

PORT SYSTEM: ADVANCEMENTS, PROBLEMS AND AGENDA

- *The New Law on Ports of 2013 was intended to address major problems that had been affecting the expansion and performance of the port system. Since it was enacted, much progress has been made, especially with regard to private participation in the sector.*
- *However, the low efficiency levels, high costs and low volume of investment that still characterize public ports in Brazil are a reflection of the performance of Port Administrations, which are public companies in charge of managing and operating port services.*
- *Shortcomings in the sector are related to problems in ANTAQ's regulatory activities, failures in dredging programs, lack of endeavor to transfer port administrations to the private sector, and delays in adjusting contracts and promoting new port leases.*

The New Law on Ports (12,815/2013) basically solved the main legal or regulatory issues that were hindering the expansion and undermining the efficiency of the port system in Brazil. Only the rigid rules that are still applied to labor relations in organized ports need to be improved through amendments to the law.

The elimination of barriers to the deployment of new private terminals derived from government decisions in the past had an immediate and significant effect, and 36 new authorizations for private use terminals (TUPs) were granted since the law was passed.

As for organized ports, the changes made since the law was passed were not very significant. Although this situation partly reflects gaps in the text of the law, it stems mainly from problems related to its implementation - mistaken government policy choices and the inability or lack of effort on the part of the Executive branch to challenge localized interests that create obstacles to the implementation of the law's guidelines.

These difficulties affect mainly biddings for terminals leased before 1993 and the renewal of post-1993 leases, whose deadlines have expired. As a result, only five lease agreements have been

signed since the New Law on Ports was passed. On the other hand, 55% of the contracts for terminals leased in organized ports (139 of the 253 leases) have expired.

Main recommendations

1 The management of organized ports should be transferred to the private sector.

This process can be carried out in two ways:

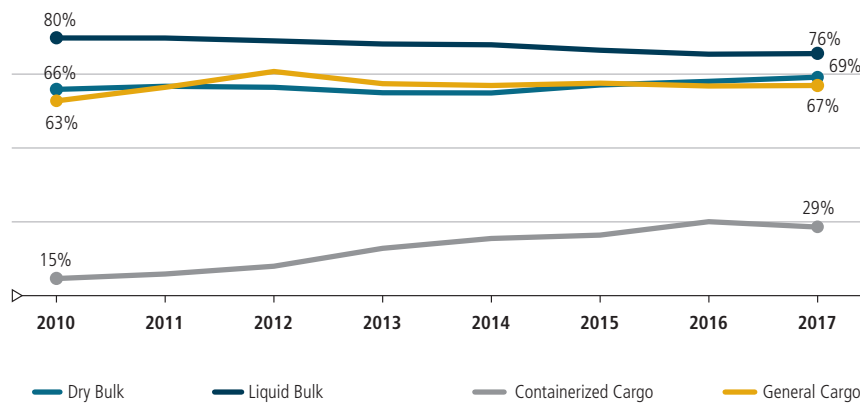
- By privatizing, preferably, each port administration, through concessions of the ports managed by them.
- Through a competitive bidding for port administration - when privatization is not possible - with corresponding lease of infrastructure, accompanied by the extinction of the relevant port administration.

2 Competitive biddings for terminals leased before 1993 should be carried out.

3 Expired lease contracts should be adjusted - by extending or inviting bids for a new contract - and auctions for unused port areas should continue to be carried out.

- ANTAQ and the National Secretariat for Ports of the Ministry of Transportation, Ports and

SHARE OF PRIVATE TERMINALS CARGO HANDLING IN BRAZIL (2010-2017)



Source: ANTAC Yearbooks.

Civil Aviation and their technical staff should be strengthened.

- The judicialization of renewal processes should be addressed through more permanent and coordinated actions involving the different spheres of the Office of the General Counsel to the Federal Government with the aim of contesting lawsuits and expedite their processing.
- Legal uncertainties associated with Decree 9,048/2017 should be addressed by reviewing some of its provisions as required.
- Coordination and liaison with the Federal Court of Audit should be enhanced.
- The process of reviewing the polygons of organized ports should be completed.
- Priority should be given to implementing new terminals in organized ports

4 The National Port and Waterway Dredging Program (PND) should be improved.

- PND management efficiency should be enhanced.
- Management of dredging services in all organized ports in Brazil should be less centralized by transferring the task of contracting and inspecting these services to a pool of terminals operating in the ports.
- The responsibility and burden of contracting dredging services should be contractually assigned to the respective concession-holders

following the transfer of the organized port to private investors.

5 Progress should be made in ensuring more flexible labor relations in organized ports.

- The amendments made by the New Law on Ports to Law 8,630 that constitute setbacks in relation to the current regime should be immediately reviewed.
- A transition process toward harmonizing the labor regime adopted in terminals of organized ports to the one adopted in Private Use Terminals (TUPs) should be initiated.

6 ANTAQ's actions in relation to the prices of cargo handling and storage services should be improved.

- A standard nomenclature for services provided by port operators should be defined and used in the price lists established by terminals.
- Container scanning fees should be immediately suspended in all port terminals, as they are in clear violation of the provisions of ANTAQ Resolution 2,389/2012.
- ANTAQ Resolution 2,389/2012 should be updated by extending its coverage to private use terminals and determining that mandatory services should be included in the Box Rate.

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