should be free to operate private terminals in the ports and to operate
17 harbour cartage, should they so wish¹¹.
- 18 • Fuel for coastal vessels should be sold at the international price paid by foreign going
19 vessels.
- 20 • Seafarers serving on coastal vessels should receive the same treatment for purposes of
21 taxation as do those serving on foreign-going vessels
- 22 • Import surcharges on coastal vessels' spares and equipment should be removed.
- 23 • No import, export, or transfer duties or taxes on coastal vessels, vessel equipment or
24 vessels spares should at present be contemplated.
- 25 • Cabotage legislation should not be adopted.
- 26

27 **7.3 Liner shipping**

28 29 **7.3.1 Introduction**

30
31 Liner shipping is the operation of scheduled services carrying breakbulk cargo and/or
32 containers possibly combined with small volumes of liquids and/or bulk parcels. Cargo is
33 attracted to the vessel by virtue of a combination of factors including sailing date, transit
34 time, freight costs, reliability, security of cargo, frequency of service etc. Specialised trades
35 involving reefer ships or pure car carriers where the cargo interests arrange the shipping are
36 also included in the comments made in this section.

37
38 South African ship owners are fairly well represented in these trades considering the
39 country's developing status.

40 41 **7.3.2 Liner Conferences**

42
43 With the advent of liner conferences in 1875 these cartels attempted to minimise rivalry
44 from non-conference carriers and also sought to rationalise their own services and
45 constrain competition amongst themselves to ensure stability in the market to the benefit of
46 themselves and their customers.

10 It is possible that such legislation would be contrary to the provisions of some of the Maritime Co-
operation Agreements under consideration between SA and other nations which guarantee equal
treatment to nationals of each state.

11 See the discussion in Chapter 8 on private enterprise within SA Ports.

1 In recent years competition from non-conference operators has forced rates down
2 considerably. Competitive forces are determining rates and the distinction between
3 conference and non-conference operators has largely disappeared . The conference
4 system is therefore tolerated internationally as a means of rationalising services. South
5 Africa in the past recognised and supported conferences in that the state concluded a
6 tripartite agreement between the Perishable Products Export Control Board (PPECB) and
7 the South Africa Europe Conference. This was known as the Ocean Freight Agreement
8 (OFA) and ensured that state controlled cargo between the conference destinations was
9 reserved for the conference. This measure was taken to provide comfort to the parties who
10 were making vast capital investments in ships and infrastructure to support the introduction
11 of containerisation.

12
13 The OFA was a discriminatory practice as opposed to protectionism. The OFA has been
14 replaced by a commercial deal between the conference and the PPECB and a
15 memorandum of understanding (MOU) between the conference and the State whereby the
16 State undertakes to use its best endeavours for state cargo to be shipped via the
17 conference at market related freight rates. The MOU is valid until 1996.

18
19 No change of policy in this regard is recommended.
20

21 **7.3.3 The UNCTAD Code**

22
23 The United Nations Conference on Trade and Development negotiated a Code of Conduct
24 of Liner Conferences which came into force in 1983. The code provides that the liner
25 conference shipping lines of countries trading with each other are each entitled to 40% of
26 the cargo with 20% going to international cross-traders. This code came about at the
27 insistence of the developing countries with a view to their gaining greater participation in the
28 shipping activities relating to their foreign trade.

29
30 Regrettably nearly all of the state owned national shipping lines that were to have benefited
31 from the UNCTAD Code are now bankrupt. The application of the code and other regulatory
32 measures skewed the market and effectively increased the cost of shipping. Similarly
33 privately owned shipping lines operating in developing countries where shipping is highly
34 regulated have failed or struggle to survive despite the UNCTAD Code. Reasons for these
35 failures vary from country to country but the general theme is :

- 36
- 37 ● Inefficient maritime administration.
- 38 ● Foreign exchange control measures.
- 39 ● Taxes on the importation and transfer of vessels.
- 40 ● Outdated legislation requiring unnecessary maintenance, crewing levels and
41 administration.
- 42 ● State interference in freight rates and ship schedules.
- 43

44 The bureaucracy that was put in place to administer the cargo sharing in support of national
45 shipping lines and also to negotiate favourable freight rates with the conferences remain in
46 place in many countries despite the fact that these functions are no longer relevant.
47

48 South Africa has never ratified the UNCTAD Code and the traditional shipping nations have
49 not applied the code to trade between themselves. Market forces have determined market
50 share in most of the traditional maritime nations. With the demise of national shipping lines
51 and deregulation and privatisation taking place globally the market is increasingly becoming
52 the determinant of market share.
53

1 The most visible symbol of this is the growth in the round-the-world container shipping
2 services. Since these large international carriers are mainly cross-trading, their success is
3 the antithesis of the protectionist spirit of the UNCTAD Code.
4

5 **7.3.4 Protection and Retaliation**

6
7 Despite the trends noted above, protection of shipping still occurs widely throughout the
8 world. Apart from outright cargo reservation and flag discrimination there are many forms of
9 direct or indirect financial assistance, subsidies and non-financial measures which are
10 being used with the objective of improving the competitiveness of ship owners.
11

12 The application of protective measures has not been requested by South Africa shipowners,
13 could result in retaliation and should only be considered if it can be proved conclusively that
14 any protective measure including subsidies, will add value to South Africa's net output after
15 the effects of all externalities including retaliation have been taken into account.
16

17 South African shipping interests have in the past suffered from protective measures taken
18 by other nations (and still do so suffer). There is possibly then justification for ad hoc *tit-for-*
19 *tat* retaliatory legislation¹² which can be a useful bargaining tool when discriminatory action
20 is being applied or contemplated by a nation which adversely affects our shipping and
21 trading interests. Any such retaliatory legislation should however be weighed carefully: it
22 should not compromise the declared policy of minimal state intervention in shipping.
23

24 Apart from this possibility of retaliatory measures, an open ports policy in which all shipping
25 is treated equally should be followed .
26

27 **7.3.5 Conclusions re Liner Shipping**

28
29 It is concluded that :

- 30
- 31 • South Africa should continue to recognise the benefits of liner conferences but that this
32 should be re-appraised from time to time.
- 33 • South Africa should not accede to the UNCTAD Code but should nevertheless strive to
34 increase its share of international shipping.
- 35 • Legislation should be adopted which would enable South Africa to retaliate if or when
36 foreign countries discriminate against South African ship owners. Apart from this an
37 open ports policy should be pursued.
38

39 **7.4 Bulk Shipping**

40 41 **7.4.1 Bulk Movement**

42
43 7.4.1.1 About 85% of the cargo moving by sea to and from South Africa comprises bulk
44 commodities. Bulk exports of about 90 mil tonnes per year comprise 65% coal, 21% iron ore
45 with the remainder being made up of assorted minerals, agricultural products and petroleum
46 products Most of the bulk shipping imports are wet bulk comprising crude oil with limited
47 volumes of wet and dry agricultural products (excluding years of abnormal weather),
48 alumina and phos rock. Import totals are normally in the order of 20 Million Tonnes per year.
49

¹² A precedent for such legislation may be found in Chapter IV (Anti-Dumping Countervailing and
Safeguard Duties) of the Customs and Excise Act 1964 (Ac No. 91 of 1964).

1 7.4.1.2 The bulk trades are therefore dominated by coal and iron ore out and crude oil in.
2 This lack of balanced trades makes entry into the dry bulk market difficult. Existing operators
3 are skilled in finding cargo to reduce ballast legs to a minimum.
4

5 7.4.1.3 Chemicals in bulk are a specialised niche in the market with imports and exports
6 totalling 4 to 5 mil tonnes per year. A few large companies dominate this sector and the
7 barriers to entry are high.
8

9 7.4.1.4 Freight charges for bulk imports and exports are estimated to exceed R2,5 Billion.
10 South African shipowners receive less than R50 Million of this and the ship operators
11 probably earn in the order of R15 Million.
12

13 **7.4.2 The Tanker Market**

14

15 Crude oil imports are shipped in very large crude carriers (VLCC's) and this market has
16 suffered huge problems of overtonnaging and violent swings in rates. Under present
17 circumstances the risk in this market is probably too high to attract local capital.
18

19 Refined products are moved around the Southern and Eastern African coast in vessels of
20 20 000 to 40 000 DWT and local operators have been able to enter this market. Comments
21 made above in relation to the coastal trade apply equally to domestic coastal product
22 movement.
23

24 **7.4.3 The Dry Bulk Market**

25

26 The dry bulk market has also suffered from overtonnaging and the Capesize sector has
27 suffered badly. Last year however rates firmed all round. South African ship owners have
28 very limited investments in this sector considering the volume of South Africa's trade.
29

30 **7.4.4 Ship operators**

31

32 A ship operator charters in a ship, contracts a cargo and executes the voyage or a contract
33 of affreightment. South African ship operators probably handle less than 10% of our bulk
34 trade.
35

36 **7.4.5 Terms of Shipment¹³**

37

38 Most export cargo is sold Free on Board (FOB) which leaves the foreign buyer or trader to
39 arrange the shipping . Most imported cargo is brought on the basis of the landed cost in
40 South Africa i.e. cost, insurance and freight included (C.I.F.). The foreign seller therefore
41 controls the shipping.
42

43 South African mining houses and other exporters have in general not developed the skills to
44 handle the shipping element and the same applies to importers. There is undoubtedly
45 scope for stimulation of SA shipping interests through measures which inure a spirit of "Ship
46 South African" in the minds of our major export houses.
47

48 **7.4.6 Government Intervention**

49

50 The Government could elect to intervene in this state of affairs by imposing cargo
51 reservation or providing subsidies. These actions would in every likelihood invoke retaliation

¹³ See the comments upon Terms of Shipment in Chapter 7 below.

or alternatively skew the market with the end result of losing foreign exchange instead of gaining it.

7.4.7 Conclusions¹⁴

It is concluded that :

- There is scope for South African ship owners, ship operators and exporters and importers to make inroads into the shipping of South Africa's bulk exports and imports.
- Entry into the dry bulk sector appears to offer the most opportunities.
- Direct intervention by the state is not advisable.
- Research be undertaken to establish the ways in which successful bulk shipowning nations achieved that status and what avenues are open for South African shipowners and operators to increase their market share.

7.5 Bilateral Agreements

7.5.1 Bilateral Shipping Agreements

Bilateral shipping agreements will tend to restrict the supply of shipping space and raise rates. If however opportunities should present themselves whereby the equal sharing of cargo with a trading partner would enable South Africa ship owners to participate in a market from which they would otherwise be excluded and shipping rates would not be raised such intervention would be in the public interest.

7.5.2 Freight Taxes/Double Taxation Agreements

Freight taxes are levied in many countries against foreign ship owners as measure of protection for local ship owners. In many of these countries exemptions from these taxes from 50% to 100% are available to ship owners in countries which have signed double taxation agreements with these countries Shipowners from countries without such agreements are then operating at competitive disadvantage to those who have gained relief from these taxes.

South Africa should conclude double taxation agreements with the relevant countries and priority should be given to the following countries :

<u>COUNTRY</u>	<u>RATE OF TAX</u>	<u>EXEMPTIONS</u>
Pakistan	8%	19 Countries 50% to 100%
India	3%	32 Countries 50% to 100%

7.5.3 Conclusions re Bilateral Shipping Agreements

It is concluded that :

- The scope for bilateral shipping agreements which will enable South African ship owners to access new markets without prejudicing shipper be examined.
- Bilateral shipping or taxation agreements should be concluded with Pakistan, India and other countries which levy freight taxes on non-resident ship owners.

¹⁴ To be read in conjunction with the recommendations of Chapter 7 below.

7.7 General Conclusions re Shipping

It is concluded that :

- A laissez faire/liberal approach by Government has been and will remain beneficial to the shipping sector.
- Coastal shipping is of benefit to the country but suffers from certain competitive disadvantages in respect of competition from the other modes and from foreign shipping.
- Cabotage legislation can be desirable as an "anti-dumping" device but should only be used in exceptional circumstances and legislation introducing cabotage is inappropriate at this stage.
- Liner conferences are not currently disadvantageous to shippers with regard to price and hold benefits with regard to service levels.
- The application of the UNCTAD Code is increasingly falling away as its application tends to increase the cost of shipping to those countries which apply the code.
- Protective measures for South African ship owners are not called for and could result in retaliation .
- Other nations have in the past and still do apply discriminatory measures against South African ship owners and operators and a retaliatory mechanism may be desirable on an ad hoc basis.
- The dry bulk shipping sector appears to offer the most opportunities for the expansion of South African Shipowning and operating.
- Bilateral shipping agreements could possibly enable South African shipping interests to access new markets without prejudicing shippers' interests.
- Discrimination against South African ship owners and operators through freight taxes can be largely overcome through double taxation or other bilateral agreements .
- An anomalous situation exists where foreign ship owners benefit from export incentive measures when purchasing South African ships and containers which measures are not available to South African ship owners.

7.8 Summary of Recommendations re Shipping

It is recommended that :

7.8.1 The Government adopt a liberal policy and refrain from interference in the private measures of ship owners to remain profitable irrespective of whether those measures involve foreign funding, registration, manning or management of vessels.

7.8.2 The disincentives towards coastal shipping in comparison with the other transport modes and foreign competition should be addressed:

- the subsidisation (direct and indirect) of heavy road vehicle movements
- the fuel price
- import surcharges on spares
- taxation of seafarers
- reliance on the monopolistic supply of certain services by Portnet.

7.8.3 Cabotage legislation be not be adopted at this stage, but that unfair competition from foreign owners and operators in coastal traffic should be reviewed from time to time by the Standing Committee on Maritime Affairs proposed by this Report.

1 7.8.4 South Africa should continue to recognise the benefits of liner conferences but that the
2 position should be reviewed from time to time.

3
4 7.8.5 South Africa should not accede to the UNCTAD Code but should nevertheless strive to
5 increase its share of liner shipping.

6
7 7.8.6 Protective measures for South African shipowners only be considered if it can be
8 shown that any protective measures including subsidies will add value to South Africa's net
9 output after the effects of all externalities including retaliation have been taken into account.
10 Measures designed to *equalise* the competitive advantage of SA shipowners and operators
11 and their foreign counterparts are proposed in Chapter 8 below.

12
13 7.8.7 Retaliatory legislation as a counter to discriminatory measures taken against South
14 African shipping interests by foreign states should be considered only on an ad hoc basis.
15 Apart from this an open ports policy with equality for all users, local and foreign, should be
16 followed.

17
18 7.8.8 In order to promote the growth of South African shipping interests in the dry bulk sector
19 research should be undertaken to establish how other nations have successfully increased
20 their market share in the shipment of bulk products and to seek acceptable ways of
21 emulating this.

22
23 7.8.9 The scope for bilateral shipping agreements which will enable South Africa shipping
24 interests to access markets which are currently inaccessible be explored .

25
26 7.8.10 Bilateral shipping or taxation agreements be concluded with Pakistan, India Tanzania
27 and other countries which levy freight taxes on non-reside ship owners so as to eliminate or
28 reduce freight taxes.

29
30 7.8.11 Financial assistance afforded local manufacturers to export ships, ship equipment
31 and spares and containers apply to sales to local ship owners provide the savings in foreign
32 exchange exceed the opportunity cost of the assistance and that there are employment
33 benefits.

34 35 **7.9 Action**

36
37 It is recommended that :

38
39 7.9.1 The Department of Transport should establish a Standing Committee on Maritime
40 Affairs¹⁵ which should have an advisory function and which should comprise
41 representatives of:

- 42 • South African ship owners
- 43 • South African ship operators
- 44 • General and specialised cargo interests
- 45 • Terminal Operators
- 46 • Stevedores
- 47 • Freight Forwarders
- 48 • Shipbrokers and agents

¹⁵ It is considered imperative that such a committee be dedicated to maritime transport matters: the previous operation of the Transport Advisory Council devoted too little time to maritime affairs as its interest base was far too broad for it to make a meaningful contribution in the field of maritime transport. The erstwhile National Maritime Council met too seldom for it to be effective.

- 1 • The maritime service industry (such as salvage, diving etc)
- 2 • Maritime economist
- 3 • Maritime lawyer

4
5 This Committee should meet quarterly to consider all aspects of maritime policy and
6 practice. It should have the power to commission investigations and reports, and should
7 carry a budget to enable reasonable costs of members to be met.

8 Draft legislation and Government notices impacting on the shipping sector should be
9 circulated to the committee and also to industry for comment to enable an ongoing review of
10 policy formulation to take place via the medium of the Standing Committee.

11
12 7.9.2 An inter-departmental committee (involving the Departments of Trade & Industry and of
13 Finance) be appointed to review the following issue affecting coastal shipping in a holistic
14 manner :

- 15 • The subsidisation of heavy road vehicle movements
- 16 • The fuel price paid by coastal shipping.
- 17 • Surcharges on imported ships spares.
- 18 • Taxation of seafarers on coastal vessels.
- 19 • The right to manage terminal and cartage facilities in the ports for coastal cargo.

20
21
22 7.9.3 Cabotage legislation should not be introduced at this stage, but coastal carriage
23 should remain under review by the Standing Committee on Maritime Affairs.

24
25 7.9.4 International attitudes towards liner conferences be monitored via the IMO¹⁶ and the
26 press and if attitudes change a reappraisal of the benefits to shippers should be carried out.

27
28 7.9.5 South Africa does not accede to the UNCTAD Code.

29
30 7.9.6 Applications from ship owners for protective measures be received before carrying out
31 any net benefit evaluations.

32
33 7.9.7 Retaliatory legislation to counter foreign discrimination against the South African
34 shipping industry be reviewed from time to time by the Standing Committee on Maritime
35 Affairs.

36
37 7.9.8 Research parameters covering the investigation into growing the bulk shipping market
38 share of South African operators be drawn up and tenders called for once research funds
39 have been accessed.

40
41 7.9.9 South Africa's Bilateral Shipping Agreements be reviewed by the Interdepartmental
42 Committee (including the Department of Foreign Affairs) and in consultation with the
43 Standing Committee on Maritime Affairs.

44
45 7.9.10 The inter-departmental committee decide and initiate a strategy to conclude bilateral
46 shipping or taxation agreements with Pakistan, India and other countries which levy freight
47 taxes on non-resident ship owners so as to minimise these taxes.

48
49 7.9.11 The inter-departmental committee review the application of export assistance
50 schemes as they apply to ships, ship's equipment and spares and containers and rectify the
51 situation applicable to South African ship owners.

¹⁶ The International Maritime Organisation of which SA is a member.

Chapter 8 PORT OPERATION & ADMINISTRATION¹⁷

8.1. INTRODUCTION

South Africa is a trading nation. In order to operate efficiently in a highly competitive world it is essential that all factors in the trading chain be as efficient and as effective as possible. Since by far the greatest portion of South Africa's trade is by sea, it follows that the ports which are being used should offer a service which promotes this trade. This service is an optimisation of a number of factors. These factors are:

- The service should be at the best cost.
- The goods handled by the ports should be secure against loss through damage or theft.
- The goods should be handled as expeditiously as possible (in loading/unloading rates, ship handling, and adequate handling opportunities).
- The cost of transport by land should be minimised by the correct siting of ports and by the ports capability of handling the products offered.

In order to achieve these ideals it is unfortunately true that the balance aimed for is not necessarily that which would completely satisfy any one group of stakeholders. It is therefore necessary to identify the stakeholders and their aims and responsibilities.

The stakeholders in the ports are:

1. The State
2. The owners/operators the port (The Port Authority)
3. The owners/operators of the cargo terminals within the port
4. The cargo owners/traders and their representatives
5. The shipowners/operators and ship charterers and collective organisations representing these interests (eg the SA Shipowners' Association and the Association of Shipping Lines).
6. The organisations/companies involved in stevedoring internal transport, storage etc.
7. Organised and unorganised labour
8. Ship repairers / ship builders
9. Ship chandlers
10. Companies involved in repair and maintenance of other equipment such as containers, vehicles, cranes etc.)
11. The supplier/owners of land transport serving the port (externally)
12. The ecologists
13. The communities and civic authorities in which the ports are situated

This list is not exhaustive and some. require closer review:

- Transnet Limited, a public company is the owner/operator of the South African ports. The state is the sole shareholder of Transnet Limited and is thus ipse facto the sole

¹⁷ Discussions on port re-structuiging have occupied much of the Group's attention. The Group is indebted to Mr Derek Lawrance and Mr Neil Oosthuizen for their input. This acknowledgement should not however necessarily imply either of their agreement with the content of this chapter. Further consultation on the subject was prevented by time constraints.

1 owner of the ports. The State created Transnet Limited in 1989 from the state
2 enterprise, South African Transport Services. In the transition from a state enterprise to
3 a public company a number of important events took place. One of these was the fact
4 that the SATS pension fund was transferred from a state type pension fund to a fund in
5 the public domain. As such, the fund managers are precluded from investing in ventures
6 of risk and were forced to invest their pension funds in either government bonds or in the
7 SATS housing scheme. Neither investment gave returns equivalent to those obtainable
8 on the commercial market nor did they afford any capital growth (in a climate where
9 inflation required it). Ultimately the state carried the responsibility of meeting the
10 commitment to the members of the pension fund should SATS, for any reason, be
11 unable to do so.

- 12 • The State however chose to address the shortfall in pension fund reserves by utilising
13 Transnet's earnings, and particularly the those derived from the profitable operations of
14 Portnet (which operates the ports) and Petronet (which operates the oil pipelines).
- 15 • The owners and/or operators of the cargo terminals in South African ports consist of
16 Portnet/Transnet Limited and a few other private companies. The private companies
17 terminals include those in Richards Bay (the coal terminal), the 12 terminals in Durban,
18 and the fruit and fish terminals in Cape Town.
- 19 • The tonnage and value of the cargo handled by Portnet terminals is greater than the total
20 handled through privately owned terminals (due chiefly to coal exports).
- 21 • The cargo owners and their representatives (agents) operate largely competitively.
22 There are monopolies in certain commodities (coal, iron ore and most other areas). The
23 agents are mostly associates with the South African Association of Freight Forwarders
24 (SAAFF).
- 25 • The ship owners/operators and charterers are associated into two groups (Association
26 of Ship Agents and Brokers of SA (ASABOSA) and the Association of Shipping Lines
27 (ASL).
- 28 • The suppliers of land transport servicing the port (externally) are either Transnet owned
29 or private operators. There exists dissatisfaction among private haulage companies who
30 believe the Transnet carriers (Px, Spoornet or Autonet) receive either subsidisation or
31 unfair privileges (regarding entry to the port or port terminals).
- 32 • Labour has expressed concern and has indicated opposition to any attempts to
33 "privatise" Portnet or its facilities. Basically, job opportunities and security of tenure are
34 major concerns which need to be addressed.
- 35 • Cities and provinces have expressed the desire to own and control the ports within their
36 boundaries (e.g. Durban and KwaZulu-Natal). This is contrary to the basic tenet that the
37 ports should be state strategic assets and not be regarded as a source of income.
38 From a planning perspective, some cities or citizens have expressed a desire to restrict
39 growth of the port (e.g. Durban - "It spoils the view of the bay").
- 40 • The ecologists have from time to time expressed concern on the effect of Ports in the
41 ecology. (Richards Bay harbour design shows great ecological concern. Durban
42 ecologists feel the port has damaged mangrove areas).

45 **8.2. COMPETITION BETWEEN PORTS**

46
47 South Africa is characterised by the fact that most of its ores, manufacturing and
48 consumers are situated far inland (usually 200 to 1000 kms from the nearest ports). As a
49 result the cost of moving products overland between the consumer or supplier and the port,
50 far exceeds the cost of handling the product at the port. (As a point of interest the difference
51 in cost in transporting one ton of steel between Pretoria and East London or Port Elizabeth
52 and that between Pretoria and Durban is greater than the total cost of handling that ton of
53 steel at East London).

1
2 Thus, a combination of economic and geographic factors make it almost impossible to
3 entice business from one port to another; that is to say each port is a virtual monopoly. The
4 monopoly is set by land transport cost and geographic situation of the ports and the trades
5 they serve. The development of industries around a port is influenced more by land
6 transport users (thus also by local availability of raw material) than by other costs such as
7 labour.
8

9 The setting of correct port tariffs is crucial to the efficient operation of the port and to the
10 competitiveness of SA products in international markets. Although the Group did not
11 examine port tariffing in any detail, policies such as rail rate equalisation across different
12 ports (against the tenets of cost-related pricing) can seriously upset the competitive
13 advantages of our ports. Such policies are both distorting and inefficient.
14

15 A final comment concerns the economies of scale. This is particularly true when
16 considering bulk cargo. Due to the lower cost per tonne of carrying bulk cargo in very large
17 vessels, it is virtually impossible to compete on the world market with bulk cargo (ores, coal
18 etc.) carried in small vessels. Another economy of scale concerns shipping opportunities.
19 A large harbour offers a very much greater opportunity to find a vessel which is destined for
20 the port of your choice. This attracts bulk shippers and shipping lines to larger ports.
21

22 The ports are thus a national asset rather than a local or provincial asset. If the national aim
23 is to encourage trade it is hardly acceptable that a city or province should make decisions
24 which can adversely affect the inland (and usually wealthier) provinces. ***The ports should
25 be operated by a single national authority.***
26

- 27 • The competition that can and should occur, can be between the terminals and services
28 within a port. There should be a port policy to encourage and foster such competition.
29

30 Thus in South Africa:
31

- 32 • The ports are each small monopolies and do not compete one with the other, though
33 each should be subject to the same market driven pricing influences.
- 34 • The ports in reality serve a larger inland community of greater economic importance than
35 the port city.
- 36 • Only some of the harbours offer economies of scale with the ability to handle very large
37 ships (Richards Bay and Saldanha Bay) or a broad diversity of shipping operations
38 (Durban).
39

40 41 **8.3. THE PRESENT PORT ORGANISATION** 42

43 The port management under Portnet falls into two clear divisions. These are the Port
44 Authority and the Port Operations. The Port Authority consists to a large extent of the
45 infrastructure of the port. It controls the channels, the berths, the navigation aids within the
46 port, and the tugs and pilot vessels. It operates somewhat analogous to a municipality in a
47 town (except that its holding company, Transnet Ltd, also owns the erven).
48

49 The Port or Terminal Operation consists of the cargo handling infrastructure and operates
50 the cranes, sheds, vehicles and storage areas. These are the cargo terminals. Terminals
51 can be single purpose (e.g. a coal terminal) or multipurpose (e.g. general cargo terminal).
52 Within a port there may be a multitude of terminals owned by a multitude of owners or at the
53 other extreme of a single terminal, sometimes dealing with a single product.
54

8.4. THE PORT AUTHORITY

It is believed that there are only two possible acceptable organisational alternatives for the Port Authority. The first is for a National Port Authority with a board of directors composed of businessmen. Furthermore, a regulatory committee should be formed consisting of members representing the stakeholders. This regulatory committee should act as an appeal board as well as a guardian of the constitution of the National Port Authority.

A second, though to the Group and to industry consulted less appropriate, alternative would be to place the National Port Authority within the ambit of Transnet Limited. The regulatory committee should remain independent.

With either model, the basic tenet of the constitution of the National Port Authority should be that no monies should pass between the Port Authority and the state or Transnet Limited. There should only be two exceptions to this (as the case may be).

- The state must honour its commitment to the pension fund and a negotiated sum must be paid annually to the present pension fund by the Port Authorities corporation and only for a fixed period of time (say 10 years) whereafter this payment ceases.
- If the Ports Authority corporation remains within the ambit of Transnet, a negotiated management sum may be paid to Transnet Limited plus any contribution required (and calculated by independent auditors) to pay the corporation share of contribution to the Transnet pension fund and Transnet for the employees currently in the corporations employ.

The advantages of the corporation remaining within the ambit of Transnet Limited lie in the minimal disruption to the employees in matters such as the pension fund and Medical Aid.

The disadvantages will be the lingering suspicion among the stakeholders of cross-subsidisation between the Port Authority and other Transnet services.

On balance, the Working Group favours complete separation of the National Port Authority from Transnet, though the Port Authority should draw on the considerable managerial expertise built up by Transnet during the years it has controlled the ports.

8.5. PORT & TERMINAL OPERATIONS

As stated above the terminals within the ports are operated by Portnet (the majority) or private operators. The Port Authority activity and the operation of Port Terminals should be separated and not fall under the same management. It is felt that a conflict of interest exists if the Port Authority also operates terminals. A situation approaching competition within the ports can be achieved at some of the ports if a policy is followed to encourage private ownership of the terminals. Transnet has already recognised the need to divorce management of the terminals from the Port Authority and Portnet is progressing in this direction.

Although it may not be regarded as expedient to force Transnet to disinvest ownership of terminals within the ports (the reverse of privatisation is proposed, but the concerns of both organised and unorganised labour would have to be addressed) a policy of encouraging private ownership should be followed. This creation of a competitive intra port situation should be entrusted to the Port Authority through its constitution. (This would allow the regulatory body to moderate on this subject).

Recommendations for a future Port Administration¹⁸

The Working Group is aware that negotiations have been proceeding between The DoT Transnet, labour and the Department of Public Enterprises. The Group would like to see the DoT playing an on-going and crucial role in these negotiations. The following policy guidelines are offered for consideration:

- 1) The real estate and hardware of the ports should be recognised as a state strategic asset, and should revert to the state.
- 2) There should then be established a National Port Authority with an administering board of directors comprising representatives of all stakeholders of the ports, and possibly having an independent regulatory committee to act as an appeal board as well as a guardian of the constitution of the National Port Authority.
- 3) A basic tenet of the constitution of the National Port Authority should be that no monies should pass between the Port Authority and the state or Transnet Limited. The National Port Authority should be “ring-fenced” financially
- 4) The state should itself, from its central fiscus, honour its commitment to the Transnet pension fund.

Whilst there may well be advantages of the National Port Authority remaining within the ownership net of Transnet Limited (such as the minimal disruption to employees in matters such as pension fund and Medical Aid), these would be out-weighed by a lingering suspicion among port stakeholders of cross-subsidisation and preference between a restructured Port Authority which remains within Transnet and other Transnet services.

- 5) Whilst the National Port Authority would of necessity provide (on a cost recovery basis) any essential facilities not willingly taken on by private enterprise, private enterprise within the ports should be promoted for the provision of all port services including the operation of cargo handling terminals.
- 6) Where the National Port Authority provides facilities (especially cargo handling and terminal facilities) in the absence of private service providers, its Port Authority activities and its operation of Port Terminals should be separated and not fall under the same management .
- 7) This creation of a competitive intra-port operation should be managed by the National Port Authority through its board and constitution which would allow for strict regulatory control to ensure that port services are maintained at an efficient level. SA ports will

¹⁸ These recommendations go a long way towards endorsing the extensive recommendations of the Floor Committee in relation to port re-structuring. It is suggested that any committee examining the re-structuring of the ports would be well advised to make reference to the extensive comment and sound reasoning of the Floor Committee on the subject. Mr Floor suggests the transfer of Transnet port assets to a state National Ports Authority and a regional substructure to operate within the national port structure.

The view expressed by the Society of Master Mariners to the Group endorsed the concept of an overall National Ports Authority as a “landlord type” authority. This view was shared by the Association of Shipping Lines in representations made to the Group.

1 probably never achieve true free competition (nor is such necessarily the optimum
2 solution for port efficiency). As far as possible however, free market forces should
3 dictate the entry and exit of players in the provision of port services, and the settling of
4 price structures within the ports.
5

- 6 8) In viewing SA ports not as a source of income but as a means of promoting trade, the
7 concerns of organised and unorganised labour at all levels of the existing
8 Transnet/Portnet structure (and outside it) must be accommodated. If it is accepted that
9 both Portnet and Transnet are now in all but name organs of the state, the proposal that
10 the state take back the real estate of the ports should not disadvantage organised labour.
11 In privatising operations with the ports however, the National Port Authority and its
12 proposed structures should make its moves with the full participation of labour.
13

14 The on-going role of Portnet in the operation of the nation's ports and in the provision of
15 services in those ports should be a recurring item on the agenda of the Standing Committee
16 on Maritime Affairs proposed by this report.
17
18
19
20
21

22 **Chapter 9**

23 **EMPLOYMENT**

24

25 As with other sectors within the shipping industry, employment particularly that of sea staff
26 is an international business activity, conducted in a highly competitive environment.
27 Accordingly South African policies, legislation, standards, structures and practices, need to
28 be formulated against international trends within this market, maximising SA seafarers'
29 marketability while ensuring acceptable conditions of service.
30

31 9.1 Employment of Seafarers in the international context

32

33 On an international level the employment of seafarers is a business characterised by the
34 following features:-
35

- 36 ● it is multinational
- 37 ● it is largely USD based
- 38 ● seafarers earnings are often tax free
- 39 ● seafarers are usually available and often employed on a contract (voyage contract) basis
40 and not permanently employed.
- 41 ● there exists a scarcity of skills in senior and technical areas as well as a lack of
42 adequate training it is highly regulated and often unionised
- 43 ● has an ageing workforce
- 44 ● is source specific: mainly from developing countries
45

46 Because of the international setting within which seafarer employment operates, it is
47 essential that the policy within this area includes:
48

- 49 ● the development of a maritime culture and awareness at grassroots level.
- 50 ● a redefinition of the training structure and its dependency on employment.
- 51 ● a model of financing that ensures quality training at the correct cost, borne equitably by
52 industry, Government and the individual seafarer

- 1 • an employment contract that is acceptable to both the SA seafarer and to the
2 international market employer as well as representative unions
- 3 • broad participation by all stakeholders interested in the policy formulation and
4 implementation
- 5 • as its goal, the creation of a pool of SA seafarers trained to international standards at
6 optimal cost
- 7 • an insistence that domestic labour legislation applicable to this area of employment
8 provides adequate protection for the SA seafarer without detracting from his/her
9 international employment potential
- 10 • modification of the existing manning regulations creating both certainty and flexibility for
11 the employer and the seafarer alike, while also complementing any modifications made to
12 the SA Ship's Register, and coinciding with the STCW implementation process.

15 9.2 Employment of seafarers in South Africa - today

16
17 The employment of seafarers on every ship registered or licensed in South Africa (except
18 pleasure craft) is regulated by Chapter III and sections 354, 5 and 6 of the Merchant
19 Shipping Act (MSA), as read with the Manning Regulations issued by the Minister of
20 Transport in terms of the Act, from time to time.

21
22 These regulations as they currently exist, tend to limit the manning of South African ships to
23 South African citizens or permanent residents only, and certainly, to holders of a certificates
24 of competency issued by the South African Department of Transport (DoT). To a limited
25 extent, some foreign equivalent certificates of competency are recognised upon application
26 and for a limited period of time only. The latter practice is a policy that discourages the use
27 of the South African flag i.e. South African ships, by shipowners because of the uncertainty
28 and inflexibility that these regulations present to the shipowner/operator and employer.

29
30 The applicability of domestic labour legislation to this arena viz. the Labour Relations Act
31 and the Wage Act through section 355 of the MSA, is also a fact or that tends to inhibit the
32 use of the South African register.

33
34 A careful balance between the need to protect South African seafarers in their employment
35 relationship and the need to allow the shipowner/operator and employer flexibility in manning
36 arrangements needs to be achieved and maintained. A move to incorporate into flag state
37 legislation, manning requirements that adhere to the relevant ILO conventions may go a long
38 way to bring this much needed certainty, and hence dispense with or dispose of the need to
39 resort to or rely upon domestic labour legislation.

40
41 Publication of those foreign certificates of competency recognised by the DoT would
42 increase employer confidence in the South African Register and allow greater flexibility in the
43 manning of South African ships.

44
45 The needs of South African seafarers as citizens and their rights of recourse to the law, and
46 the protection that it affords them, must remain paramount in a policy that is unobtrusive,
47 non prescriptive and encourages participation in the South African register.

48 9.3 Education, Training and Development (ETD)

49 Current Position and policy recommendations

50
51
52

1 Any policy formulation in this area must take cognisance of the fact that the current situation
2 is characterised by fragmentation of resources, inadequate financing and a low priority
3 which the maritime sector has in many spheres - both public and private.
4

5 Given adequate resources and financing, there exists in the MITB the vehicle by means of
6 which formulated policy can be effectively implemented.¹⁹
7

8 Policy that addresses the ETD needs of seafarers and others within the broader maritime
9 transport industry must include the following:
10

- 11 • a developed maritime master training plan that co-ordinates the existing facilities and
12 resources, eliminating duplication
- 13 • a determination of the capacity requirements, namely funding, physical and personnel
14 resources
- 15 • adequate funding from the state, donor, employer and employee sources
- 16 • clarity in the role of both the DoT and the MITB in determining experimental training
17 requirements, standards and qualification requirements within the industry
- 18 • a determination of SA's role in the development of the regional training structure
- 19 • the implementation and incorporation of the revised STCW Convention at the correct
20 and cost effective standard.
- 21 • recognition of the link between seafarers' skills and shore employment opportunities.
22 This often forms the career path planning of seafarers and provides much needed skills
23 for shore based industries ancillary to shipping services. This link should be examined
24 to devise methods of improving seafarers' skills for employment ashore at a later stage
25 of the seafarer's career.²⁰
26

27 9.4 STCW²¹ 28

29 The STCW conference held in June/July 1995 achieved an internationally accepted
30 standard for all seafaring watchkeepers, thereby aspiring to uniform standards throughout
31 the world. The Department of Transport was an active participant in the STCW convention
32 and is committed to the changes heralded by it, which will be phased in by January 1997.²²
33 The SA DoT's Certificates of Competency should be such that SA seafarers can obtain
34 employment throughout the world. There must never be the opportunity for the shipping
35 industry to claim that SA seafarers are not of the same international standard.
36

37 The successful implementation of the revised STCW Convention in SA will lead not only to
38 the safer operation of ships, but will also go a long way towards ensuring the marketability of
39 SA trained seafarers.

40 As a matter of policy, it should be recognised that the revised STCW sets an internationally
41 agreed standard under the auspices of IMO. The adoption of higher standards would only
42 serve to prejudice SA seafarers in the international marketplace because it would make their
43 training and employment costs uncompetitive.

¹⁹ The Floor Committee suggests the establishment of a Southern African Maritime College to co-ordinate the fragmentation of training. Since that report, the MITB has adopted the role of such a College.

²⁰ The Society of Master Mariners is particularly concerned with this aspect of the employment of seafarers.

²¹ Standards of Training Certification & Watchkeeping Convention, 1978

²² To assist the planning of the phasing in process, the DoT in October 1995 established a steering committee comprising representatives of shipowners, seafarers and the DoT.

1 The present government initiative with broad industry participation in the STCW
2 implementation committee will ensure that SA seafarers remain competitive at the STCW
3 standard by offering cost effective and quality (value added) services in a safer environment
4 for all concerned.
5

6 **9.6 Critical issues in employment**

7

- 8 • SA seafarers are currently not given the same protections and rights in labour law
9 as workers employed on land.
- 10 • The SA shipping industry is currently experiencing a shortage of skilled and
11 adequately certificated SA seafarers, particularly in the deck and engine room
12 officer ranks. This problem is exacerbated by the presently fragmented approach
13 to training and development, and the declining resources available to institutions.
14 Economic liberalisation in the ports, coupled with the vagaries of shipping and cargo
15 movements and consequent sharply variable labour requirements have in the last
16 twenty years led to wage competition particularly in stevedoring and other parts of
17 the cargo handling industry. This has in turn led to the replacement of permanently
18 employed dockers by casual workers.
- 19 • The majority of workers in port cargo-handling operations are unskilled with a high
20 level of illiteracy, thereby limiting their ability and the industry to adapt to
21 technological change and improve efficiency and levels of service.
22

23 **Key recommendations**

24

- 25 • Labour legislation needs to be amended to ensure that seafarers employed by SA
26 owners and operators are afforded the same rights and protections as other
27 workers.
- 28 • The crisis in the structure of employment in the ports needs to be urgently
29 addressed through:
 - 30 • correct management of any restructuring
 - 31 • involvement of labour in all developments affecting employment; and
 - 32 the re-structuring of employment to ensure that the variable labour requirement
33 of port service providers are sourced from a common pool at equal unit cost
34 in order to reverse the casualisation of port employment and to improve
35 working conditions and efficiency of service.
- 36 • The crisis of skills and basic education in the maritime labour market needs to be
37 urgently addressed through a concerted programme of education and training to
38 meet the growing demand for seafarers, and to improve the skills base of existing
39 employees in the industry.
- 40 • Education and training must comply with domestic and international standards as
41 defined and required in the SA Qualifications Authority Act and the STCW
42 convention.
43

44 **Implementation of recommendations**

45

- 46 • Government should facilitate the amendment of labour legislation to give greater
47 protection to SA seafarers, through an interdepartmental committee involving the
48 DoT and the Department of Labour, and involving organised labour and employers.
- 49 • Government should manage the restructuring of Portnet to ensure
50 preservation/satisfactory alternative arrangements, and will create the necessary
51 forums to ensure that such restructuring is done with the full input of organised
52 labour.

- 1 • Government, through the DoT and the National Ports Authority, will actively support
2 and facilitate the negotiated establishment of a statutory labour pool, which shall in
3 each port create a single pool of permanently employed registered dockers to
4 supply the variable labour requirements of port operators at equal unit cost
5 according to skill.
- 6 • Whilst Government, through the DoT will continue to act as the competent authority
7 administering the certification of seafarers in terms of the STCW, Government will
8 also work with and support the Maritime Industry Training Board in its functions:
 - 9 • as the competent standard setting and accreditation body for training and
10 education in the maritime industry under the SAQA Act
 - 11 • as a facilitator of education and training to ensure that the training and
12 education needs of employees and the industry are met
13 as a sponsor of maritime training and education.
- 14 • Government will also assist the MITB in its efforts to arrive at appropriate and
15 effective financing mechanisms which require minimum wastage of resources on
16 administration and enforcement

Chapter 10 Salvage

23 South Africa's extensive coastline is ecologically vulnerable to marine pollution resulting
24 from a maritime casualty. Such a disaster could significantly disrupt maritime transport (for
25 example where a port is closed). And it could have serious ripple effects throughout the
26 economy.

27 The potential exposure must be viewed in the light of the following facts:

- 28 • Three of the ten largest oil spills in world history have occurred off the South African
29 seaboard.
- 30 • The oil pollution of Cape Peninsula beaches from the sinking of the Apollo Sea in the
31 winter of 1994 involved an apparent 5 000 tonnes of fuel oil, for which on-going clean up
32 costs are approaching R24 million. Compare this comparatively small quantity of oil with
33 the 276 000 tonnes of crude oil which was lost following the fire and sinking of the
34 Castillo de Bellver 14 miles off Saldanha Bay in 1983. It is an inescapable fact that SA
35 has a high exposure to cataclysmic oil pollution.

36 The South African Government in the 1970's took the initiative to support the construction of
37 what were then the world's two largest salvage tugs. An accommodation was reached with
38 the tugs' operators to ensure that one tug would remain on station on the South African
39 seaboard at all times. This "insurance policy" for which the Government has made an
40 investment in the form of a subvention of expenses incurred by the tugs, has contributed to
41 the establishment of a state of salvage preparedness on South Africa's coastline which is
42 possibly unparalleled elsewhere in the world. It is a preparedness which is geared primarily
43 to *prevention* of a maritime incident resulting in pollution.

44 The provision of a satisfactory, well-prepared and well-equipped salvage service for the
45 South African coastline is imperative, and cannot be left entirely to be funded by the private
46 sector. The deep-sea salvage business is precarious: many of the bigger players have in
47 the past three decades been forced out of a business which is enormously capital intensive
48 and the plaything of fate and fortune.

1 Nor should Government intervention in the provision of salvage preparedness be considered
2 undue interference with free trade: The British Government, in pursuance of the Donaldson
3 Report which followed the sinking of the Braer in 1993, has accepted a proposal that the
4 British Government should underwrite the provision of private salvage tugs on station on
5 U.K. waters at all times. Other nations have followed suit.
6

7 The advisability of SA Government intervention in salvage was investigated by the Group.
8 The Group also investigated allegations of unfair competition with local salvors from tugs
9 owned and operated by Transnet through Portnet.
10

11 **Recommendations:**

12 **10.1** The provision of salvage services on the SA coast :

13
14 The SA government should facilitate investment from the private sector in the tug and
15 salvage industry. It is the private salvor world-wide which has the expertise necessary to
16 provide a satisfactory salvage service; but in so doing, the salvage industry provides
17 strategic and essential services to both the private sector and the government, and the
18 government needs to invoke special measures to encourage the development and
19 maintenance of salvage preparedness.
20

21 These measures could include the provision of tax incentives and relief beyond those given
22 to conventional ship owners and operators, and to this end a brief should be given to the
23 Standing Committee on Maritime Affairs to investigate and report to the Departments of
24 Finance and Transport. The terms of the brief should be *to investigate ways in which the SA
25 Government can stimulate the local salvage industry with a view to encouraging that
26 industry to maintain a state of salvage preparedness around the full length of the SA coast,
27 both in terms of indirect fiscal relief and direct subsidisation.* In preparing its report, the
28 Standing Committee on Maritime Affairs should consult with the Standing Committee on Tax
29 Matters of the Department of Finance.
30

31 **10.2** Government participation in salvage, directly or indirectly should however be
32 discouraged as being a dis-incentive to the investment of the private sector in the industry.
33 The private sector should not be expected to compete for salvage work against quasi-
34 government operations such as Portnet.²³

35 **10.3** The Government, through the offices of the Chief Directorate: Shipping, should pursue
36 investigations via the Standing Committee on Maritime Affairs into the advisability of
37 promoting private industry to either upgrade or supplement the existing salvage fleet
38 stationed on the SA coast. Such investigations should examine the advisability of whether
39 future salvage preparedness plans for the SA coastline should include the permanent
40 stationing of a deep-sea salvage tug in both Cape Town (or Saldanha Bay) and Durban (or
41 Richards Bay). The response time of deploying only one tug along the entire length of the
42 SA seaboard is considered by some to be too long to ensure that the first tenet of oil
43 pollution prevention is observed: *save the ship and you avoid the pollution.*
44

²³ This stance, and the necessity of the provision of purpose designed salvage tugs on the SA seaboard, is endorsed by the Society of Master Mariners in representations submitted to the Group.

Chapter 11 Safety at Sea

A cohesive, co-ordinated and effective policy giving due cognisance to internationally accepted principles of Safety at Sea as well as to particular requirements of the South African coastline and the trades which ply its waters, is a prerequisite to ensuring safe and orderly maritime transport. A number of issues have been identified and examined.

11.1 Navigation

Issue

Which government authority has the responsibility for the provision of navigation aids in the RSA?

At present, Portnet are the lighthouse authority and as such provide the Radio Direction Finder Radionavigation Aids. They are also providing DGPS signals which is considered to be beyond their responsibility. The DoT is providing a national DECCA CHAIN Radionavigation System which is reaching the end of its serviceable lifespan. Various other organisations provide local systems for their own use. eg. Dredging services, De Beers Marine etc.

Comments

There is a fragmented provision of navigation aids with no official policy. Navigation aids are provided by PORTNET without consultation with the appropriate authority.

Recommendations

It is recommended that a Statutory National Navigation Authority be created under the auspices of the Department of Transport. All provision of Navigation aids should then be co-ordinated by this authority.

11.2 Communications

A contract has been signed with TELKOM by which TELKOM has contracted to supply all the relevant services in order that the Department of Transport can fulfil its statutory functions in terms of the SOLAS Convention. This contract will shortly be extended to include SAFETYNET transmissions by satellite.

11.3 Weather reporting

A contract has been negotiated between Weather Bureau and DoT for the provision of the SOLAS weather information. The contract requires TELKOM to relay this information to shipping.

11.4 Search and rescue

Issues

This function is under the Chief Directorate: Civil Aviation. The Portnet Port Captains play a major role in minor incidents. The provision of hardware (vessels, long range planes and a COSPAS/ SASAR coast earth terminal) is seen as the major issue. Co-operation with neighbouring states could be improved.

Comments

SASAR is effective and highly regarded in international circles. The provision of a long range aircraft and a coast earth station would improve SASAR's effectiveness.

Recommendations

Long term budgeting be undertaken by the appropriate directorate to provide the necessary equipment and personnel to ensure an effective search and rescue capability in a state of permanent readiness.

It is not envisaged that the control of SASAR would be moved to the Shipping Directorate. However close liaison between the Chief Directorates: Shipping and Civil Aviation is essential to ensure that best use is made of the combined facilities of aviation and maritime

1 interests, both private and public. Use could be made of the Interdepartmental Committee
2 proposed by the Floor Committee for this purpose.

4 11.5 Port state inspections²⁴

5 **Issues**

6 SA implemented Port State Control (PSC) in 1988 at Durban. Since that time when a target
7 of 10% was set, the DOT has been unable to achieve the set target due to staff shortages.
8 SA co-operates with the Paris MOU²⁵ but is not a participating country. IMO would prefer to
9 see regional MOU's set up rather than remote countries joining the Paris MOU.
10 Nevertheless, the Paris MOU invites the DOT to participate in General meetings and
11 Surveyors training sessions. Notices of detentions are exchanged. In 1995, Saldanha Bay
12 achieved 25% inspections, Richards Bay 20% with the national average less than 5%. IMO
13 is in the process of amending the SOLAS Convention to make PSC/PSI mandatory.

14 **Comments**

15 PSC is an effective means of monitoring and thereby controlling (and ultimately preventing)
16 the use of SA ports by substandard ships and enforcing both internationally set minimum
17 standards and SA's own domestic maritime legislation.

18 **Recommendations**

19 It is recommended that:

- 20 • the DOT resolve its staffing problems and ensure that there are an adequate number of
21 surveyors employed to ensure that the internationally accepted 25% of all vessels calling
22 at RSA ports are port state inspected in accordance with the SOLAS convention;
- 23 • the DOT accede to the amendments to SOLAS as soon as possible to give effect to the
24 international requirement of PSC²⁶; and
- 25 • in view of the acute shortage of qualified marine surveyors, consideration should be
26 given to interim measures to employ suitably experienced and qualified marine surveyors
27 to conduct preliminary port state inspections.²⁷

29 11.6 Marine Pollution

30
31 A significant and strategically important role of the DoT concerns pollution control and
32 prevention. It is in the Minister of Transport that the powers of the Oil Pollution Act are
33 vested.

34
35 There exists at present a dichotomy of control whereby oil whilst on board a vessel in
36 distress is the responsibility of the DoT. As soon as the oil escapes onto the sea, the oil
37 falls into the jurisdiction of the Department of Environmental Affairs. This overlapping
38 jurisdiction has in the past caused administrative delays and difficulties in the regulation of
39 maritime casualties, and it should be addressed.

40
41 The Working Group is of the opinion that prime responsibility for the prevention and control
42 of marine oil pollution should remain with the DoT, and that where appropriate the DeA

²⁴ Port State Control (PSC) and Port State Inspections (PSI) is a system whereby a local maritime authority inspects foreign ships using its ports to ensure compliance by those vessels with international safety standards.

²⁵ The Paris Memorandum on Port State Control Inspections in which 16 states are signatories to an agreement which sets minimum (and maximum) vessel inspection frequencies and standards. MoU states agree also to target specific sub-standard vessels, their owners and their flags.

²⁶ The latest amendments dealing with PSC came into effect in January 1996 and substantially bolster the port state's powers (and obligations)

²⁷ Discussions have been held between the Working Group and the Society of Master Mariners who have indicated a willingness of their members to participate in PSC. Inspectors have however to be employees of the State to enjoy the PSC powers of international law.

1 should interact with the DoT through the mechanisms of the Interdepartmental Committee
2 recommended by the Floor Committee.

3
4 The capacity of the DoT to deal with marine oil and other forms of pollution should be
5 monitored by the Standing Committee on Maritime Affairs.

7 11.7 Law enforcement

8
9 The Working Group is of the opinion that maritime law enforcement should remain a prime
10 responsibility of the DoT through the Chief Directorate: Shipping. It is noted that the Floor
11 Committee recommended the establishment of a SA Coastal Patrol; and that others would
12 prefer a SANDF Coast Guard. Both the SAN and the SA Police Services (Border Control
13 Unit) have vessels capable of patrolling and exercising policing functions within the territorial
14 waters.

15 **Comments**

16 If required of it, the Standing Committee on Maritime Affairs would investigate this
17 overlapping jurisdiction in relation to maritime law enforcement further, and make
18 appropriate recommendations. The solution to the problem should be worked out to the best
19 advantage to the economy of the country. A prime consideration should be a rationalisation
20 of the government fleet, and compliance with international laws and conventions.

21 **Recommendations**

22 It is tentatively suggested that the status quo remains, but with better conditions for those
23 who man government vessels. If opinion points to a change in the status quo, a full
24 investigation should then be undertaken by a representative committee, to advise upon the
25 best utilisation of government funds in the most effective manner making due allowance for
26 the expertise which exists in the existing government departments.

29 **Chapter 12** 30 **Administration**

32 12.1 IMO/ILO²⁸ Conventions

34 **Issues**

35 SA has acceded to some 16 IMO Conventions. Most of these conventions have many
36 amendments and/or protocols which have not been acceded to as yet. A problem has been
37 encountered in time delays for the promulgation of legislation in SA to update IMO
38 conventions which are already on the SA statute book but which are themselves frequently
39 revised.

40 **Recommendations**

41 Streamlined methods within the new constitution should be found in which the RSA can
42 update its international conventions. Those conventions not acceded to as yet should be
43 urgently examined to ascertain the advisability or otherwise of accession.

45 12.2 Current SA Regulations

46 **Issues**

47 The majority of the SA regulations are dated and require updating and/or renewal. All require
48 re-examination in the light of the Interim Constitution.

²⁸ The International Maritime Organisation, being the UN controlling body for government departments charged with responsibility for the administration of maritime affairs and of which SA became a full member in March 1995; and the International Labour Organisation, charged with the protection of seafarers' rights internationally.

1 **Recommendations**

2 The Department of Transport should embark on an extensive programme of regulation
3 evaluation and renewal. Due to the shortage of staff (technical), it might be prudent to make
4 use of appropriate UK (or other) regulations as an interim measure.

6 12.3 Scope of operation of Department of Transport.

7 **Issues**

8 There is a fragmented involvement of many government departments in maritime matters.
9 This fragmentation allows various departments to make decisions on maritime matters or
10 matters which effect the maritime community without reference to each other. One
11 example is the occurrence of oil pollution²⁹. Another is the overlapping jurisdiction of the
12 DoT and other departments in relation to accidents occurring on board ship

13 **Conclusion**

14 An unsatisfactory situation of overlapping jurisdictions exists in relation to maritime affairs
15 which could have bearing on maritime transport generally.

16 **Recommendation**

17 The Department of Transport Chief Directorate Shipping should increase its capacity to deal
18 satisfactorily with all maritime matters, and its jurisdiction should be reviewed and revised if
19 appropriate. Where a matter involves other Departments, the Chief Directorate Shipping
20 should play the role of facilitator through the Interdepartmental Committee recommended by
21 the Floor Committee..

23 12.4 Regional issues

24 A political decision has been made for the RSA to be involved in regional issues relating to
25 maritime transport and the administration of shipping. Such initiatives are likely to
26 materialise for the Indian Ocean Rim and the South Atlantic Ocean Rim. The Chief
27 Directorate Shipping must therefore be adequately staffed to cater for the work which will
28 result with SA's involvement. Consideration should be given to SA joining regional
29 Memoranda of Understanding entered into in relation to Port State Control (some of which
30 are, or are likely to be, organised on a regional basis).

32 12.6 Standing Committee on Maritime Affairs

33 As detailed in Chapter 5 above, a Standing Committee on Maritime Affairs should be
34 established to ensure proper liaison between the Department of Transport and the industry it
35 seeks to serve. The Committee should have unlimited scope to consider any issue it
36 deems relevant to maritime affairs, and it should carry a budget to ensure proper
37 participation by its members. The power to appoint members should vest in the Director
38 General of Transport, in consultation with the Chief Director: Shipping, and the Committee
39 should report direct to the Chief Director: Shipping, whose office should provide the
40 secretariat.

Conclusion of Report to Plenary #2:

²⁹ The SA government has allocated responsibility for oil pollution to the Department of Transport in its Chief Directorate: Shipping whilst the oil is on board a vessel (in distress or otherwise). As soon as that oil spills into the sea the Department of Environmental Affairs assumes jurisdiction from the DoT - even while oil remains on board the offending vessel which remains the responsibility of the DoT. This duality of overlapping jurisdiction has caused problems in timeous decision making in situations where time is crucial.

The Maritime Transport Policy Working Group respectfully submits this Report with recommendations for consideration by the Second Plenary Session of the national transport policy review initiative convened by the Hon. The Minister for Transport.

*Cape Town,
February 1996*

J E Hare,
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SCHEDULE 2 DOCUMENTS TABLED

Report of the Committee of Enquiry into a National Maritime Policy for the Republic of South Africa ["The Floor Report"]	BC Floor et al	Aug 1993
The International Shipping Industry and SA's Seaborne Trade	T Jones	Apr 1987
South Africa - A Maritime Business Location	Safmarine et al	May 1995
Gearing up for the 1990s	Dept of Transport	1995
The Possibilities for SA Shipping	RJ Knudsen	Nov 1993

SCHEDULE 3 Persons consulted or from whom representations were received