NATIONAL PORT USERS' FORUM

c/o Garlicke & Bousfield Inc
24th Floor, Durban Bay House
333 Smith Street
Durban, 4001
Telephone : 570 5520
Facsimile : 570 5501

Our Reference
Mr A Norton/96/114

23 June 2003

Mr Jeremy Cronin, MP
Chairperson of the Portfolio Committee on Transport
Parliament of the Republic of South Africa
P O Box 15
CAPE TOWN
8000

Attention : Ms Nomonde Mjoli
E Mail : nmjoli@parliament.gov.za

FAX : 021-403 2880

22 PAGES IN ALL

Dear Mr Cronin

PUBLIC HEARINGS ON THE NATIONAL PORTS AUTHORITY BILL [B5-2003]- CALL FOR SUBMISSIONS

Thank you for again inviting our submissions on the amended draft of the National Ports Authority Bill. Since it has been some time since the hearings in respect of the original draft bill it may assist to remind you that the membership of the **National Port Users' Forum ("NPUF")** consists of port users and associations whose members are port users. The NPUF was formed in April 2001 in order to communicate with the South African government and other appropriate bodies regarding the concerns of its members in respect of developments in the South African ports. The current membership of the NPUF, in alphabetical order, is as follows :

The Association of Shipping Lines ("ASL") was formed in January 1975. Its membership comprises shipping lines calling regularly at one or more ports on the southern African seaboard in the range Walvis Bay, Nacala and Johannesburg, the last being a port of entry and shipment for containerised cargo. The Association is recognised as being the authoritative mouthpiece representing its members and the

interests of all other Lines calling in the range Walvis Bay, Nacala and Johannesburg.

The Association of Ships' Agents & Brokers of Southern Africa ("ASABOSA") was formed in June 1970. Its membership comprises agents and brokers in Southern Africa, representing local and foreign stakeholders, including the owners, charterers and cargo interests. The scope of involvement covers the commercial and operational interface of these principals in South Africa. It is relevant to note that its members' are currently forced to contract with Transnet Limited as principals

The Island View Leaseholders Association is an association of persons who have land and facilities on lease or sub-lease in the Island View and Fynnlands complexes located in the Durban port area. The association was formed in around 1996 to represent the interests of its members in liasing with institutions which have an impact on their businesses, in particular, the port of Durban.

The Maydon Wharf Leaseholders Association is an association of members of the Durban Chamber of Commerce and Industry who hold leases in the Maydon Wharf and Bayhead areas of the port of Durban. The Association was formed over forty years ago and serves to represent the interests of the members of the Association with regard to the Maydon Wharf and Bayhead areas.

The National Association of Stevedores was established in 1993 with its pre-cursor, the Association of Durban Stevedores, being established in 1985. Its membership comprises *bona fide* stevedores actively engaged in business directly connected therewith, and have valid stevedoring licenses issued to them in terms of Harbour Regulations. It promotes and maintains the interest and welfare of its members and speaks on their behalf on general issues of concern.

The Richards Bay Coal Terminal Company Limited is the operator of the Richards Bay Coal Terminal that, with an annual throughput of about 66 million tonnes of coal, is the largest terminal of its kind in the world. It was formed in 1976. It is a joint venture company, the shareholders of which are the larger coal producers in South Africa.

The South African Association of Freight Forwarders – KZN is the Kwa Zulu Natal Regional Association of the South African Association of Freight Forwarders (“SAAFF”) and is affiliated to the International Federation of Freight Forwarders Assocations (“FIATA”). It was formed in 1896 to further the interests of all freight forwarders, warehousemen and harbour carriers in the Kwa-Zulu Natal region. Today it represents the interests of over 125 firms in the Kwa-Zulu Natal Region.

The South African Shippers’ Council is a non-profit body that represents cargo owners in Southern Africa on strategic matters of principle affecting freight transport and related logistics. Its membership comprises most major shippers from South Africa and is, therefore, uniquely placed to represent the interests of South Africa’s import and export markets. It was formed in 1995 as a mouthpiece for shippers to communicate their concerns to all entities that have an impact on their activities.

The Terminal Operators Association is a loose association of private terminal operators in the port of Durban which was formed in about 1997 in order to give its members a structured voice in the Durban Port Liaison Committee meetings which are convened by the Durban Chamber of Commerce and Industry. It has subsequently also represented its members' interests in other forums dealing with business relevant to that of its members.

These submissions are in the main directed at the amendments to the draft Bill. We stand by our previous submissions made in respect of those sections of the Bill that have not been amended.

You will recall that we were very concerned about the approach that was taken by both Transnet Limited and the NPA at the hearings held on 26 February and 4 and 5 March 2003 in respect of the draft bill. We made further written representations dated 7 March 2003 that we presented to you for circulation. It is not clear to us whether those submissions were circulated or not and, as such, we annex hereto marked "A" a copy thereof for consideration.

We now note that certain of the submissions made by those parties have been carried forward into the amended Bill. Consequently, we now wish to amplify those concerns insofar as they relate to the revised draft bill.

EXCISION OF THE NPA FROM TRANSNET LIMITED

We are extremely disappointed to note that the draft bill has been amended to provide for the continued control for the foreseeable future of the NPA by Transnet Limited, first as a division of Transnet Limited and then as the National Ports Authority (Pty) Ltd, a subsidiary of Transnet Limited.

It is our view that the creation of National Ports Authority (Pty) Ltd and the transfer of the assets and liabilities of the current NPA to that company is an expensive administrative procedure that has absolutely no effect whatsoever.

As set out in annexure "A" to our submissions to you dated 24 February 2003 we, together with many other players, including the Department of Transport, have been working for some fourteen years to have the NPA excised from Transnet Limited. The reasons are set out in that annexure.

To those reasons have been added the following.

First, the fact that our ports have been allowed to disintegrate. The reason for this is the fact that there has not been sufficient investment in the port infrastructure to keep pace with trade developments for many years. This much has been conceded in a plethora of recent articles in the press, a copy of one such article being annexed hereto marked "B". There is no restriction in the draft bill in its current form to prevent Transnet Limited, as the holding company of the National Ports Authority (Pty) Ltd, from using the profits of that company to cross subsidise its other businesses.

The funds paid by port users for that purpose have instead been used to subsidise other businesses of Transnet Limited. This much has been admitted by Transnet Limited in its submissions to you. In many instances such cross subsidisation has permitted Transnet Limited to compete unfairly with private enterprise operators in other sectors. We have already drawn your attention to press articles in this respect, one of which is annexed marked "A" to our submissions of 7 March 2003.

The disintegration of the South African port infrastructure has led to severe delays being experienced at berths. The Container Liner Operators' Forum has kindly provided us with its own rough calculation of costs caused to a typical member Line by the delays experienced by the lack of investment in port infrastructure. For a Line operating 7 vessels, each calling 7.44 time per annum (being 52 calls per annum) the costs to the Line on a delay of 20 hours will be–

Ship operating costs of US$15 000 per day x 52 calls per annum x 20 hours =	US$650 000.00
Operating costs of containers of US$2 per day x 2 000 containers per call x 52 calls per annum x 20 hours =	US$208 000.00
Costs of bunkers (fuel) per voyage = US$950 000 x 10% extra used for additional speed to restore schedule = USS$95 000 per voyage x 7.44 voyages per year =	US$707 000.00
On the basis that 25% of calls necessitate missing a port to make up schedules and feedering boxes from alternative ports to the original destination = 13 feeders at a cost of US$600 000.00 per feeder =	US$7 800 000.00
But for the delays the line would only require 6 ships to carry trade volumes but has to employ an extra vessel to maintain schedule integrity at a cost of US$15 000 per day x 365 per annum =	US$5 500 000.00
	US$14 865 000.00

That is, of course, for only one Line. There are 26 container Lines calling at South Africa. Let us assume that only 15 are affected as much as the example given and one has a conservative total loss by the container Lines in the region of US$222 975 000.00.

That only deals with container traffic and does not take into account delays in the breakbulk and bulk trades.

The Lines contend that they have in the main borne the brunt of losses due to the delays caused by port inefficiencies and have not passed same on to customers by way of increased freight rates other than by way of a congestion surcharge. Whether that is so or not, the calculation of those losses obviously does not take into account the multiplier effect of such delays to the national economy.

To illustrate such effect we draw your attention to an article by Stephen S Cohen, Professor of Regional Planning at the University of California at Berkeley entitled "Economic Impact of a West Coast Dock Shutdown" published in January 2002 and found at

http://www.portmod.org/news/2002/May%202/Cohen%20Final%20Jan%202002.pdf
.

In that article Professor Cohen refers to an analysis by Martin Associates, a nationally recognised maritime economics consulting firm on the economic impact of a port shutdown on the USA West Coast. He summarised the results of their analysis as follows –

> "In the year 2000, containerized cargo generated 55,100 direct jobs at ports in California, Washington and Oregon. These jobs are held by members of the ILWU: terminal operators, steamship agents, freight forwarders, consolidators, truckers, and railroad workers. These directly impacted workers earned $2.4 billion of wages and the firms employing the directly employed workers received $12 billion of business revenue.
>
> The expenditures by these 55,100 directly employed for food, housing, clothing, healthcare, transportation services, and education supported an additional 36,600 induced jobs. The purchases by the firms providing the vessel and cargo handling services at the West Coast ports supported an additional 23,800 indirect jobs, for a total employment impact of more than 115,500 workers. This suggests that for every direct job created by containerized cargo at West Coast ports, another indirect and induced job is also created.
>
> In 2000, the economic value of the containerized goods exported and imported through the West Coast ports was $258 billion of the $309 billion West Coast trade. The West Coast ports are the largest port system in the United States for pass-through shipments. Pass-through shipments represent all goods shipped through West Coast ports irrespective of the state in which they are produced or consumed. The production of these exports and the use of the imports in retail and wholesale trade as well as in manufacturing supports 3.9 million workers throughout the United States. The ultimate value of these exports and imports, including the value added by handling these cargoes through the West Coast ports and the production and consumption value is estimated at $723 billion, or 7.3% of the total Gross Domestic Product of the United States in 2000.
>
> Using this economic impact model, Martin Associates estimated the potential impact of a West Coast port shutdown for five, ten, and twenty day durations. A five-day shutdown would cost the national economy an estimated $4.7 billion, 30.2 million man-hours would be lost, and federal, state and local tax receipts would be reduced by nearly $115 million. If the duration of the strike were to increase, given the fact of low-inventory practices in manufacturing and mass retailing, impacts would spread and snowball at a rapidly increasing rate. If the work stoppage lasted 10 days, the national cost would increase to $19.4 billion, 181.2 million hours would be lost by the nearly 4 million workers throughout the United States that depend on containerized cargo handled at West Coast Ports, and $693 million of federal, state and local tax revenue would be lost. By the time the duration of the work

> stoppage increased to 20 days, the cost to the United States economy would grow to $48.6 billion, over 480 million hours would be lost and $1.8 billion of federal, state and local tax revenue would be lost.
>
> The Martin analysis focuses only on containerized cargo and excludes non-containerized cargo such as automobile exports and imports, general cargo commodities, and bulk cargoes such as agricultural commodities, coal, sulfates, and bauxite. Martin notes that although the economic impact of disrupting these sectors would be substantial, it would not be as great as that on containerized cargo. Approaching the subject from a different perspective, Captain J.M. Holmes, the Coast Guard commanding officer for Long Beach-Los Angeles, said recently, referring to the Ports of Los Angles and Long Beach, "If they shut us down for a month, the economy of the western United States would grind to a halt.""

The point made by the Cohen article is that port delays have a much wider impact on the general economy of a nation than those immediately envisaged. This is to no small extent because of "a change in the Logistics systems and practices which extend from ships right up through manufacturing production lines and retail sales counters. Cargo no longer sits in warehouses. Containers go directly from the ship to distribution centers tied tightly to the ports, where it is immediately broken down, re-packed and sent to its final destination. All this in hours, not days. This has permitted radical reductions in inventories and much improved matching of supply to final demand. The benefits are enormous, for the economy as a whole. Alan Greenspan observed that this revolution in low inventory, supply chain logistics has been a major element in the recent increase in productivity in the US economy[1]. But there are costs. The biggest is a massive increase in vulnerability to supply disruptions. This is as true for manufacturers who no longer stock large quantities of parts and components, but rely on frequent shipments to sustain production flows as it is for giant, hyper-efficient retailers who no longer maintain warehouses. They have been replaced by reliable, efficient, "moving inventory," goods in movement on ships, trains, and trucks. There is no inventory to cushion the impact of disruption. A West Coast port shutdown, will quickly shutdown production lines in factories across the United States (and across Northern Mexico) and empty the shelves in the malls."

---

[1] Alan Greenspan, "Testimony of Chairman Greenspan Before Committee on Banking and financial Services, US House of Representatives" : http://www.federalreserve.gov/boarddocs/hh/1999/July/Testimony.

We do not have the information required to conduct a similar calculation in respect of the impact that port delays have had and continue to have on the South African economy as a whole. It is obvious that the nature of the delays caused by the South African ports over the past years will have a slightly different impact on the South African economy from the impact of a labour dispute did on the USA economy. However, in the light of the fact that the South African economy is probably more sensitive to delays through Durban than is the whole of the economy of the USA to shipping delays on its West Coast, it is likely that the real impact on the South African economy will be proportionately greater. The South African Reserve Bank reflects the GDP of South Africa for the year 2000 as being R888 billion. It seems clear to us that the loss to the South African economy is, therefore, to be measured at least in billions of Rand.

Secondly, as we have said before, transitional states leave those concerned, whether NPA, SAPO, Transnet or port users, in a state of limbo, unable to properly take business decisions for fear that they will impact negatively on an unknown "end-state". Mr Felix Schieder-Bieschin Jr forcibly made this point at the end of our submissions. For this reason, too, we do not believe that the existence of the NPA in a transitional state in the form of a subsidiary as opposed to a division of Transnet Limited will benefit the country as a whole.

Thirdly, as we have previously said, to further delay such excision will only exacerbate the current culture of reliance on the NPA for cash reserves for the other businesses of Transnet Limited, which cash reserves will still be available to Transnet Limited by way of the subsidiary relationship of the NPA to it.

For all of those reasons we strongly resist the introduction of a transitional stage in the life of the NPA as currently envisaged in the draft Bill.

THE REGULATOR

The NPA is currently a part of Transnet Limited which has a substantial monopoly on the transport infrastructure in South Africa. When it is excised from Transnet Limited it will continue to retain a monopoly on all port resources in South Africa and will be in a position to treat parties differently in respect of those resources and exercise other aspects of monopoly power. It will also, very importantly, determine the port charges payable in South Africa.

It is for those reasons that we believe that it is absolutely essential that the NPA be regulated, both as a part of Transnet Limited and in the future as a standalone entity. Consequently, we do not support and object strenuously to the intended phasing out of the regulator as provided for in section 55 of the draft Bill.

Furthermore, as we have said before and as one of your members indicated during the discussions with the NPA on this issue, if the NPA is doing its job properly, it need have no fear of the existence of a permanent regulator. If it is not, then it proves the need for the Regulator.

For those reasons we are strongly of the view that there is a need for a permanent Regulator and we support the submissions of ICASA dated 4 June 2003 in this regard.

On the actual provisions of the sections dealing with the regulator we believe that it is absolutely necessary that the regulator be in all respects independent. For that reason we do not agree with the draft 43(1)(b) and we believe that 32(4)(b) should include both a direct and indirect financial interest.

TERMINATION OF LEASEHOLD RIGHTS BY EXPROPRIATION OR BUSINESS RIGHTS BY LICENCE

We note that the section in the draft Bill that previously dealt solely with Maydon Wharf has now been made applicable to any area within a port (old section 45, new section 67). As such, leasehold rights and the right to continue to conduct "port services", as defined, in the port area are effectively at the whim of the NPA.

We have already referred in some detail to the reasons as to why those rights should not be provided to the NPA. Those reasons are set out in our original representations dated 24 February 2003. Those reasons still hold good and are now of even more importance in the light of the fact that the expropriation right has been extended to all port land. For the sake of completeness we repeat them.

Firstly, those who the NPA are now trying to attract to develop existing berths by way of concession will be reluctant to tender against the background of a right on the part of the NPA to terminate their leases at any time. The crucial point is that future concessions will be just as much subject to the NPA's right to expropriate long term leasehold rights as existing long-term leases.

Furthermore, any further investment in the port areas that rely on leasehold property will also be compromised. We wonder, in this respect, what those who hold long leases in port property developments, such as the V&A Waterfront development have to say about the possibility that their rights might well be terminated or their land use altered at some time in the future by the NPA?

Secondly, and as we have previously mentioned, many leaseholders are financed through third party financial institutions. There are many different structures available to financiers. They are able to finance on the basis of taking security by way of mortgage bond over the registered long leases, taking cession of the leases concerned or through listed property funds.

In the circumstances it is not only the rights of the current operators of leasehold properties that are affected but also the rights of financiers (and their shareholders and investors) of those leases.

Thirdly, the disruption to trade and the economy of the country cannot be overlooked. The operators of facilities in the ports generally have firm contractual arrangements with customers in place. Obviously those customers have made arrangements based on those contracts and to have those arrangements arbitrarily terminated will necessarily impact on other trading arrangements.

It seems to us that simply to give you theoretical instances of the negative impact that this will have on our economy does not serve to adequately illustrate the severity of the difficulties caused by these clauses. For that reason we have undertaken to persuade one or two or our members to make representations on their own behalf before you to factually illustrate the difficulties that will attend upon the draft Bill being enacted in its current form. We hope that they are afforded an opportunity to address you to factually clarify the concerns that we have.

Finally, we are very pleased to see that "port service" has been more clearly defined in the draft Bill, thus giving clarity on exactly who needs to apply for a license.

We do, however, note that it is still open to the NPA to gazette additions to that definition and believe that this leaves the NPA with an inappropriate ability to extend its influence without reference to any other authority or the sector designated.

As we have previously said, this arbitrary power should not be given to the NPA and should be deleted in its entirety. At the very least any such designation should only be after a transparent process with reference to the Minister and the Port Consultative Committees against the backdrop of stated criteria (in the Bill) to determine whether there is a necessity for making such a designation.

INTER AND INTRA PORT COMPETITION

It has always been of the utmost concern to us that the principles adopted in the White Paper on National Ports Policy should be clearly reflected in the draft Bill. One of those principles is that there be both inter and intra port competition. In that respect we are most concerned that the only reference to inter and intra port competitiveness has been deleted from clause 12 which creates an obligation on the Authority to ensure inter and intra port competitiveness and has been replaced by mention of it in clause 30 which creates an obligation on the regulator to do so. We have two difficulties with this.

The first is that we believe that it should be an obligation of the Authority to ensure inter and intra port competitiveness in the running of its business.

The second is that it is currently intended that the regulator will only be of a transitory nature, in which event the only reference to inter and intra port competitiveness in the draft Bill will then be of no force or effect.

OTHER ISSUES

Section 3(2)

We note the deletion of the old section 3(2) and that it has not been replaced in any other section of the draft Bill. The NPA in transitional form (as a subsidiary of Transnet Limited) will in any event be subject to the PFMA by schedule 2 of that Act. We believe that it is absolutely essential that the draft Bill make provision for an amendment to that schedule to include the NPA in final form.

Section 4(6)

It is not clear from section 4(6) and the other relevant provisions as to precisely what is intended. In particular it is not clear whether the provision is intended to provide the Minister with the power to vest the NPA as a division into the NPA (Pty) Ltd or to vest the NPA (Pty) Ltd into the NPA Limited. Clearly the Minister should be given the power to deal with both situations.

Section 10

Our previous comments on this section stand.

Section 11(2)(c) and (3)

Our comments stand.

Section 14

Our comments stand.

Section 14(7)

We believe that it is essential either that the Board of the National Ports Authority (Pty) Ltd is appointed in terms of section 14(1) or that the first board of the National Ports Authority Limited be appointed de novo in terms of that section. Otherwise it is possible that section 14(2) will be by-passed for the first term of the Board.

Section 16(2)(g) and 16(4)

With regard to section 16(4) our comments stand and we are additionally concerned at the amendment to this section. In our view, additionally, the Minister of Transport should at the very least have a say over whether port land is required for maritime purposes before it is sold off.

Section 30(1)(g)

Our comments stand.

Section 37(2) (old section 33(3))

Our comments stand.

Section 42(1)

In our view the ability of the Regulator to accept donations raises serious questions as to its impartiality and we believe that such source of funding should not be permitted.

Section 56(1), (4) and (5) (old section 34(1), (4) and (5))

Our comments stand.

Section 57(1) (old section 35(1)) as read with the definition of port service in section 1 and 86(1)(d) old section 63(1)(c))

We presume that it is intended that section 86(1)(d) is intended to refer to section 57(1) and not 59(1). If that is so then our previous comments stand.

Section 58(1)(c) (old section 36(1)(c))

Our comments stand.

Section 62(5)

Logically the words "… whichever occur first, …" should read "… whichever occur last …".

Section 63 (old section 41)

Our comments stand.

Section 64 (old section 42)

Our comments stand.

Section 70 (old section 48)

Our comments stand.

Section 73(6) (old section 51(6))

Our comments stand.

Sections 54 and 55 pilotage

Section 82 (old section 60)

The number of representatives of the Authority is not specified and in our view it should be.

Section 82(3) (old section 60(3))

Our comments stand.

Section 87 (old section 64)

Our comments stand.

Transparency

Our comments stand.

We look forward to our opportunity to address you on Wednesday, 25 June 2003.

Yours faithfully

TONY NORTON
CHAIRPERSON
NATIONAL PORT USERS' FORUM

Annexure "A"

NATIONAL PORT USERS' FORUM

c/o Garlicke & Bousfield Inc
24th Floor, Durban Bay House
333 Smith Street
Durban, 4001
Telephone : 570 5520
Facsimile : 570 5501

Our Reference
Mr A Norton/96/114

7 March 2003

Mr Jeremy Cronin, MP
Chairperson of the Portfolio Committee on Transport
Parliament of the Republic of South Africa
P O Box 15
CAPE TOWN
8000

Attention : Ms Monwabisi Ngunqu
E Mail : mnguqu@parliament.gov.za

9 PAGES IN ALL

Dear Mr Cronin

PUBLIC HEARINGS ON THE NATIONAL PORTS AUTHORITY BILL [B5-2003]- CALL FOR SUBMISSIONS

Thank you very much for the opportunity to make submissions in respect of the abovementioned Bill on Wednesday, 26 February 2003 and for taking the time to discuss issues of concern on 4 and 5 March 2003.

The NPUF is very concerned about the approach that has been taken regarding a number of matters by a number of stakeholders making submissions at the hearings on the days concerned. For that reason we would like to draw your attention to our position in relation to those matters and would ask that our concerns be circulated to the other members of your committee.

EXCISION OF THE NPA FROM TRANSNET LIMITED

We were surprised and astounded by the submissions of Transnet Limited to the effect that the NPA should not be excised from Transnet Limited.

As set out in annexure “A” to our submissions we, together with many other players, including the Department of Transport, have been working for some fourteen years to have the NPA excised from Transnet Limited. The reasons are set out in that annexure.

Our ports are currently in a state of disintegration. The reason for that state is that there has been under-investment in the port infrastructure for many years. The funds paid by port users for that purpose have instead been used to subsidise other businesses of Transnet Limited (in many instances to permit Transnet Limited to compete unfairly with private enterprise operators in other sectors). Press articles in this respect abound and in that regard we annex hereto marked "A" a copy of one such article.

Whilst on the subject of passenger rail services we draw your attention to the fact that such services were intended to be undertaken by the South African Rail Commuter Corporation established in terms of section 22 of the Legal Succession to the South African Transport Services Act, No 9 of 1989. That section reads –

> “22. Establishment and Name.—(1) On the date referred to in section 3 (1), a legal person, which shall be called the South African Rail Commuter Corporation Limited, shall be established.”

The following section provides –

> “23. Main Object and Powers.—(1) The main object and the main business of the Corporation are to ensure that, at the request of the Department of Transport or any local government body designated under section 1 as a transport authority, rail commuter services are provided within, to and from the Republic in the public interest.”

It is this company that in our view should be dealing with passenger rail in this country, not Transnet Limited, and government transparently subsidising such rail, if felt necessary, rather than funds being diverted from our port infrastructure to deal with such subsidisation. The same principal also, in our view, holds true for ventures undertaken by Transnet Limited for more political purposes, such as NEPAD.

The diversion of funds from our port infrastructure is currently having an extremely adverse effect on the economy of this country. We do not believe that this is in dispute.

An inter-ministerial committee comprising the Departments of Trade & Industry, Finance, Public Enterprises and Transport has considered that situation for the past almost two years and has finally decided to proceed with the excision of the NPA from Transnet Limited. It has done so on the basis of very careful consideration and expert advice and against the background that it is fully aware of the financial situation of Transnet Limited. That much is clear from the address of the Minister of Public Enterprises to parliament in 2000 when he said –

> "A major constraint in the restructuring of Transnet is the debt that the company has - at the end of the 98/99 financial year in March, Transnet debt stood at R27.185 billion. This debt is made up of these principal components: the core debt which constitutes the biggest slice of the debt, the pension fund debt and provisions for pensioners' post-retirements benefits. The Pension fund debt resulted from the corporation of the then SATS to the company Transnet in 1990. At the time the pension fund for SATS employees was only around 22% funded and Transnet management decided to issue the T11 bond to ameliorate the fund's financial position to 64%. The coupon rate for the T11 bond was 16.5% and proved quite onerous for the company which had to issue more debt just to service the T11 interest payments. Management has since, through additional contributions and more debt, improved the pension fund's funding level to around 90%. This has resulted in more debt for Transnet.
>
> In restructuring Transnet then debt is a key issue and government has decided to deal with the debt on a case by case basis i.e. as the different entities are privatised. This was the case with SAA. On corporatisation of the business unit SAA it was apparent that SAA could not sustain the debt attributable to it. Hence Transnet and Government decided to adopt a burden sharing approach. Government has directed the Transnet management to explore further options for resolving this impasse."

We believe that it is also obvious that such committee was during its deliberations well aware of the wider social and political obligations of Transnet Limited.

The relevant Ministries have obviously investigated the situation and reached the conclusion that, on balance, it is in the interest of the country to excise the NPA from Transnet Limited. With this conclusion we fully agree.

We implore you to ensure that before you consider any course of action other than that currently encapsulated in the Bill you consider carefully the debates of the inter-ministerial committee to which we have referred. It is clear to us that the result of those debates is correct and there is no doubt that the financial situation of Transnet Limited has been taken into account in those debates.

Furthermore, and whilst on this issue, we are most concerned to note press statements to the effect that the NPA is now operating terminals in Ghana under a division named Portcon. The thrust of both the White Paper and the Bill is that the NPA will only use monies earned from South African ports for development in the infrastructure of those ports, not in operational ventures in other parts of the world. Indeed, the NPA has no power in terms of the Bill to undertake such a venture. We have no objection to another division of Transnet Limited undertaking such an operation so long as the NPA is excised from Transnet Limited and funds earned by the NPA are not subjected to the vagaries of new offshore businesses but are reinvested in the South African port infrastructure.

TRANSITION OF EXCISION OF NPA FROM TRANSNET LIMITED

It has been argued by Transnet Limited that the NPA should remain as part of Transnet Limited until such time as it is able to restructure itself.

We have three points to make in this regard.

The first is to repeat that transitional states leave those concerned in a state of limbo, unable to properly take business decisions for fear that they will impact negatively on the "end-state". Mr Felix Schieder-Bieschin Jr forcibly made this point at the end of our submissions.

The second is that Transnet has been unable to restructure itself to accord with the obvious intent of government since 1994 (see annexure "A" to our main submissions). Furthermore, there is no reason to believe that it will do so now. To do anything other than excise the NPA from Transnet now will be to do what has happened for the past fourteen or so years, viz., to leave government policy to Transnet Limited to implement. With respect, that company cannot be left to implement a policy that has so severe an impact on its own operational capacity.

The third is that to further delay such excision will only exacerbate the current culture of reliance on the NPA for cash reserves for the other businesses of Transnet Limited.

For those reasons we believe that a clean break needs to now be made and that the Bill should in this respect be enacted in its current form.

THE REGULATOR

The NPA will not only act as a regulator of activities of others within the port infrastructure but will also be undertaking certain actions on its own behalf, even if just at the level of the concessioning process and in the application of its regulatory functions. It is for that reason that we believe that the Regulator should not just be of a transitional nature but should be a permanently established body.

As one of your members indicated during the discussions with the NPA on this issue, if the NPA is doing its job properly, the regulator should be of no difficulty to it. If it is not, then it proves the need for the Regulator.

For those reasons we support the need for a permanent Regulator. We are, however, in agreement with the NPA that the drafting of the sections dealing with the Regulator are not detailed enough and require further work.

LICENSES

In the submissions by the NPA Mr Gama referred to the fact that licenses are currently required in terms of the existing Harbour regulations. He refers to regulation 98 which provides –

> "(1) No person shall at a harbour –

(a) undertake the landing, shipping, stevedoring, cartage or delivery of goods/cargo; or
(b) supply water or ballast; or
(c) act as agent for the clearing or forwarding of goods/cargo, baggage or parcels; or
(d) engage in the business of supplying watchmen to ships; or
(e) engage in hawking or trading; or
(f) act as a container operator undertaking the landing, shipping or forwarding of ISO containers;

unless he is in possession of a valid license issued by the Transport Services authorising him to carry on any such activity."

Sub-regulation 2 excludes the provisions of that regulation from Maydon Wharf.

As far as we are aware the only manner in which that regulation has been applied in the past is in relation to persons undertaking stevedoring services. The reason for the licensing of those parties by the port was that the port was also in the business of stevedoring and conducted the land-side operation whilst the private stevedores conducted operations on the vessels. Consequently, there needed to be a close working relationship between the two. With the advent of concessioning the concessionaire will arrange full service stevedoring and it will, consequently, no longer be necessary to license stevedores.

In respect of most of the other parties named in the regulation, their services are entirely paid for by third parties, their qualification to operate and their businesses are in many respects not understood by the NPA and in certain instances, for example, container operators, they are already licensed by other authorities, namely, in that case, Customs.

The submissions by the Shipper's Council in relation to clearing and forwarding agents is a case in point. It is the shippers of South Africa that appoint those parties on the basis of their qualifications, expertise and past service record, matters of which the NPA is entirely unaware as they are simply not engaged in that aspect of the shipping business. Consequently, those parties believe that they are best placed to decide what is good for their businesses rather than being told by the NPA who they can and cannot deal with.

However, the major difficulty we currently have with the section is that the definition of the persons that need to be licensed is so unclear as to be incapable of determining in advance whether a particular sector of the shipping business requires to be licensed or not. This is the more serious in the light of the fact that to operate without a license when one is required to have one is a criminal offence in terms of section 63(1)(c).

In the circumstances our position is that with the advent of concessioning we do not believe it necessary for the NPA to license persons to operate within the port area and that normal security arrangements can deal with access issues.

However, on the current draft of the Bill the parties requiring licenses need to be clearly identified and, as pointed out in our original submissions, the NPA should not be entitled to deny existing contractual rights by way of a denial of a license.

MAYDON WHARF

We were concerned to hear what we considered to be the inflammatory and in certain respects disingenuous nature of the submissions by the NPA in this respect. There are a number of points that we believe need to be made in this respect.

First, an extremely negative picture was painted of the Maydon Wharf area and it is clear that your committee, when it was treated to an inspection of the area by the NPA, has been shown the worst of the area. We believe that your committee should also have been introduced to and shown the more successful businesses in the area and heard what those business have to say about Portnet's concerns.

In this respect we would also point out that there are major offshore port operators that have in the recent past invested in the Maydon Wharf area and the proposed treatment of all operators in that area simply does not create the type of impression conducive to investment in this country.

For those reasons we would ask you to carefully consider the points that we made in our original submissions in this respect.

Second, I have personally been advising on leases in the Maydon Wharf area for the past fifteen or so years and have never come across a perpetual lease. In the circumstances I am currently making enquiries of the members of the Maydon Wharf Leaseholders Association to establish exactly how many such leases exist.

Third, much was made by the NPA of the fact that many of the leases concerned have clauses that do not permit their cession to black persons. Those clauses exist in those leases at the previous insistence of the South African Transport Services and for their benefit. If they or their successor, the NPA, do not enforce them, then they can be ignored, as they are being by those on Maydon Wharf. There are many businesses on Maydon Wharf that are currently being operated by or are controlled by black persons.

In any event the clauses concerned would be entirely void at law by reason of their discriminatory nature.

For those reasons such clauses are simply not relevant to this debate at all.

Fourth and finally, we have heard the NPA's position on the constitutionality of this provision and respectfully disagree with it. Should the Bill move forward in its current form on this issue we have no doubt that it will be the courts that ultimately decide the issue.

It was suggested that, in order to qualify as a law of general application so as to avoid the unconstitutionality of the provision, it should not specifically refer to Maydon Wharf but to all facilities in all harbours. We do not imagine that anyone

would be inclined to tender for concessions in circumstances where there is an existing provision in law that entitles the NPA to do away with leasehold rights in circumstances where the market has turned against it.

In conclusion, we again thank you for your time and trust that you will keep us in mind in your further consideration of this matter.

Best regards

TONY NORTON
CHAIRPERSON
NATIONAL PORT USERS' FORUM

ANNEXURE “A”

Survival is not based on protectionism

Dear Sir,

THE articles, Hauliers to face heavy penalties (July 18), and Spoornet on track to claw back market share (July 26), need to be exposed for what they are a distorted viewpoint based on myth and misconception centred on "protectionism from competition".

Before 1994, the railways (Spoornet) were protected from competition by a strictly controlled permit system, which served as a barrier to entry to the market for enterprising hauliers. With deregulation taking place and, for the first time, the customers voting for their preferences, the market shifted away from monopolised freight by rail to a majority of tonnage being shifted to road haulage.

This was a "natural" restructuring of the market. The effect has been that rail transport found itself uncompetitive.

Why? Interestingly, consumers have shifted to road not necessarily because road is cheaper, but for reliability and service. To argue for heavy penalties on overloading would be to echo the Road Freight Association's own stance.

State-owned enterprises must realise that their survival is not based on protectionism, using taxpayers' money, but by adapting to the market's needs and entering into synergistic relationships with other competitive transport modes, such as road transport.

The article refers to a toxic spill on the N1, but fails to say that similar incidents also happen regularly with rail transport. Being intimately involved with these issues, we are not interested pointing fingers.

After three years of lobbying, the Road Freight Association has seen its efforts translate into legislation in terms of the new chapter VIII provisions of Dangerous Goods Transportation of the Road Traffic Regulations, which will address practices and reduce the potential for incidents like the one mentioned.

Road Freight Transport has been proactive on this subject. Spoornet has repeatedly called on government to utilise its power to negate the competitive edge of road transport.

Road Freight pays not only its way, but also sponsors Spoornet's activities. Consider this: Petronet's levieson fuel users are used to subsidise other nonpaying services. Fuel levies are used (R300m) to create metro rail competition to road transport. PX has been a loss-making venture for years. Road pays its way and more than R14bn annually goes into government's coffers, and less than R800m this year will be ploughed back into road expenditure.

The effect of freight vehicles on deteriorating road infrastructure is grossly exaggerated. If we accept that road traffic was suddenly to cease using roads, our roads would still be deteriorating through storm activity, and radical temperature changes. Regardless of usage, roads still require maintenance. Unlike Spoornet, road users have no say in what gets reinvested in roads

infrastructure. If we saw a 33% reinvestment annually of road taxes and levies in infrastructure we would be in a reasonably healthy situation today.

The statement that "road operators contribute nothing to developing and maintaining road infrastructure " is fallacious in the extreme. Taxpayers subsidise rail. We fail to see how it can ever be in the national interest to create artificial competitive distortions on a healthy mode of transport to bolster failing uneconomic government enterprise.

The Road Freight Association welcomes effective law enforcement (in the interests of fairness and bringing policy offenders to book).

H Lemmer, Chief Executive, Road Freight Association

Aug 21 2000 12:00:00:000AM Business Day 1st Edition

Annexure “B”

Port surcharge is to be lifted soon'

Cape Correspondent

CAPE TOWN The contentious 100-a- container freight surcharge was expected to be lifted within a month, Tau Morwe, CEO of SA Port Operations (SAPO), said yesterday.

Morwe told a media briefing that by then there would be adequate reasons to ask the conference lines, which imposed the congestion surcharge on each 20ft-equivalent container, to lift the penalty.

The surcharge has made SA's exports less competitive and imports more expensive.

Morwe said operational measures, such as increasing the number of working gangs at the Cape Town harbour and deploying management to work at night, had cleared the backlog at the harbour.

The surcharge applies to SA's three harbours that handle containers Cape Town, Port Elizabeth and Durban.

But Morwe admitted SA's ports were under stress and had a history of always being under pressure because of under financing.

He said SAPO was not happy about the surcharge as it added costs to an already expensive leg of transport, and SAPO was continuously in contact with the shipping conferences that introduced the surcharges, some on May 15 and others on June 1.

Morwe said SAPO was attending to backlog capacity but would have to spend about $100m on Durban harbour alone to gain 30% more capacity, money it did not have.

Mervin Chetty, executive manager of corporate strategy and continuous improvement at SAPO, said private sector participation in SA ports would be "quickly introduced". He said SAPO had implemented capacity development plans to upgrade the Durban container terminal, SA's biggest, as well as those in Cape Town and Port Elizabeth by leasing and buying additional cranes. These should be operational by October.

Morwe said a decision on the privatisation of SA ports was expected within about three weeks.

This followed after acting transport minister Jeff Radebe gave unions six weeks to submit their proposals on what should be done to improve the function and capabilities of SA's ports.

He said there had been interest from the traditional private port investor countries, such as Singapore and Britain, in Durban harbour.

Jun 13 2003 06:08:53:000AM Chris van Gass Business Day 1st Edition