

Distr.
RESTRICTED

LC/R.1066
25 October 1991

ORIGINAL: ENGLISH

E C L A C

Economic Commission for Latin America and the Caribbean

**THE RESTRUCTURING OF PUBLIC-SECTOR ENTERPRISES: THE CASE OF
LATIN AMERICAN AND AND CARIBBEAN PORTS**

This document has not been subjected to editorial revision

91-10-1710

CONTENTS

	Page
SUMMARY	1
PREFACE	7
I. INTRODUCTION	9
II. THE OPERATIONAL REQUIREMENTS FOR RESTRUCTURING PORTS .	13
A. Institutional structure	13
B. Employer-employee relations	15
C. Inland transport of goods	18
D. Competition in and between ports	20
E. Trade and transport facilitation	22
III. THE INSTITUTIONAL FRAMEWORK FOR RESTRUCTURING PORTS ..	25
A. Statutory authority	25
B. Deregulation	29
C. Decentralization	32
D. A new regulatory regime for ports	35
1. Avoidance of abuses of dominant positions by private interests	36
2. Balance of interests between the private sector, labor and governments	39
3. Changes to national port administrations .	40
IV. MIXED PUBLIC-PRIVATE OPTIONS FOR RESTRUCTURING PORTS .	43
A. Private stevedoring companies	44
B. Management contracts	46
C. Concessions	47
D. Joint ventures between public and private sec- tors	49
E. Authorizing single-user terminals to handle third-party cargoes	51
F. Conversion of public-sector ports into limited liability companies	53
G. Sale of ports	55
V. THE IMPLICATIONS OF RESTRUCTURING PORTS	59
A. Economic	59

1.	Productivity and service quality	61
2.	Commercial performance	62
3.	Institutional modernization	64
4.	Transaction costs	65
B.	Political	66
C.	Social	69
VI.	CONCLUSIONS AND RECOMMENDATIONS	71
A.	Macroeconomic mandates for restructuring ports .	72
B.	New roles for the public and private sectors in ports	74
C.	The process of restructuring	76
D.	An implementation strategy	80
	ENDNOTES	83

SUMMARY

The public-sector ports of Latin America and the Caribbean face a crisis in almost every aspect of their activities. The consequences of government ownership and operation of ports can be seen from a chronic overstaffing, political constraints on the construction of facilities at new sites and on the movement of certain activities to more appropriate locations, costly work arrangements, low productivity and charges far in excess of international levels. Without a reduction in costs and an improvement in productivity at many ports of the region, a decisive opportunity to enhance the competitiveness of the region's exports in international markets will be lost. Latin American and Caribbean governments seek to restructure their ports so that they might better support national economic growth goals. To accomplish this task, they have begun to consider a role for the private sector in public ports. The trend towards private involvement in port services and port facilities is not an adjustment to cyclical factors but responds to growing recognition that open-ended government involvement in ports has led to a misallocation of national resources, inflated the cost of services, crowded out private investment, restricted foreign exchange earnings and undermined the capacity of public ports to resist political pressures. The restructuring of public-sector ports is seen as a means by which governments might remove themselves from day-to-day commercial decision making, and become more involved in the formulation and implementation of appropriate laws, regulations and policies.

The freer movement of capital, information services and cargoes across national boundaries has highlighted the cost and quality differences not only of goods but also of distribution systems. To improve the competitive position of a country's goods in world markets, exporters must have access to a network of ports, carriers and communications services which reflect the international competition they face. On the other hand, national producers that rely on domestic markets will probably view low cost, efficient ports as a means to enhance the competitive position of imported goods and could oppose private-sector involvement in port services and port facilities. Such a divergence of interests means that public-sector ports often fail to reach international levels of innovation, productivity and cost-effectiveness, not from an insufficiency of resources, but because dominant groups participate in decisions for the selection and utilization of those resources. This is of great importance to Latin American and Caribbean governments because they have adopted export-oriented macroeconomic policies. Such policies and the gradual opening of domestic markets to imports has generated a substantial increase in the region's external trade volumes. These economic transformations have had, as yet, little impact on Latin American and Caribbean ports. The reason is that existing port institutions are based on legislation, regulations and policies that reflect earlier trading conditions.

In a global trade environment subsidies and market restrictions are no longer effective to bridge the gap between commercial and socio-political goals. The ultimate costs of such measures are jobs that do not get created, goods that are not produced, services that are not offered and new investments in plant and equipment that are not made. One of the principal factors which influences the productivity and cost-effectiveness of public and private ports is their respective labor regimes --the former has a public-sector or bureaucratic labor regime, while the latter utilizes market-oriented national statutes that are applicable to profit- and loss-making enterprises. The re-

sponse of employers to employee demands at public-sector ports is inherently a political process involving compliance with policies and budget allocations or justifying variations therefrom, whereas for private ports it is essentially a balance between such demands and product or service costs, competitive position, worker productivity and commercial profitability. To avoid resolving labor problems, subsidies are often utilized to pay the extra costs of dockworkers' wages, and these, in turn, ultimately depress the competitiveness of a nation's exports in international markets. Governments must be sensitive to the concerns of labor and safeguard their interests by offering redundant workers alternative employment, retraining programs, early retirement benefits and compensation payments. In such an environment, port labor, governments and private interests will come to understand and share the challenges facing the industry.

The fundamental reason for the participation of private interests in public-sector enterprises is to create a basis for competition so that costs might be reduced and the quality of goods and services improved. Competition achieves those objectives by compelling such enterprises to face commercial risks, the possibility of financial losses and the threat of bankruptcy. Without competition, privatization would amount to little more than a transfer of port services and port facilities from the complete control of governments to a similar degree of control by private interests. This would permit private interests to increase profits without any service or technical innovations, or improvements in productivity and cost-effectiveness. Put another way, even though private investors usually equate success with profits, competition would limit their freedom to unduly raise port charges. The key to establishing competition in and between ports is the freedom of entry and exit to the industry. Such freedom cannot be absolute, as the number of possible port and marine terminal locations is limited. If private interests are allowed to participate in the provision of port services and port facilities, and offer services to the same users, additional competitive elements will be introduced and the market should be better served. It is frequently alleged that competition among ports leads to wasteful investments. The risk of wasteful investments is greater with the public sector than with private interests, and government influence is often responsible for inopportune and unsuitable investments by private interests.

To promote private sector involvement in port services and port facilities a central government must adopt an institutional framework which reassigns operational, planning and administrative functions among public-sector agencies and private interests within a market-oriented institutional framework, in order to ensure that dominant port groups cannot distort the commercial environment in which trade relations take place. In addition, a comprehensive regime of investment laws must be formulated so that private investors will have the freedom to invest and transfer capital, and to distribute income. The laws, regulations and policies which constitute that framework should define with precision the properties and services which are to be made available to private interests, provide guidelines that can be utilized to determine their values, safeguard the property rights of investors, and specify any advantages or consideration accorded citizens of the country in which the port is located. The major elements of such framework encompass statutory authority for private participation, deregulation, decentralization, an antimo-

monopoly regime and a public-sector agency which balances competing interests to ensure that no one group can utilize market mechanisms to obtain a monopoly position. The statutory authority should clearly define standards for approval of private sector proposals and establish a strong presumption that increased participation will benefit the nation through increased competition in order to avoid the endless problems and delays of trying to satisfy imprecise regulatory requirements.

Deregulation can be generally understood to encompass the removal of government imposed constraints to the interplay of market forces on both public and private sector economic activities. For ports, it is utilized to ensure that all those providing services and facilities operate in a commercial environment bounded by the laws of supply and demand, profit and loss, freedom of entry and exit, scale economies, customer likes and dislikes, and the risk of bankruptcy. However, the total absence of regulations could lead to non-commercial abuses by private interests. As a consequence, governments must retain sufficient control over port activities through antimonopoly regimes to ensure that no group of the port community is able to insulate itself from market forces and exact monopoly rents.

The major objectives in decentralizing a nation's public ports are not only the transfer of authority and delegation of powers and functions from central governments to local bodies but also a balancing of the interests of the public sector, dominant groups and users so that commercial goals might be achieved. Decentralization does not mean the elimination of government involvement, but that it should be structured to ensure on-site port administrators, boards of directors and private interests have sufficient commercial freedom to set their own tariffs and to adjust quickly to changing market conditions. A decentralized national port system should be structured to provide such groups with the flexibility to operate their facilities commercially, to plan for and make needed investments, and to work with urban authorities so that competing land-use problems might be resolved.

The specter of a transfer of a public-sector monopoly to private interests has long plagued governments and given substance to the arguments of all those seeking to preserve existing institutional arrangements and their dominant positions. Private sector participation in port services and port facilities can contribute to commercial viability of a nation's international trade relations only if supported by vigorous domestic competition and a strong antimonopoly policy. For years, existing laws, regulations and policies have privatized port profits by allowing them to fall into the hands of dominant port groups, and socialized losses by utilizing the public treasury to subsidize non-commercial operations. In a competitive port environment the monopoly rents now enjoyed by such groups would be socialized among those in the distribution chain and any commercial losses would be born by private investors. The claim that the participation of private interests in the provision of port services and port facilities will lead to a socialization of losses and a privatization of profits is simply untrue. Governments cannot decree that their ports will be competitive, but they can adopt an institutional framework which emphasizes freedom of entry instead of protection, managerial autonomy to earn a profit through competition instead of access to the national treasury, laws of the marketplace instead of day-to-day bureaucratic in-

volvement and antimonopoly regimes instead of the political influence of dominant groups.

A wide-range of options exists for shared participation of governments and private interests in public-sector ports. The options include private stevedoring companies, management contracts, concessions, joint ventures, authorizing private terminals to handle third-party cargoes, conversion of public-sector ports into limited liability companies and, finally, the sale of a port. Without an appropriate institutional framework and a market-oriented labor regime, the participation of private interests can lead to numerous problems. Government involvement in a port with private interests will continue through its institutional framework, the monitoring of private-sector activities, taking part in earnings, incentive schemes and contractual arrangements. Whether governments retain title to port equipment and properties is not the major issue. The decisive question is not who has ownership of port equipment and properties, but if they are utilized on a commercial basis. The choice is not public or private provision of port services and port facilities, but which of many possible options can be utilized to achieve the desired commercial objectives. The mixed public-private options for restructuring ports should not be considered in isolation, but as part of a broader program of institutional reform which is designed, among other things, to ensure that private interests will carry out their activities in a commercial manner.

All mixed public-private options must be supported by economic policies which seek to promote trade, an institutional framework which allows market forces to govern port activities, a productive workforce whose collective agreement permits the attainment of commercial goals and an attractive environment for private-sector investments, or the risk of transferring a public-sector monopoly to private interests could become a reality. As an illustration of this point, without deregulation and decentralization, which promote competition between ports and between terminal operators of the same port, exporters and importers are not likely to participate in the cost savings that should result from private participation in cargo-handling and storage activities. Governments seek private participation in port activities to reduce their administrative and financial burdens, promote competition, improve efficiency and lower costs, as well as to participate in earnings that might otherwise be reserved for the private sector. For private interests, such participation is viewed favorably where complete ownership of assets and operational control are not allowed, or where the magnitude of the commercial risks or capital requirements are beyond their capabilities. Finally, the primary criterion for the selection of private interests is not price, even though that factor is important, but the capacity to succeed in a competitive environment and to implement certain policies deemed important by the government.

A government must respond to the needs of the people it represents and, without a carefully formulated institutional framework, it is most difficult to avoid the transmission of economic, political and social pressures of dominant groups to public-sector enterprises. Public-sector ports are expected to achieve a wide-range of conflicting objectives such as raising productivity while utilizing inappropriate technologies, and controlling costs while employing an oversize workforce. Usually, public-sector ports are the only em-

ployer in surrounding communities, a source of political strength, part of a nation's defense structure and there are multiple ministries involved in every detail of port activities, all of which limit the possibility that commercial decisions might be made. For many years port deficits were considered of minimal importance and a matter that could be corrected with larger budget allocations or simply by raising charges. However, such increases for nations which have adopted export-oriented macroeconomic policies will ultimately affect the price of both exports and imports. The recognition of such impact also leads to an awareness that ports are structurally competitive; that is, even though in possession of monopoly positions vis-a-vis their hinterlands, they must respond to the competition faced by the goods they handle in order to survive commercially. The restructuring of public-sector ports to permit private involvement would impose the market system of penalties and rewards, and would identify inefficiencies, monopoly rents paid to dominant groups, and the extent of excessive budget allocations and avoidable subsidies.

Much of the debate over private participation in port services and port facilities is political in nature, rather than economic, operational, technical and legal. Indeed, because such participation involves the functions and powers of governments, it is the national sovereignty issues, often voiced in terms of economic independence and defense capabilities. In contrast to consumer electronics, if ports are leased or sold to foreign interests for commercial operations, they could not be relocated in another nation nor would it create large-scale employment opportunities for non-citizens or decrease the inflow of foreign exchange. Ports are site and customer specific, and purchasers would make investments in those sites and in those customers, and would earn a return-on-investment from them. Dockworkers would be recruited locally, as most Latin American and Caribbean countries have immigration laws which permit the employment of foreigners only when the skills required cannot be obtained from the citizens of a country. Such arrangements would actually increase the amount of public control through an appropriately formulated institutional framework which clearly limits and balances the influence of government agencies, dominant groups and private interests. Ports which are leased or sold to foreign interests would still be subject to all the laws of the countries in which they are located, and governments would formulate regulations to govern the conduct of business in order to protect what it perceives to be of national interest and which would allow it to operate them directly in times of national emergencies.

In many countries, the prosperity of ports and of cargo owners are viewed as separate or, at best, only indirectly related. That view is false and dangerous, as a dynamic private sector and a well-run public sector are the fundamental prerequisites for economic growth. All those providing services at ports under earlier macroeconomic policies were able to capture hinterlands and hold them ransom to numerous cost-increasing monopoly practices, but the situation has been reversed with the adoption of export-oriented policies and ports have been captured by the goods they handle and their destinies are irreversibly intertwined. The transformation of port structures which are focused on satisfying domestic needs into those which are internationally viable is a systemic undertaking. All those providing services and facilities must surrender their dominant positions, monopoly rents and efficiency reducing activities, and agree to work together to establish a commercial port en-

vironment. The dilemma facing governments is found between two extremes -- none of those providing services will voluntarily relinquish their dominant positions and governments cannot repeal the laws of the marketplace nor ignore global economic changes. However, governments are not helpless and can formulate an institutional framework within which each member of the port community will, by his own accord, seek to bring about such alterations. Thus, it is essential that governments begin to view their role in ports in terms of facilitating activities; that is, as owners, investors, partners, facilitators and regulators.

Governments must assume the role of catalyst and utilize the mixed public-private restructuring options and a market-oriented institutional framework to encourage, challenge and even compel members of the port community to innovate, compete and invest so that productivity and cost-effectiveness will continually be improved. At the outset of the restructuring process, each Latin American and Caribbean government should appoint a director and team of highly qualified persons who are committed to the restructuring public-sector ports from the ministries of finance, trade, transportation, public works and labor, as well as from the central bank and port administration. The adoption of measures by governments to shift port functions from the public sector to private interests and to establish a market-oriented institutional framework will probably be on a piecemeal basis. The logic of piecemeal restructuring of public-sector ports appears at first unchallengeable -- it would permit all those in the port community to slowly implement changes in order to reduce political and social costs. Nevertheless, the unavoidable rigors of global trading will require governments to continually restructure their public-sector ports so that productivity might be improved and costs reduced in order to enhance the competitiveness of their goods in international markets. In addition, if dominant groups have an extended period of time to comply with market-oriented changes, they will have more than enough time to influence the laws, regulations and policies which are utilized to create the commercial framework. Thus, the piecemeal implementation of private participation in public-sector ports could result in a self-defeating regulatory strategy which achieves objectives precisely opposite to those intended.

PREFACE

The public-sector ports of Latin America and the Caribbean face a crisis in almost every aspect of their activities --from investments and planning to labor, management, costs and productivity. This can be seen from complaints of port users, as well as from the steps governments are taking to reduce capital investments, and budgets for equipment maintenance and personnel training programs. Many exogenous factors have contributed to the crisis, such as external indebtedness, transformations in national economic goals and fiscal deficits, but governments have largely imposed it upon themselves through policies which strongly support the demands of dominant port groups. The responsiveness of governments to such groups has led to the establishment of port institutions based on laws, regulations, agreements, policies and socio-political obligations which lack coherence and pursue conflicting objectives. This has permitted, for instance, dockworkers to reject labor-saving technologies, intermodal distribution systems and global economic realities, and to usurp many managerial functions of public-sector port administrations. For years efforts to resolve these problems have been focused on investments in infrastructural improvements and new cargo-handling technologies, but governments are beginning to recognize that they can no longer permit institutions which are ineffective and dominated by influence groups to impede the efficient utilization of such investments, reduce trade opportunities and weaken the impact of export-oriented macroeconomic policies.

These problems were analyzed in a recent ECLAC study entitled Structural changes in ports and the competitiveness of Latin American and Caribbean foreign trade (LC/G.1633-P, October 1990), which, at page 23, suggested that

"Like pieces of different puzzles that do not fit together, the wide range of governmental agencies involved in ports seem to lack the agility needed to plan, organize and execute institutional and infrastructural improvements. Such agencies cannot discard the time-honored doctrine that the country will only work properly if everything is regulated and centrally directed. In the last decade of the twentieth century, governments face a fundamental choice: either they identify and define appropriate roles for the public and private sectors in ports vis-a-vis international trade or accept a reduction in the competitiveness of their exports in world markets, a contraction in foreign exchange receipts, a decline in domestic investments and a higher level of national unemployment."

Despite the constraints which are inherent in such an undertaking, it is mandated by the efforts of governments to improve the wellbeing of their people through export-oriented economic growth goals and of individual industries to strengthen the competitiveness of their products in world markets.

This study is not a theoretical discussion of privatization, nor a collection of case studies. Rather, it presents a seven-part analysis of the major issues which arise from private participation in public-sector port services and port facilities, and suggests economic, legal and social measures governments might adopt to deal with them. Part I presents an overview of the

market forces which have created a compelling need to restructure port institutions and operations, and to redefine the roles of governments and private interests in order to improve productivity and reduce costs so that the competitiveness of exports in international markets might be enhanced. Parts II and III present the operational and institutional factors which mandate a competitive restructuring of the region's public-sector ports, and the major challenges which must be met to satisfy that mandate. The challenges primarily encompass the formulation of an institutional framework composed of deregulation, decentralization, the utilization of market-oriented employment regimes, and a balancing of the interests of governments, labor and private interests. To provide guidelines for the participation of private investors in public-sector ports, parts IV and V evaluate various mixed public-private options, and the economic, political and social implications of such involvement. Finally, the conclusions and recommendations make suggestions governments might consider when formulating policies and plans to restructure their public-sector ports.

I. INTRODUCTION

Ports are located at the confluence of major economic, political and social events, and this has led governments to construct and operate them in many countries of the world. With limited exceptions, Latin American and Caribbean ports serve their hinterlands on an exclusive basis and users are very vulnerable to any interruption in services. Those which are owned and operated by governments of the region offer docks, cranes, warehouses and cargo-handling services to the public at large, while private ports in the same countries utilize specialized installations to handle only their own cargoes. Many ports of the region were originally private and offered services to the public, but the inability of owners to finance costly installations and the need to reduce the risks of and damages which would result from an interruption in services has led the majority of them to come under government control since the early 1940s. The consequences of government ownership and operation of ports can be seen from a chronic overstaffing, political constraints on the construction of facilities at new sites and on the movement of certain activities to more appropriate locations, costly work arrangements, low productivity and charges far in excess of international levels. The dominant role of governments in ports has led to a dichotomy between public ports and public services on the one hand, and private ports and private services on the other, and this has been the controlling model in the region for decades. Nonetheless, the validity of this model has increasingly been called into question since the early 1980s with changes in national economic policies.

The high level of public investment in Latin America and the Caribbean during the late 1970s and early 1980s led to a transformation of their economies. Such investments were based on a rapidly growing external indebtedness that reached a maximum of US\$445.8 billion in December 1987, but has fallen off to US\$427.5 billion at the end of 1990.¹ Debt servicing during the 1970s was facilitated because prices for their traditional primary products rose with increases in the cost of petroleum. However, the dramatic reductions in the prices of crude oil from US\$34.00 per barrel in 1981 to US\$17.50 by January 1987 led to similar reductions in the prices of their exports and culminated in the debt crisis of mid-1982. Governments were suddenly faced with an unavailability of funds from international sources, a massive outflow of capital to other countries and a deep recession, and they responded by adopting export-oriented macroeconomic policies.² As an illustration of the impact of the debt crisis, the lending to developing nations dropped from approximately US\$56 billion in 1981 to US\$29 billion the following year and, finally, to US\$3.3 billion in 1983.³ It has been estimated that the amount of capital held by the private sector of Argentina and Mexico in foreign banks is no less than US\$40 billion for each country.⁴ The need for private-sector participation in the provision of port services and port facilities was largely implied in export-oriented macroeconomic policies, but it has increasingly become a major factor in, if not a prerequisite for, their fulfillment.

Since the onset of the debt crisis Latin American and Caribbean public-sector ports have faced a dilemma. They are expected to operate as commercial enterprises and, at the same time, they are treated as statutory bodies subject to government controls in areas ranging from operations to finance, as well as to all the social and political objectives of government agencies.

For example, according to estimates of the Brazilian Steel Institute (IBS) for the period January to July 1988, the per ton tariffs for handling steel were US\$20-22 in Santos, US\$15-18 in Rio de Janeiro and US\$11-14 in Vitoria, while at the port of Jacksonville (U.S.) the per ton docklabor costs amount to US\$5.60, at Hamburg (Federal Republic of Germany) US\$4.20, at Rotterdam (the Netherlands) US\$3.80, at Antwerp (Belgium) US\$3.31 and at Kaohsiung (Taiwan) US\$3.18.⁵ In 1990, 47 000 Brazilians were utilized to handle 320 million tons of cargo at its ports, while at Rotterdam 2 000 port workers handled 292 million tons.⁶ The Brazilian private steel producers association estimated that excessive port charges and delays have resulted in a loss of US\$780 million in overseas sales for its members during the past decade.⁷ Without a reduction in costs and an improvement in productivity at many ports of the region, a decisive opportunity to enhance the competitiveness of the region's exports in international markets will be lost. Thus, governments must ensure that public-sector ports function as true business entities within an institutional framework which is free from excessive bureaucratic constraints.

Latin American and Caribbean governments seek to restructure their ports so that they might better support national economic growth goals. To accomplish this task, they have begun to consider a role for the private sector in public ports. In 1979, for instance, the Government of Argentina adopted a policy to promote and facilitate private investments in and the decentralization of its ports, but docklabor resistance has severely restricted its implementation.⁸ Following the inauguration of Carlos Menem as President of Argentina in July 1989, his minister of economy announced privatization plans for some 30 state-owned enterprises.⁹ In August 1989, legislation was adopted to restructure public-sector enterprises, and the national telephone system and international airline have been sold to a consortium of domestic and foreign purchasers.¹⁰ The provisions of that law related to services largely reflect the conclusions of a workshop on Argentine ports, sponsored by the stock market of Buenos Aires a year earlier, which found that it was necessary to restructure, privatize, deregulate and decentralize the entire port system of the country.¹¹ The Argentine Undersecretary of Transport and Waterways proposed a new regulatory regime for ports which would permit private-sector participation in their ownership, management and operation, and a draft law to that effect was to be submitted to the Congress in May 1990.¹² For its part, port labor unions prepared another draft law which would increase the role of the state in ports. In spite of such differences, the Argentine Senate unanimously approved a law to permit private participation in public-sector ports and it has been sent to the House of Representative for final approval.¹³

A study prepared by port-users councils of Brazil brought out the need for greater private-sector participation in that country's ports. Brazilian vessel operators agreed at their August 1989 meeting that the country's ports should be privatized and the monopolies enjoyed by dockworkers should be terminated.¹⁴ Reflecting those conclusions, the Brazilian Congress is considering the adoption of legislation to restructure the country's ports. The restructuring would allow ports to offer 24-hour services every day of the year, individually set their own rates, permit the private sector to invest in port facilities, authorize single-user terminals to handle third-party cargoes and privatize many of the services currently performed by public port administrations, but dominant port groups have proposed 119 amendments which nullify

many of these changes.¹⁵ For its part, the Government of Colombia proposed legislation in December 1990 to dissolve its public-port administration (COLPUERTOS) and dockworkers at the Atlantic ports of Santa Marta and Barranquilla, and at the Pacific port of Buenaventura began daily two-hour work stoppages and undertook preparations for an indefinite strike.¹⁶ Finally, during January 1991, the national congress adopted Law No. 01 which creates a general superintendency of ports (SGP), as well as autonomous and decentralized organizations to administer them, while permitting both the public sector and private interests to construct, maintain, operate ports and port terminals, and establish tariffs, and orders the dissolution of COLPUERTOS over a three-year period.¹⁷

The handling of ships and their cargoes at ports must be efficient, but it is not enough. With the globalization of trade, ports must be part of cost-effective intermodal distribution systems that contribute to the competitiveness of goods in world markets. This means that ports must have productive labor forces which are paid competitive salaries, modern cargo-handling equipment and facilities, adequate access for carriers, electronic information systems, and simplified trade and transport documentation. The predominant role of governments in ports of the ECLAC region came about not just from nationalizations but also through the inability of private owners to repay loans to or guaranteed by them.¹⁸ In addition, such involvement has created an extensive network of socio-political obligations that all but preclude the achievement of commercial goals. This has led governments to consider private-sector participation as a means to establish commercial discipline. For private interests to consider investing in ports, however, the activities contemplated must have potential earnings which reflect their financial commitments and the risks assumed, as well as a market-oriented institutional framework which permits innovative responses to users needs, the authority to control costs, increase efficiency and raise productivity. At the same time, governments must retain sufficient control over private investors to ensure that they do not insulate themselves from market forces, demand monopoly rents and ignore externalities such as the marine environment.

The trend towards private involvement in port services and port facilities is not an adjustment to cyclical factors but responds to a fundamental change in trade relations, a dramatic increase in the cost of facilities and a systematic expansion in the range and variety of services. After committing their ports to various forms of public-sector ownership and control for more than four decades, Latin American and Caribbean governments find that the commercial functions of ports have become secondary to the socio-political obligations of job creation for the unemployed in surrounding communities, assigning port positions to loyal party members and others. For example, directorships on the boards of state-owned enterprises in Brazil are considered a source of prestige and serve as the equivalent of ambassadorships in the U.S.¹⁹ In addition, governments act as conduits for special interest groups which seek to influence port activities for their own benefit. Such open-ended government and dominant group involvement has led to a misallocation of national resources, inflated the cost of services, crowded out private investment, restricted foreign exchange earnings and undermined the capacity of public ports to resist political pressures. There is nothing new about governments restructuring public-sector ports, for numerous attempts have been made

to transform deficitary, inefficient operations into those of a more commercial nature, but what is new is that current efforts focus on the utilization of market forces to bring about needed changes.

Privatization is not a single doctrine, but an amorphous concept that seems to defy definition until assigned a meaning. For purposes of this document, it represents any shift from governments providing port services and port facilities to private interests making them available.²⁰ The participation of private interests in such activities is often presented as a self-evident and all encompassing answer to problems such as high costs, chronic inefficiencies, overstaffing, fiscal deficits, subsidies, low productivity, uncompetitive products and services, and an undisciplined government bureaucracy, but this is not the case. Such participation should contribute to the creation of a basis from which the aforementioned problems might be more easily resolved, but it must be supported by an institutional framework which allows the unregulated interplay of market forces to govern port activities, a productive workforce whose collective bargaining agreement permits the attainment of commercial goals, an antimonopoly regime applicable to both management and labor, and an attractive environment for private-sector investments. Just as the pervasive regulation of ports by Latin American and Caribbean governments failed to respond to the needs of exporters and importers in a commercial manner, without such a framework private participation in port services and port facilities will not furnish a comprehensive response either. Thus, to portray the transformations needed to restructure Latin American and Caribbean public-sector ports as simply private-sector participation is to fail to convey the true dimension of the undertaking.

II. THE OPERATIONAL REQUIREMENTS FOR RESTRUCTURING PORTS

Traditionally, governments justified bureaucratic impediments to efficient, low-cost ports by asserting that they support important economic, political and social goals. To the extent that cost-increasing, efficiency reducing, non-commercial port practices continue to be made part of such goals, the potential benefits which might result from any restructuring of port services and port facilities will be limited. What often appeared to be a socially desirable policy --utilizing ports to provide jobs for the unemployed in surrounding cities-- raises port costs, lowers the competitiveness of exports in world markets and creates a heavy burden on the entire national economy. A dynamic trade environment can create a commercial basis for fulfillment of export-oriented macroeconomic policies, but ports must be structured in a manner that permits all those providing and receiving services to achieve commercial objectives. To carry out this task, some of the more important considerations relate to (i) institutional structure, (ii) employer-employee relations, (iii) inland transport, (iv) competition in and between ports and (v) trade and transport facilitation.

A. INSTITUTIONAL STRUCTURE

Government agencies operating commercial enterprises such as ports must meet many conflicting economic, political and social objectives, and, hence, do not have the same managerial freedoms enjoyed by private operators. In this context, public-sector ports often fail to reach international levels of innovation, productivity and cost-effectiveness, not from an insufficiency of resources, but from the manner in which competing factions participate in decisions for the selection and utilization of those resources. Government are staffed by people who have training and experience in the formulation and administration of policies and regulations, rather than in the operation of commercial enterprises. When public-sector ports are unable to provide services and facilities which meet the requirements of cargo owners and carriers, they are often the subject of frequent studies and reorganizations. Typically, such studies lead to the adoption of new policies and regulations, appointment of new executives and changes in management structures, but they are largely without any notable degree of success. The major reason is that public-sector port administrators usually allocate staff and equipment according to political dictates, rather than to maximize earnings and the value of public-sector investments. Such practices respond to the demands of dominant groups and resulting inefficiencies are often rewarded with larger budgets and more staff. Even if the compensation of government administrators was linked to specific performance goals, few remain at ports long enough to develop an understanding of the industry, identify needed changes and implement them.

Ports have become more closely tied to the achievement of macroeconomic policies and their institutional structure must be reformulated to reflect that reality. Trade relations have been transformed from a limited number of products moving between countries in highly regulated conditions to an ever-expanding range of goods in a progressively deregulated environment and from political efforts to create semi-autonomous national economies to the adoption of measures which reflect the globalization of trade. Such transformations have had, as yet, little impact on Latin American and Caribbean ports. The

reason is that existing port institutions are based on legislation, regulations and policies that reflect earlier trading conditions. In 1975, for instance, the Government of Brazil created a public-sector enterprise (PORTOBRAS), to carry out activities related to the construction, administration and exploitation of ports. Nonetheless, without needed support from the deregulation and decentralization of port operations and the shifting of dockworkers from a bureaucratic to a market oriented labor regime, PORTOBRAS was unable to attain those goals and was abolished in 1990.²¹ A useful place to start the restructuring of public-sector ports would be to compare their present goals and objectives with modern trade requirements. Once identified, governments must formulate legislative, regulatory and policy initiatives which reflect the role ports should play in trade relations so that they might contribute to, not detract from, the competitiveness of goods in international markets.

Notwithstanding the direct relation between the commercial success of exporters and importers, and the demand for port services and facilities, the institutional framework under which Latin American and Caribbean ports operate only indirectly considers their needs when decisions are being made. In addition, dockworkers, Customs administrations, freight forwarders, Customs brokers, banks, insurance companies and carriers operate with different unions, contractual arrangements, government regulations and international conventions. This dense institutional arrangement largely does not consider users' needs and is complicated even further by the existence in many ports of two groups of workers -- formal and informal. As but one illustration, there are six ministries and 18 state agencies involved in Argentine port activities, and dockworkers represented by six different unions freely subcontract with informal groups to carry out heavy, dirty or otherwise undesirable tasks.²² Public port administrations are given the unenviable task of organizing this complexity, but organized complexity does not lead to service and facility innovations, productivity increases nor cost reductions. Indeed, organized complexity amounts to an institutionalization of high cost and inefficient practices. This leads to bureaucratic lethargy on the part of port administrators and creates inefficiencies which limit the cost-effectiveness of the entire port community and the competitiveness of a nation's exports in international markets.

Subsidies and market restrictions have been utilized by most Latin American and Caribbean governments to absorb the unnecessary costs of inefficient port practices. All production and distribution costs in a global trade environment, whether directly or indirectly related to such practices, will ultimately be incorporated into the sales prices of such goods and will affect their competitiveness in world markets. In essence, such costs and inefficiencies are the result of earlier inward-looking macroeconomic policies which were justified under very different trading conditions, but today they have a negative impact on foreign exchange receipts, employment creation and domestic capital investments. In a global trade environment subsidies and market restrictions can no longer be utilized to bridge the gap between commercial and socio-political goals. The ultimate costs of such measures are jobs that do not get created, goods that are not produced, services that are not offered and new investments in plant and equipment that are not made. In the quest for competitiveness of a nation's goods in international markets, it is important for governments to focus on economically strategic activities such as

port services and port facilities. Just as technological advances which reduce costs and increase efficiency will replace earlier systems, institutional changes such as privatization, deregulation, decentralization and others which produce similar results are equally inescapable.

B. EMPLOYER-EMPLOYEE RELATIONS

Almost without exception, public-sector ports of Latin America and the Caribbean have followed the first two commandments of government bureaucracies; that is, all activities will ultimately become labor intensive and personal qualifications are secondary in the selection of persons for key positions. Public port administrators usually limit themselves to those activities which generate the least amount of institutional conflict, and this can be seen from their willingness to accept the demands of dominant groups. Frequently, administrators surrender many of their management functions to port labor representatives, for which the latter are not prepared. Dockworkers have, in turn, become independent entrepreneurs and subcontract many of their tasks to a number of informal, non-union workers. This has led to gross overstaffing, wages in excess of those for comparable positions in the private sector, the selection of port directors on the basis of political affiliations, and even outright looting of state-owned ports. For example, the port of Montevideo (Uruguay) provides employment for an estimated 5 000 people, while requiring only 1 000.²³ In addition, lines of authority and responsibilities between ministers and public port directors are seldom clear and this results in politically negotiated responses, not solutions, to practical port problems. These and other factors have created an undisciplined work environment and demonstrate the dangers inherent in a system that permits dominant groups to control port policies and operations.²⁴

One of the principal factors which influences the productivity and cost-effectiveness of public and private enterprises is their respective labor regimes --the former has a public-sector or bureaucratic labor regime, while the latter utilizes market-oriented national statutes that are applicable to profit- and loss-making enterprises. The response of employers to employee demands at public-sector enterprises is inherently a political process involving compliance with policies and budget allocations or justifying variations therefrom, whereas for private companies it is essentially a balance between such demands and product or service costs, competitive position, worker productivity and commercial profitability. To restructure port services and port facilities through private-sector participation, employee-employer relations must be moved from the public to the market sphere.²⁵ This change is considered to have contributed most importantly to the success of the privatization endeavors undertaken by the British Government.²⁶ As will be presented in greater detail at part V, privatization of U.K. ports commenced in 1983 and shifted the source for payment of dockworker's wages from the seemingly boundless wealth of the national treasury to the limited earnings and possible losses of private employers. Labor problems will not disappear by changing applicable labor regimes, but it will subject workers to the same commercial pressures as are felt by traders, and provide a basis for employers and employees to work together to control costs and improve productivity.

The major obstacles to the private provision of port services and port facilities will probably arise out of the efforts of dominant groups, especially port labor and public port administrations, to preserve their privileges and benefits. To avoid such problems, in March 1986, the Government of Malaysia established a basis for worker acceptance of the leasing of the container terminal at the port of Klang to a consortium composed of the government and private interests. The agreement with the new operator provided that employees would receive the same wages and benefits, could not be fired for a period of five years, unless they were being clearly disruptive, and that legislation would be adopted to safeguard pension entitlements.²⁷ For its part, the Government of Venezuela issued a decree in August 1990 which abolished the state ports holding company (INP), and is to establish a new regulatory agency, transfer ports to regional governments and permit private interests to provide cargo-handling, storage and equipment rental services. The decree also provides for the compensation of redundant dockworkers from an IDB loan administered by the state investment fund (FIV).²⁸ Similarly, the U.K. Dock Work Act 1989 establishes a voluntary redundancy program with the Secretary of State and port employers each contributing one-half to provide workers with severance payments of up to US\$58 000.²⁹ Thus, governments must ensure that a change in employer-employee regimes does occur and that it results in a balance between safeguarding employees' rights and enabling port employers to not only earn a profit but also to offer services and facilities which are cost-effective and productive.

The exceptional wage, benefit and employment security provisions that most Latin American and Caribbean dockworkers enjoy are a consequence of the economic, political and social position of ports in national affairs, and the capacity of port labor unions to translate that position into concrete legislation and work practices. To successfully restructure ports in such an environment, dockworkers must feel that the change in governing legal regimes will not compromise any of their rights or, if it does, that they will be compensated. Part IX of Title VI of the Constitution of Mexico, entitled labor and social security (*Del Trabajo y de la Provisión Social*), provides that if a position is abolished the affected workers have a right to another comparable to the one eliminated or to an indemnity. In addition, the rights accorded Mexican workers by the constitution, federal labor law and collective agreements are not extinguished by a sale of an enterprise and must be respected by purchasers.³⁰ Such requirements provide workers with many positive social benefits, but private interests will not invest in public enterprises if such laws and regulations prevent them from altering operations to better respond to changing market conditions. For example, the sale of the national telephone company of Mexico to private interests was made possible through negotiations with workers who consented to a change of job categories in exchange for an agreement that they would not be made redundant.³¹

Another consideration relates to the cost of complying with the provisions of existing labor agreements on such matters as the employment of registered dockworkers, minimum gang sizes and hours of work, as well as restrictions on output, work rotation and many others. Each of these provisions must be carefully considered by both the public and private sectors to appropriately restructure port operations so that they might be commercially viable and better able to meet the needs of users. The cost of port operations in many

Latin American and Caribbean countries have risen, as the expenditures for new infrastructure and equipment have been added to the financial burden of an unnecessarily large workforce. Nonetheless, existing labor agreements are neither preordained nor immutable and many of the supposed political and social costs of changes are more apparent than real, as compensatory payments can be made to redundant workers. The achievement of national economic growth goals requires not only a shifting of labor regimes from bureaucratic to commercial standards but also the formulation of a new institutional framework for ports, a topic which is presented at part III.

The Government of Chile has defined its labor regulations role in ports from the viewpoint of fostering trade. Prior to its adoption of law 18 032 in 1981, which ended vessel and landside cargo handling monopolies as well as the distinction between those activities, ports of that country were controlled by 15 labor unions. At that time, the balance of negotiating power favored dock-labor unions and they were largely successful in establishing the number of workers required for each task and their remuneration. Labor requirements were inflated and wages so high that registered dockworkers often subcontracted their tasks to a large number of informal workers. Formal dockworkers were represented by unions and employed by the port, and informal workers were utilized by their formal counterparts to replace them at a substantial reduction in wages. When this system was audited in early 1981, it was found that some 3 200 registered dockworkers were "employed" 400-600 days per year and earned more than US\$2 000 per month.³² Labor unions are not necessarily stronger in public-sector ports than at their private counterparts. For example, the same unions represent workers at both public and private ports in Trinidad and Tobago, but at the public facilities of Port of Spain they identify with the state largess and utilize their political strength to obtain higher wages, more social benefits and greater job security. In contrast, the demands of workers at the private port of Point Lisas are limited by the competitiveness of the commodities they handle and are much more moderate.

The dockworkers in Chile were compensated with around US\$30 million for the revocation of their cargo handling monopoly and port employment was opened to all workers meeting minimum age and physical requirements. Payments to dockworkers averaged US\$14 300, and ranged from US\$10 000 to US\$200 000.³³ Private stevedoring companies were established and negotiations undertaken between each and individual unions concerning manning levels and salaries, and the central hiring hall was replaced with three categories of port workers: permanent employees who receive a salary whether or not there is a ship in port; special contract workers who, in addition to a minimum income guarantee of four shifts per month, are paid on a daily basis according to the volume of cargoes handled; and casual workers who have no income guarantees. The Maritime Chamber of Chile has estimated that the annual savings exporters and importers enjoyed from the commercially oriented institutional reforms amounted to US\$40 million during the first year after the adoption of law 18 032, and by 1990 it reached nearly US\$96 million.³⁴ Such savings are not unique to Chile, as the Government of New Zealand began privatizing its ports in 1989 and paid nearly US\$28 million to redundant workers. By the end of following year, the direct savings to port users of that country amounted to US\$56 million.³⁵ Thus, the gains associated with shifting port workers from bureau-

cratic to commercially oriented labor regimes usually far exceed the amounts that would be required to compensate displaced workers.

The most significant issue that must be addressed in making a decision to permit private interests to participate in the provision of port services and port facilities is the effect it will have on employees and dockworkers. The problem is that existing regulatory regimes reward public-sector port workers for their failure to control costs through wage increases. The restructuring of port services and port facilities will render few benefits unless dockworkers permit technological innovations, and provide services which are cost-effective and productive. By the same token, no private-sector service industry can sustain itself without the support of motivated, trained and well-paid workers. Dockworkers employed by private entrepreneurs usually receive pay raises and promotions on the basis of productivity, rather than on time-in-service. Job security in the private sector depends on performance, and not on union pressures or government regulations which limit the capacity of public port administrations to respond to market forces. Such a change requires that workers respond not to political pressures, but, rather, to market signals. Governments must be sensitive to the concerns of labor and safeguard their interests by including provisions in agreements with private interests which require the latter to offer employment to existing workers at nationally competitive wage rates, early retirement benefits and compensation to redundant workers.³⁶ In such an environment, port labor, governments and private interests will come to understand and share the challenges facing the industry.

C. INLAND TRANSPORT OF GOODS

From the very beginning of ocean-borne commerce, ports have relied on inland transport to move goods to and from their facilities. With the transformation of ports from open markets and intermediate cargo-storage terminals to free-flowing cargo-interchange platforms, however, inland carriers have progressively come to exert an enormous influence on port planning, investments, productivity and cost-effectiveness. As an illustration of this point, the road carriage industry in the ECLAC region is composed of private companies with a limited number of heavy trucks and many owner-operators whose equipment can generally transport no more than eight-to-10 tons. Marine containers are generally loaded with 11-24 tons, so the majority of such units must be emptied at ports before goods can be transported to their ultimate destinations. This requires multiple handling of goods, an enlarged workforce and substantial investments in warehouses and cargo-handling equipment, all of which create unnecessary costs. Road carriers are usually politically influential and have obtained the support of governments to ensure that containers are emptied in ports, often for valid reasons such as to protect roads. However, such roads could frequently be utilized if trucks were purchased which would permit a reduction in the weight per axle, but road carriers do not have the funds to acquire them. For their part, governments lack funds to invest in port storage facilities and have created a demand for the use of trucks as temporary warehouses.

The demand for port services is influenced by water, land and locational characteristics, the facilities offered, nature of the hinterland served, the

transport systems --ocean and inland-- available to cargo owners, and the productivity and cost-effectiveness of the entire distribution chain. For a nation's ports to operate as efficient cargo transfer platforms, they must be supported by equally efficient inland carriers. If the inland movement of goods is inefficient, undertaken with technologically obsolete equipment or involves unnecessary costs, even the most appropriately structured and equipped port cannot provide cost-effective services. For example, several Taiwanese manufacturers of toys, footwear, garments and jewellery have shifted their production from Thailand to Indonesia in order to avoid unnecessary costs created by infrastructure bottlenecks at the ports and in inland transport systems of Thailand.³⁷ The need to improve the efficiency of inland cargo movements is felt by public port administrations from the demands of ocean carriers to reduce origin-to-destination transit times, from the demands of inland carriers to eliminate delays in the utilization of their equipment and from the demands of cargo owners for faster delivery of their goods. Inland transport systems which are low-cost and efficient lead to an expansion of cargo catchment areas of ports and permit capital investments of both ports and carriers to be more fully utilized. Thus, cost-effective inland transport systems can make an important contribution to the competitiveness of a nation's exports in international markets.

Traditionally, inland carriers provided only transportation services, but today they operate in a global trade environment, and must operate within and strengthen inventory control systems of cargo owners through "just-in-time" deliveries. This requires a commitment on the part of inland carriers to provide a broad range of services such as precisely timed deliveries, specialized equipment and electronic data interchange services. For example, United Parcel Service of the U.S. has established a network of subsidiaries and joint-venture partners in over 170 countries for its international movements, and Consolidated Freightways, also of the U.S., uses a number of regional less-than-truckload carriers and liner vessel operators for such movements.³⁸ The Government of Chile responded to such trends by deregulating its road carriers, thereby allowing the market mechanisms of supply and demand, profit and loss, and the threat of bankruptcy to create incentives which would lead them to specialize and amalgamate into more viable enterprises. For their part, railways are government owned and operated, suffer from many of the same problems afflicting ports --overlarge workforce, restrictive work agreements, increasing demand for fiscal support and aging equipment-- and urgently require the modernization of services and facilities. To the extent that such measures contribute to a reduction of the dwell time of cargoes in ports, the ever-increasing demand for warehouses and equipment to store and handle them should be abated.

Inland carriers must be granted the freedom to make investments, and determine routes, frequencies and rates if they are to reach international levels of innovation, productivity and cost-effectiveness. Where such activities would leave a community without services, governments could ensure their provision through competitive bidding among interested carriers, thereby permitting market forces to determine the amounts of needed subsidies. Historically, inland carriers have been completely regulated and unable to take advantage of commercial opportunities due to bureaucratic constraints. For example, government regulations often prohibit inland carriers from reducing the

number of employees, and from offering flexible rates and volume or repeat customer discounts. Yet, these and other practices must be changed if inland carriers are not to limit port efficiency and, hence, the competitiveness of a nation's goods in international markets. Road and rail carriers require modern regulatory regimes that create a competitive environment within and between modes, an incentive to improve productivity and service quality, which would lead to a renovation of rolling equipment and facilities, and to an increase in earnings. To reach such objectives, the regulatory regime for road carriers should deregulate or remove bureaucratic constraints to entry, and that for railroads should create a statutory basis for private participation.³⁹ Thus, ports can no longer limit their concerns to activities which occur at the waterfront, and must work with governments and inland carriers to create an environment in which the latter might be more innovative, productive and cost-effective in order to ensure their own commercial survival.

D. COMPETITION IN AND BETWEEN PORTS

The fundamental reason for the participation of private interests in public-sector enterprises is to create a basis for competition so that costs might be reduced and the quality of goods and services improved. Competition achieves those objectives by compelling such enterprises to face commercial risks, the possibility of financial losses and the threat of bankruptcy.⁴⁰ Most public-sector ports of Latin America and the Caribbean enjoy monopoly positions in their respective hinterlands, but there is a growing recognition that they must be restructured to reflect the competition faced by the goods they handle in order to better support national economic growth goals in a global trade environment. However, there are numerous government regulations, policies and union agreements which permit those providing services at public-sector ports to maintain their dominant positions by, for instance, limiting the productivity of or rejecting modern cargo-handling technologies. To preserve this system dominant port groups have eliminated all vestiges of competition, and carefully observe and defend the boundaries of each others' monopolies. This unnecessarily increases the cost of services for cargo owners and reduces the competitiveness of a nation's goods in world markets. It is precisely the function of competition to transform the non-aggressive, stagnant environment that protects dominant port groups in a manner which compels the entire port community to innovate, improve productivity and reduce costs so as to enhance their own individual positions and, at the same time, those of exporters and importers.

The participation of private interests in the provision of port services and port facilities usually leads to greater innovation, productivity and cost-effectiveness, and these factors enhance the competition in and between ports. To the extent that all those providing port services and port facilities are subject to vigorous competition, it is more likely that they will respond to the needs of shippers and consignees.⁴¹ Without competition, privatization would amount to little more than a transfer of port services and port facilities from the complete control of governments to a similar degree of control by private interests. This would permit private interests to increase profits without any service or technical innovations, or improvements in productivity and cost-effectiveness. Put another way, even though private investors usually equate success with profits, competition would limit their free-

dom to unduly raise port charges. To avoid potential monopoly abuses, governments must restructure the institutional framework of ports, a topic presented at part III, to ensure that the benefits of private provision of port services and port facilities are passed on to shippers and consignees in the form of reduced charges and increased productivity. If governments forego their responsibility of establishing and preserving competition, private terminal operators will evolve into a monopoly or into oligopoly structures which limit competition and require users to pay excessive charges. This would mandate intervention on the part of governments to protect users.

Competition requires rivals who are able to assert and defend themselves effectively in each activity of the manufacturing and distribution process. The key to establishing competition in and between ports is the freedom of industry entry and exit. Such freedom cannot be absolute, as the number of possible port and marine terminal locations is limited. However, if private interests are allowed to participate in the provision of port services and port facilities, and offer services to the same users, additional competitive elements will be introduced and the market should be better served. Latin American and Caribbean ports operate in an overregulated environment which restricts the entry of private interests and precludes the exit of loss-making, entrepreneurially inactive public-sector operators. At present, industry expertise is not the primary determinant of whether private interests will be permitted to enter the industry. Rather, they must satisfy time-consuming, labyrinth-like and influence-ridden requirements for eligibility, and be considered politically acceptable to obtain government approval. Governments must formulate regulations that eliminate such selection procedures, but it is not practical to formulate detailed plans for private-sector involvement because port activities are far too varied and dynamic for universally applicable rules. Instead, governments should formulate an institutional framework which would allow private interests to propose their own plans for participation according to ever-changing market conditions.

It is frequently alleged that competition among ports leads to wasteful investments, overcapacity and a misallocation of resources, and the ports of northern Europe and the U.S. are cited as examples. To determine the validity of such assertions, the context in which port investments are made must be understood and the costs of those made by governments and by private interests should be compared. Port investments are made in a dynamic profit-oriented environment composed of numerous commercial and political factors. Commercial factors arise from the ever-changing nature of trade, the capacity of ship operators to divert their vessels to other ports and the possibility that new sources of supply will supplant those served by the port. The political influence of dominant port groups is often utilized to coerce governments in their investment decisions, and governments, in turn, influence those of private interests through grants, low-interest loans, moratoria, guarantees and subsidies. Governments, in comparison with private investors, lack direct involvement in port operations and are only indirectly responsible for the value consequences of their decisions. As an illustration of this point, an engineer with the abolished PORTOBRAS recently estimated that the pavement for the container storage yard at the port of Santos (Brazil) cost twice as much as necessary because it was not constructed under the watchful eye of the private sector. Thus, the risk of wasteful port investments is greater with the pub-

lic sector than with private interests, and government influence is often responsible for inopportune and unsuitable investments by private interests.

With limited volumes of cargoes passing through many Latin American and Caribbean ports, the possibility of creating a competitive environment appears to be an insurmountable task. Such ports currently face little or no inter-port competition and the only means which could be utilized to create the desired commercial environment would be through intra-port competition. For their part, private interests are unwilling to become involved in such ports because existing regulations and labor agreements do not allow them to operate on a commercial basis, or because such involvement would harm someone of the port community to whom they are indebted or from whom they might require assistance. In this context, governments might wish to consider entering into commercially-oriented joint ventures with private interests not only to ensure such participation in the purchase and operation of needed equipment but also to guide activities so as to improve the overall willingness of private investors to compete. Governments should eliminate the distinction between ship and dock workers, as the functions performed by them are quite similar with the advent of cargo unitization and capital-intensive handling systems, and compensate workers for the loss of any acquired rights. Dockworkers should be authorized to establish competing companies to carry out cargo-handling and storage functions, and carriers permitted to contract freely among them. Thus, for governments which possess the political will, a competitive environment can be created in ports which handle small volumes of cargoes.

The concept of competition is often considered to encompass all commercial activities, but one activity commonly excluded at ports is that of dock-labor. Many countries utilize private interests in their ports to carry out management functions or to operate terminals, but they continue to rely on nationwide labor monopolies for workers. For example, ports of the U.K. began to be sold to private investors in 1983, but it was not until the repeal of the Registered Dock Labour Scheme in 1989 that port labor was subjected to the same competitive forces as shippers, consignees, carriers and port owners.⁴² To the extent that labor agreements obstruct the utilization of flexible manning practices, preclude the adoption of labor-saving technologies and are negotiated nationally, the possibility of port managers responding to such forces is reduced. If bureaucratic barriers to competition are not removed for the entire port community, if management and labor are not permitted to negotiate market-oriented labor agreements that respond to local commercial requirements and if the scope of application of antimonopoly regimes embrace only cargo owners and port investors, dockworkers will be isolated from and are unlikely to respond fully to the market signals of supply and demand, profit and loss, customer likes and dislikes, and the threat of bankruptcy. Thus, policy makers at all levels must ensure that the institutional framework for ports, presented at part III, is applicable to both management and labor.

E. TRADE AND TRANSPORT FACILITATION

Trade and transport facilitation is generally considered to encompass the simplification, harmonization and reduction of the documents and procedures required of international trade and transport operations. The objective of such activities is to eliminate any possible delays which might result from compli-

ance with such formal requirements and to reduce their costs for traders, ports and carriers. Facilitation is not limited to government agencies and includes private interests, not just to the extent that the latter can make relevant contributions, but, often, as principal initiators of such programs. The reason is that public and private interests play joint and mutually supportive roles in determining which of such requirements might be simplified, harmonized and reduced. That is, the large majority of persons complying with such requirements are of the private sector and those that verify such compliance are usually public officials. This private-public dichotomy between compliance and verification of trade documentation and procedural requirements is common in most countries, but there is a growing recognition that those activities which are repetitive, non-discretionary and would not require any specific technical knowledge, could be fulfilled by private companies to reduce the consumption of public resources.

Many Customs administrations carry out their mandates on the basis of manual document processing systems which require multiple entries and verifications, as well as control of individual shipments. With the adoption of export-oriented macroeconomic policies, the advent of a global trade environment and the transmission of data electronically, that focus impedes the commercial movement of goods and creates unnecessary obstacles to the achievement of economic growth goals. To remove such constraints, governments might wish to consider shifting the focus of their Customs administrations from an individual shipment basis to a broader trade management orientation. A major step in this direction has already been taken by many Customs administrations of Europe and North American when it was decided that traders or their agents would assume responsibility for the description, classification and value of the goods declared. By providing traders with needed authority, the "self assessed declaration" eliminates the need for Customs officers to carry out a time-consuming clerical job. This seemingly minor change was a necessary condition for the more recently introduced "trader data entry systems" used in computerized clearance procedures of many industrialized countries. The participation of private traders in Customs activities in this manner avoids the traditional employment of Customs officers to identify bills lading from the cargo manifests of vessels and to match each of the former with a line on the latter.

Private sector involvement in Customs activities is not at odds with their traditional fiscal responsibilities. For example, in New York City the collection of taxes is carried out by private banks. Banks receive tax returns, review the calculations and deposit any funds involved so that they immediately begin to earn interest. The banks also provide various clerical services before turning over a computerized record to the city government for action regarding overdue taxpayers.⁴³ With regard to Customs, private banks might provide tariff collection services. In doing so Customs administrations would shift their traditional fiscal approach to an audit one, which should lead to a much higher efficiency in the use of qualified personnel. In this context, Customs officials could formulate criteria for the identification and inspection of trade documents and goods, and do so without the pressure of having to take the blame for causing cargo-flow stoppages at airports, ports or border crossings. Of course, such services should be subject to open bidding procedures, have a limited duration and be subject to the direct control

of Custom administrations. Without the restructuring of routine tasks of national Customs administrations so that they might become trade managers, the potential benefits which should arise from the participation of private interests in port services and port facilities could be substantially decreased by the lack of a commercial basis for compliance with trade documentation and procedural requirements.

III. THE INSTITUTIONAL FRAMEWORK FOR RESTRUCTURING PORTS

The institutional environment of Latin American and Caribbean ports is the result of an accumulation of international conventions, laws, regulations, union agreements and policies over the last three or four decades. They were adopted to either control or benefit a wide range of organizations and enterprises that carry out activities which support trade flows at ports and seek to achieve different and, at times, conflicting objectives. If this diversity were not enough, most Latin American and Caribbean ports have extensive socio-political obligations. If uncontrolled, they can become part of an enormous network of restrictions and benefits that can limit, and even preclude, the possibility of a port operating on a commercial basis. The resulting organizational structures of ports are not an optimal choice, but, rather, a common denominator of such requirements. The conventions, laws, regulations, union agreements and socio-political obligations of ports are not abstractions and the organizations and enterprises providing services and facilities will not relinquish their individual privileges and benefits unless required to do so. Notwithstanding such obstacles, the central message of this document is that port services and port facilities can be restructured to enhance the competitiveness of a country's exports in international markets and, at the same time, channel the demands of dominant groups toward more productive activities that benefit the entire port community.

Many Latin American and Caribbean governments have indicated that they would like private interests to offer cargo-handling services at public-sector ports and to invest in needed equipment and installations, but there are numerous restrictions in their constitutions, commercial codes, regulations and policies which severely restrict such involvement. The constitutions and laws of many countries specify the sectors that are within the competence of the national and local governments. Under such regimes, legislators have assumed that private interests can participate in those sectors only to the extent that the government retains a large degree of control.⁴⁴ The national laws of most countries contemplate the lease or purchase of property by governments from private individuals, but either make no provision for or specifically prohibit governments from leasing and selling waterfront properties. Often, governments must approve collective bargaining agreements to ensure that they are in harmony with their social responsibilities. This means that once approved such agreements carry the weight of the government behind them and become, as a consequence, a form of national legislation which is subject to the influence of dominant groups. In addition, the creditworthiness of private interests wishing to invest in ports is limited by such restrictions. Of the many factors that must be considered to create an institutional basis for private participation in public-sector ports, some of the more important include (i) statutory authority, (ii) deregulation, (iii) decentralization, and (iv) a new regulatory regime.

A. STATUTORY AUTHORITY

The restructuring of public-sector ports requires laws, regulations and policies which reassign operational, planning and administrative functions among the central government, local organizations and private interests. Many nations have created a basis for such restructuring through measures which range

from specific statutory authority, presidential decrees and ministerial resolutions to platforms of elected political parties and even legal fictions. For example, the British privatization program is based on the adoption of individual statutes and regulatory regimes for each industry. The most notable have been the British Aerospace Act 1980, the Civil Aviation Act 1980, the Transport Act 1980 (which provided for the sale of the British Transport Docks Board), the Iron and Steel Act 1981 (now part of the Iron and Steel Act 1983), the Transport Act 1982 (which provides for the sale of the National Bus Company), the British Shipbuilders Act 1983 and the Telecommunications Acts 1981 and 1984. The objectives of these acts were to authorize government agencies to alter the legal and financial structures of designated enterprises in order to facilitate their conversion into limited liability companies and, then, to transfer them to private interests through the sale of stock.⁴⁵ With such authority, a transfer or sale to private interests removes many uncertainties and increases the amounts they are willing to invest.

For many years, the private sector in most Latin America and Caribbean countries has been accustomed to not only an overregulated commercial environment, but also one in which the statutes, decrees and regulations governing their activities are altered frequently.⁴⁶ Accepted commercial practices are often reversed or modified and new ones adopted with each alteration in economic, political and social policies, and changes of key government officials. The need for governments to have qualified staff capable of analyzing policy alternatives, of making decisions in a coordinated way among relevant bodies and of maintaining an appropriate level of communication between public and private interests is fundamental to avoid costly reversals and modifications of policies. Often, such staff exists but are not utilized, as in the case of public-port administrations, where port directors rely more on representatives of labor unions than their own experienced specialists. Policy reversals and modifications do not carry with them the implication of incremental changes and improvements, and private interests are reluctant to commit funds in an unpredictable, sure-to-change-again environment. To promote private sector involvement in port services and port facilities governments must provide the necessary statutory authority, within a market-oriented institutional framework, in order to ensure that dominant port groups cannot distort the commercial environment in which trade relations take place.

Any effort to restructure Latin American and Caribbean ports must have strong and unvarying support from the highest government level.⁴⁷ The reason is that all those involved in ports have developed mutually-beneficial rent seeking arrangements which protect their individual interests. They encompass control of legislative committees, public interest groups, as well as regulatory agencies and port administrations. Often, government entities work to justify larger budget allocations for ports so as to safeguard their own functions. The elimination of such well-entrenched, multi-group arrangements, even in the name of promoting economic growth and national prosperity, will be less than successful unless the nation's highest executive obtains the support of all relevant organizations, appoints a director and team of highly qualified persons who are committed to restructuring public-sector ports from the ministries of finance, trade, transportation, public works and labor, as well as from the central bank and port administration, and gives them a clear mandate to create a basis for private sector participation in port services and

port facilities.⁴⁸ As examples of this point, consistent public commitment by the chief executive of the Government of Honduras helped to ensure the adoption of legislation for the privatization of enterprises created by CONADI,⁴⁹ and much credit for the successful deregulation of the U.S. airline industry is given to the economist, Alfred E. Kahn, who had written extensively on the subject before being named chairman of the U.S. Civil Aeronautics Board.⁵⁰

The statutory authority which creates a basis for the private participation in the provision of port services and port facilities should define with a high degree of precision the properties and services which are to be made available to them, provide guidelines that can be utilized to determine their values, safeguard the property rights of investors, and specify any advantages or consideration accorded private interests of the country in which the port is located. Unfortunately, the asset valuation, bidding and purchase procedures of many countries are subject to influence of dominant groups and government bodies are often prevented from selecting the most appropriate.⁵¹ Under these circumstances, explicit rules should be drafted to govern the acceptance of the lowest bids in the case of port management contracts, or the highest offers in the case of sales and concessions, and to justify not doing so, as well as for rejecting all offers, the maximum period of agreements and options for renewability, duration of offers, public disclosure and advertising requirements.⁵² Such rules should also provide directors and restructuring teams with the authority to verify that all statutory requirements --such as purchaser and bidder qualifications, and transparency-- have been complied with, to determine the companies in which the government should retain minority and controlling interests, and to recommend any incentives considered necessary to create a basis for private participation.⁵³ Finally, the studies and decisions of such teams should give preference to trade interests to ensure a market-orientation prevails.

Numerous provisions in the constitutions, laws and regulations of Latin American and Caribbean countries preclude private participation in public-sector ports if it were not for the use of legal fictions.⁵⁴ Legal fictions are often utilized to achieve a desired objective where specific statutory authority either precludes such an undertaking or does not exist, and represent a modification in the application of a law even though its letter remains unchanged.⁵⁵ For example, a legal fiction called a "use permit" was granted to a group of private enterprises for a period of 10 years so that they might construct and operate a container terminal at the port of Buenos Aires (Argentina). Similar legal fictions were utilized by private interests to construct 10 bulk terminals near Rosario on the Parana River. During 1989, those terminals handled 8 820 247 tons or 55% of all Argentine grain exports. Legal fictions are useful, as they allow a rapid response to commercial needs and avoid legal inflexibilities, but they can lead to the corruption of public officials and limit the capacity of public administrators and courts to enforce the formal system. The major concern of private-sector owners of such terminals is that they have no formal basis which protects their large investments. Legal fictions are outside the formal framework, which increases risks and reduces the willingness of private interests to make investments. Thus, private sector involvement in port services and port facilities requires specific legal

authority to create a secure base for their rights and duties, as well as for investments.

In August 1989, the Government of Argentina adopted Law 23.696 to transform public-sector enterprises into limited liability companies, and to merge companies. Public-sector enterprises must be formally declared "subject to privatization" by a presidential decree or authorized in the law itself. Of the 22 public-sector companies authorized for privatization in the law, the national port administration (AGP) is to be either privatized or have its functions transferred to the Provinces in which ports are located. The law permits a wide range of privatization options, such as those evaluated in part IV of this document, and requires the Congress to monitor all such efforts through a special committee. Moreover, each company or agency is to have an individual government decree which will define the procedures, conditions and mechanisms for its privatization. Privatizations are to be made through public bids, auctions and sales at the stock exchanges, but direct transfers may be entered into with employees, suppliers and customers. When considering offers, the executive authority is permitted to evaluate not only the amount tendered but also any other possible benefits to the public interest. Also, the value of the companies and their assets are to be appraised by a designated public agency. Prior to the consummation of a privatization, an opinion of the Tribunal de Cuentas de la Nación or the Sindicatura General de Empresas Públicas, or both, must be sought concerning a specific privatization project. These public agencies have 10 days to object or suggest changes, or the project will be considered approved.⁵⁶

The Brazilian privatization program was initiated through provisional measure No. 155 of 15 March 1990, promulgated the same day Fernando Collor de Mello took office as president. One month later that measure was approved by the national congress and transformed into Law No. 8.031, and regulated by Decrees Nos. 94.463 and 94.464. The decrees specify the companies subject to the law, the methods by which companies might be privatized, the duties of the directive committee and designate the state-owned national bank for economic and social development (BNDES) as manager of the denationalization fund or depositary of corporate holdings to be privatized. The directive committee is composed of eight to 12 members appointed by the president and approved by the national Congress. The committee is to propose companies to be included in the privatization program, monitor compliance with the above laws and decrees, ensure complete disclosure, approve the structure --legal, accounting and financial adjustments, conditions of sale, means of payment and creation of special or golden shares to protect national interests-- for each privatization project and publish an annual report of its activities.⁵⁷ Except for public-sector enterprises required by the federal constitution to remain under direct government ownership and control, Law No. 8.031 provides for the privatization of companies which were established by the federal government, as well as controlled by or transferred to it. The law allows foreigners to purchase up to 40% of the voting share of companies being privatized, but through subsidiaries of foreign companies established in Brazil they might acquire 100% of such shares.⁵⁸

Due to the ephemeral nature of commercial opportunities and the traditional lethargy with which government bureaucracies function, the statutory

authority should clearly define standards for approval of private sector proposals. Such standards should establish a strong presumption that increased participation will benefit the nation in order to avoid the endless problems and delays of trying to satisfy vague requirements such as an "economic need", "inadequacy of existing services or facilities", "benefits to the public" or the "lack of adverse effects on existing operators" and allow the desired activities to be undertaken in a much more rapid and commercially prudent manner. For example, the U.S. Motor Carrier Act of 1980 deregulated road transport in that country and requires existing carriers to show that the granting of a request of a new carrier to offer services would be "inconsistent" with public convenience and necessity.⁵⁹ Such authority can also be structured to establish time limits for decisions by government agencies on proposals and for their implementation by private interests. To provide stability for private investors, governments should include provisions which provide that if, for any reason, changes would be needed to existing regulatory regimes or the rights of private operators would be compromised, they would be fully compensated. For example, among the many conditions imposed by the Brazilian private sector for making port investments, the most important concerns irreversibility of the Government's decision to privatize public-sector ports.⁶⁰

B. DEREGULATION

In many parts of the world government regulation is synonymous with restrict, limit and prohibit, and deregulation is employed in the context of a total removal such restrictions, limitations and prohibitions. However, just as the economic regulation of Latin American and Caribbean ports involves a limitation or suppression of competition, whether by control of entry or of prices or both, and often leads to non-commercial operations, the absence of regulations could lead to wide-scale abuse of dominant positions by private interests. Opinions of the benefits of deregulation vary greatly depending on which factors are considered most important. As an illustration of this point, in the years following the adoption of the U.S. Airline Deregulation Act of 1978 an unabated stream of books and articles have evaluated various aspects of its impact.⁶¹ Those which support deregulation note that the basic wages of airline employees have been reduced, but actual worker income has increased due to productivity bonuses and profit-sharing schemes, and the number of flight attendants has grown from 48 353 to 72 697 between 1978 and 1987.⁶² In 1986, the annual airline industry cost reductions were estimated at US\$6 billion, and this has led to lower fares for travelers, a near doubling of competition between city pairs and improved safety. In contrast, a return to historical regulatory practices is usually recommended if the focus is on the reduction of services to small communities, and the possibility of a decrease in competition which might result from the growing concentration of the industry through mergers, acquisitions and bankruptcies.⁶³

An interesting point to come out of the study of numerous books and articles on U.S. airline deregulation is the difference between those written by economists and attorneys. The training of economists generally makes them comfortable with the market mechanisms of supply and demand, profit and loss, freedom of entry and exit, scale economies, customer likes and dislikes, and the threat of bankruptcy. Attorneys are trained to represent special interests, formulate and apply laws and regulations, and follow detailed proce-

dures, and usually they have only a cursory understanding of how such mechanisms function. As a consequence, the books and articles prepared by attorneys typically advocate a return to some form of regulatory control, while economists recommend a continued reliance on market mechanisms. This does not lead to an either/or decision, as many of the measures proposed by both groups have substance, and must be fully understood and carefully integrated to obtain maximum benefits from any effort to restructure public-sector ports. Market mechanisms can be utilized to create a basis for ongoing innovation, increases in productivity and cost-effective operations in ports if a commercially-oriented institutional framework is adopted. As a consequence, both economic and legal measures are required to create an appropriate basis for the participation of private interests in public-sector port services and port facilities.

The U.K. Government undertook a program to privatize numerous public-sector enterprises in 1979. To avoid the risk that government monopolies would be converted into a private ones, it sought to create a commercial environment which would ensure that consumers would not be exploited. To reach that goal, a general policy of deregulation or removal of government imposed obstacles to the interplay of market forces in privatized industries was adopted.⁶⁴ Deregulation can be generally understood to encompass the removal of government imposed constraints to the interplay of market forces on both public and private sector economic activities. Similar initiatives in the U.S. have either partially or completely deregulated various aspects of banking and financial services, oil and natural gas pricing, securities markets, telecommunications, commercial radio and television, and air, bus, truck, railroad and ocean transportation.⁶⁵ In the ECLAC region, public-sector constraints on commercial activities can be seen from the 301 days required to obtain all necessary approvals and licenses from the Peruvian government to initiate a small manufacturing business, and 289 days for a small garment factory in the same country.⁶⁶ In a highly regulated environment with pervasive government intervention entrepreneurs must establish and maintain close ties with political and bureaucratic authorities to ensure that measures are not adopted which prejudice their interests, instead of channelling their time, money and efforts into better serving customers.

In 1983, as will be presented in greater detail in part IV, the British Transport Docks Board (BTDB) was converted into a limited liability company, known as Associated British Ports (ABP), and its shares were sold to port workers and the general public in two separate blocks in the year of privatization and in the following year. The BTDB ports and management were deregulated, but each port continued to employ port labor within a national labor arrangement known as the Registered Dock Labour Scheme. It permitted only registered dockworkers to carry out tasks that were traditionally defined as port work and led to overstaffing, jurisdiction or demarcation disputes, and an inability of managers to either discharge workers or to utilize them in the most efficient manner. Labor representatives sought to maintain high levels of employment and benefits, carriers sought to utilize capital-intensive technological innovations that reduced the demand for labor, port management sought to achieve a reasonable return on investments, and port users' groups sought to reduce high port charges and eliminate unnecessary delays. Then, in July 1989, the Scheme was repealed and port labor was deregulated, and the national association of port employers voluntarily disbanded to preclude any

claim of unequal bargaining power.⁶⁷ This led to the creation of port-specific labor systems, which replaced the earlier industry wide supply of labor and determination of employment conditions, and permitted dockworkers and management at each port to negotiate agreements in response to local conditions.

For ports, deregulation seeks to ensure that all those providing services and facilities operate in a commercial environment bounded by the laws of supply and demand, profit and loss, freedom of entry and exit, scale economies, customer likes and dislikes, and the threat of bankruptcy. The entire port community --from dockworkers and carriers to Customs and management-- should be included in order to avoid one or more groups demanding excessive payments from not only port users but also others providing services. A major task of governments is to overcome the pressures of groups that seek to maintain an enormous network of non-commercial privileges and restrictions which largely nullify commercially oriented activities through the payment of fees, wages, charges and taxes that provide no benefits to ports or commerce, or to the achievement of national economic growth goals. Deregulation requires public-port administrators and the private sector to make changes in the nature, scope and direction of their activities, to negotiate with labor unions and other groups, and to apply pressures of their own in order to preserve profit-oriented, competitive structures. As a consequence, governments must retain sufficient control over port activities to ensure that no group of the port community is able to insulate itself from market forces and exact monopoly rents.

The pervasive regulation of Latin American and Caribbean ports is usually justified as a means to protect users from destructive competition, monopoly abuses, and to support national economic, employment and strategic policies. Customarily, such regulations received wide support from the entire political spectrum --from the left in order to preserve jobs and benefits, from governments in order to retain their power and patronage system, and from many on the right as a way to maintain a secure, stable business environment.⁶⁸ Following the adoption of export-oriented macroeconomic policies, however, many of those same political groups have come to recognize that ports cannot satisfy non-commercial objectives and, at the same time, promote the competitiveness of goods in international markets. Deregulation seeks to change this scheme by permitting the interplay of market forces on ports and by providing port executives with the freedom to react thereto. The freedoms that are implicit in trade-driven deregulation will vary from country-to-country depending on national economic and legal realities. Many are expressed in expedited government approval procedures for the entry of new competitors and the grant of authority to both the public and private sectors so that they might conduct operations according to market dictates and establish competitive rates for services.⁶⁹ Thus, governments must decide whether ports would provide greater support for export-oriented macroeconomic policies if they are controlled by bureaucratic fiat or through a regulatory regime that utilizes the competitive forces of the market place.

C. DECENTRALIZATION

Latin American and Caribbean countries have a tradition of central government involvement in and control of economic activities.⁷⁰ As an illustration of this point, a treatise on Argentine administrative law asserts that

"...the goal of the State is to satisfy all needs: education, even though this is the responsibility of the family; health and welfare, even though private institutions, whether profit or non-profit oriented, perform them; recreation, even though there exist a great variety of institutions devoted to those activities; production of goods and services, despite the fact that in non-collectivist societies this is carried out by private enterprises, and thus the list could extend to the limits of imagination and as far as historical circumstances justify it." (emphasis added, not an official translation)⁷¹

Such an open-ended role for governments was considered a more equitable means to bring about rapid industrialization and balanced development than if major resource allocation and investment decisions were made by private interests.⁷² With the adoption of export-oriented growth policies, however, the laws, regulations and policies which support central government control are undergoing a fundamental reconsideration.⁷³

With regard to public-sector ports, the centralized organizational structure has greatly increased costs and led to a deterioration of services and facilities. Major decisions are made and policies implemented by people far removed from the actual business of receiving and dispatching trucks, trains and vessels, handling cargoes and complying with trade requirements. The complexity and time-consuming nature of decision making, and labyrinth-like rules and procedures tend to limit the capacity of governments to respond to new conditions with innovative ideas. As the pace of change in ports is accelerating, events today occur far too rapidly for the generation, processing and transmission of needed information between different parts of government bureaucracies. In this context, operational matters for ports of industrialized nations, such as the leasing of port terminals, changes in working hours and tasks of docklabor, and the availability of Customs services, are usually made at the local level so as to respond as closely as possible to specific trade needs. In contrast, decisions in those areas by Latin American and Caribbean governments are usually made at the ministerial level without haste on a case-by-case basis and require the support of politically appropriate groups and persons for approval. Overall, such factors result in protracted delays and inappropriate decisions, both of which unnecessarily increase the cost of a nation's exports in international markets.

A centralized public-port system is one in which there is almost no delegation of authority and decisions are in the hands of persons appointed by and under the direction of ministers of transport or public works, and where earnings are often utilized to subsidize loss-making activities. Indeed, ministers of certain Latin American countries choose to be involved in day-to-day operations instead of formulating policies which ensure the achievement of economic growth goals.⁷⁴ Public port administrators are reluctant to make de-

cisions without consent of officials at the ministerial level, and often have a most relaxed attitude regarding commercial matters. They have different priorities and criteria than private-sector managers, and are heavily influenced in their decisions by dominant groups. This leads to bureaucratic delays, non-commercial decisions, losses of profitable contracts, and the need for governments to increase budgetary support and contribute to capital-investment projects. In response to this situation, the governments of Argentina, Brazil and Venezuela have adopted laws which permit the transfer of control of their respective ports to local government authorities.⁷⁵ These laws do not eliminate central government responsibilities, and require that an institutional framework be established which provides local organizations and private investors with the authority to carry out operational, planning and financial functions, and transforms the public-sector port administration into a regulatory body to monitor and coordinate such activities.

To decentralize public-sector ports, governments must remove themselves from day-to-day operating decisions and focus on the formulation of longer term policies and plans which support macroeconomic objectives. For example, shortly after taking office on 15 March 1990, the President of Brazil made a number of economic and administrative changes. Those changes encompass plans to sell 100 state enterprises and to reduce the number of government employees from 800 000 to 250 000 over the next five years, opening the country's economy to greater foreign competition, the replacement of import controls with tariffs and the removal of most non-tariff barriers to create an incentive for local industries to become competitive. The Government seeks to reduce worker resistance to such changes by allowing them to purchase shares at special rates and with extended payment periods. With regard to the potential receipts from such sales, BNDES has estimated that US\$80 billion worth of public-sector assets might be sold for only US\$60 billion, with the difference attributable to the errors of centralized decision making.⁷⁶ Brazilian ports are to be restructured to promote local administrative autonomy in order to attract private capital, and only 11 have been designated for future investments by the central government.⁷⁷ Without such reforms governments will continue to make fundamental business decisions for enterprises in response to socio-political policies and will continue to attempt to correct resulting market distortions through larger budget allocations and exclusive dealing arrangements.

The major objective in decentralizing a nation's public ports is to improve service and facility innovation, productivity and cost-effectiveness through an increase in local participation, utilization of local resources for investments and greater accountability of government officials. These goals can be attained only if supported by a market-oriented institutional framework for ports. As an illustration of this point, the decentralization of public-sector ports is usually accomplished by placing local bodies in charge of ports, and allowing them to make planning and operational decisions in accordance with trade requirements, national policy objectives and the competing demands for utilization of waterfront properties. In countries which have a tradition of active state participation in a wide range of economic matters and where the influence of pressure groups is strong, however, decentralization could lead to greater conflict and less efficiency unless positive steps are taken to ensure that such groups do not simply shift the focus of their

efforts from the national to the local level. To achieve this objective, local authorities in charge of ports must be insulated from the national government and the influences of such groups must be balanced through such framework. Thus, decentralization entails not only the delegation of powers and functions from central governments to local bodies but also a balancing of the interests of the public sector, dominant groups and users so that commercial goals might be achieved.

In addition, if the decentralization of public-sector ports is to have any real impact on enabling local organizations to provide port services and port facilities, both public and private organizations at the local level must be given the authority not only to carry out daily operations and to plan for the future but also to raise capital for investments and establish prices for services. However, local institutions may lack technical expertise to carry out such activities. The major sources of funding for investments and expertise may continue to come from the central government for some time after public ports are decentralized. As such, various national ministries will continue to exert an enormous influence on the types of investments which can be made and on the validity of operational changes and planning activities carried out by them. The submission of projects by local ports to the national government for funding could result in bureaucratic decisions by the latter in the form of either a pro rata sharing of funds between projects or the selection of one or more projects that most closely correspond to the funds available. In light of the severe fiscal limitations facing most governments of the ECLAC region, some mechanism for awarding national investment funds would seem necessary. It might be based on, for instance, the actual earnings of ports and the potential revenue of each project, with the central government providing part of the funds until local ports are financially strong enough to generate them alone.

The decentralization of decision making and financial autonomy allows on-site administrators and labor to identify more closely with the earnings, productivity and commercial strategies of their individual enterprise. For example, the British coal industry was nationalized in 1946, but its system of collective bargaining was highly decentralized. Due to the autonomous nature of each pit at a mine, negotiations between employers and unions took place on a pit-by-pit basis. Coal was the principal source of energy in the U.K. until the early 1970s, subject to a high demand and the bargaining strength of the National Union of Miners (NUM) was very strong. However, as petroleum's share of the U.K. energy market increased from 10% in 1950 to approximately 50% in 1972, the demand for coal declined and so did the bargaining strength of the NUM. The sensitivity of the NUM to market conditions largely disappeared when the coal industry shifted from local pit to centralized national negotiations and it was able to obtain substantial wage and benefit increments even though the demand for coal was declining.⁷⁸ For some 15 years following World War II, this led to the paradoxical situation in which it was less expensive to mine coal in Kentucky and West Virginia (U.S.), transport it to the port of Philadelphia (U.S.), ship it across the Atlantic and deliver it to South Wales (U.K.), rather than to mine nearby Welsh coal.⁷⁹ In the period 1948-1974, the number of jobs in U.K. coal mining decreased from 800 000 to 314 000.⁸⁰

Ports and individual marine terminals within ports are highly autonomous and dockworkers' sensitivity to market conditions also increases when negotiations are of a local nature.⁸¹ In 1980, for instance, the International Longshoremen's Association (ILA), which represents dockworkers on the U.S. Atlantic and Gulf coasts, extended its master contract negotiations from those on the North Atlantic to encompass all ports it represents.⁸² The ILA master agreement deals with such matters as hours of work, gang sizes, pensions and wages for cargoes which are loaded in containers, or carried in lighter-aboard ship (LASH) or roll-on/roll-off (RO-RO) vessels. The ILA local unions at individual ports negotiate similar agreements for break-bulk and bulk cargoes, and operational matters --work guarantees, meal hours, ordering of gangs, pay days and many others-- for all cargoes. By 1986, Gulf coast ports responded to an increasing utilization of intermodal cargo movements, which greatly enlarged the hinterlands served by ports on the U.S. North Atlantic and Pacific coasts to their detriment, by terminating the master agreement so that more competitive rates might be offered to ship operators. Dockworkers recognized the need to remove any incentive to utilize lower-cost, non-union labor as a means to strengthen the competitiveness of Gulf coast ports, and agreed to eliminate their guaranteed annual income (GAI).⁸³ In addition, dockworkers at South Atlantic ports will phase-out their GAI by the end of 1992.⁸⁴ Thus, decentralization makes labor unions more responsive to local conditions vis-a-vis competing ports and the requirements of international trade.

Much of the world has begun to make corrections for the failures of centralized control of commercial activities. The decentralization of ports does not mean the elimination of government involvement, but that it should be structured to ensure on-site port administrators, boards of directors and private interests have sufficient commercial freedom to set their own tariffs and to adjust quickly to changing market conditions. A decentralized national port system should be structured to provide such groups with the flexibility to operate their facilities commercially, to plan for and make needed investments, and to work with urban authorities so that competing land-use problems might be resolved.⁸⁵ For its part, the Mexican port administration (PM) negotiates annual performance agreements with individual ports on various operational, financial, personnel and maintenance matters in order to provide local port administrators with clearly defined objectives and the managerial authority to reach them. Such objectives can encompass private participation where it would be considered feasible and desirable.⁸⁶ Most countries which have decentralized their ports have also found it necessary to make them autonomous financial entities. The reason is that there is a direct relation between decentralization, financial autonomy and managerial accountability in the achievement of commercial objectives. Thus, decentralization encompasses a transfer of decision making authority from central organizations to those on the periphery, and makes on-site administrators and private interests accountable for the effective planning and execution of activities at the local level.

D. A NEW REGULATORY REGIME FOR PORTS

To support the restructuring of port services and port facilities, governments must alter their traditional roles vis-a-vis the entire port community. Historically, governments were owners, operators and regulators of ports, as well

as employers of dockworkers. In export-oriented economies governments should retain certain of those activities, such as regulators, owners and investors in physical infrastructures, but a wide range of other functions which include operation of port terminals, investments in cargo-handling equipment and employment of dockworkers can be assumed by private interests. According to U.S. Maritime Administration estimates, of the 1 941 terminals in that country capable of handling international trade, 64% are privately owned and operated. The remaining 36% are owned by municipal and state governments, and the vast majority utilize private enterprises to operate their facilities.⁸⁷ A 1990 survey of the 83 U.S. port authorities conducted by the American Association of Port Authorities found that 42 operate their own facilities, 31 lease them to private operators, and 10 do both. The regulatory regimes for ports of many Latin American and Caribbean countries contain detailed requirements for each activity to be undertaken, but they lack the necessary flexibility to ensure appropriate commercial results can be obtained. Such regimes must be modified to reflect a different reality -- shared management of docks with private interests, participation in the earnings of private marine terminal operators, a balancing of interests and promotion of economic growth in the hinterland of ports.

This regulatory focus must reflect the commercial goals which are implicit in national economic policies, or ports will remain a costly burden to the hinterlands they serve. In addition, the new regulatory regime must provide both government administrators and private interests with sufficient flexibility to respond to changing commercial and technical realities. It is often suggested that private participation could lead to a weakening of government control over port activities, but the new shared public-private reality means that both will have to work much more closely in order to initiate, ratify, implement and monitor port activities. This ensures greater transparency and control over decision making processes, as public sector regulators themselves will be monitored and controlled by private interests. While the specific objectives of such an institutional framework will vary depending upon the economic, political and social context of each country, and the restructuring option or options selected, some of the more important include (i) avoidance of abuses of dominant positions by private interests, (ii) balance of interests between the private sector, labor and governments, and (iii) changes to port administrations.

1. Avoidance of abuses of dominant positions by private interests. The principal mechanism utilized to avoid such abuses is a commercially oriented institutional framework composed of statutory authority for private participation, deregulation, decentralization and antimonopoly laws. Governments have traditionally utilized economic regulations to modify and replace market outcomes with those they desire. Such regulations are generally adopted on the premise that market forces are so imperfect that unrestrained competition will lead to monopoly abuses. In contrast, antimonopoly laws are adopted on the assumption that economic regulations are so burdensome on commercial activities that it is less costly to redress the improper use of market forces by private interests on an after-the-occurrence basis. That is, regulations attempt to satisfy national economic growth goals through the involvement of public-sector officials in day-to-day commercial activities of enterprises, and antimonopoly laws lead to such involvement only when private interests

utilize market forces to restrain consumers' choices or exact monopoly rents.⁸⁸ Economic regulations and antimonopoly laws seem to espouse different administrative philosophies, but they are complementary and should be combined with the mixed public-private options for restructuring ports presented in part IV, and supported by freedom of entry, managerial and financial autonomy, and the utilization of market-oriented labor regimes in order to create an institutional framework which more fully supports export-led economic growth goals.

The monopoly structure of most Latin American and Caribbean ports is an important factor which must be taken into account if private interests are to become involved. The specter of a transfer of a public-sector monopoly to private interests has long plagued governments and given substance to the arguments of all those seeking to preserve existing institutional arrangements and their dominant positions. Ports of the region often have no competitors, but they can be restructured to operate successfully in a deregulated environment. Such restructuring would vary from country-to-country depending on factors such as economic policies, the political strength of dominant groups, alternative sources of employment, investment and managerial capacities of private interests, and many others. It will be recalled from part II that the Government of Chile solved the lack of competition problem by formulating a regulatory regime which permits citizens of that country to establish stevedoring companies, one of the mixed public-private options for restructuring ports presented at part IV, and provides ocean carriers with the freedom to select the company they desire. This has led to vigorous intra-port competition; that is, the selection of stevedores through competitive bids based on the time and cost for handling cargoes.⁸⁹ Where stevedores would need to make site-specific investments, they could also be selected through competitive bids and awarded concessions commensurate with their financial commitments.

Private sector participation in port services and port facilities can contribute to commercial viability of a port only if supported by vigorous domestic competition and a strong antimonopoly policy. Such factors are fundamental to innovation, productivity and cost-effectiveness of any commercial activity. The globalization of trade is often utilized as a justification for the merger of a nation's major industries in order to integrate and coordinate activities so as to avoid the presumed wastes of competition and to create a strong international competitor, but without vigorous domestic competition as a proving ground for new products and services such concentrations usually undermine their own capacity to compete in world markets.⁹⁰ For ports, competition forces management to completely reexamine the basic activities carried out in order to modify, expand, relocate and join them in innovative patterns so that new service configurations might be offered and operations might better respond to the needs of users. Governments cannot decree that their ports will be competitive, but they can adopt an institutional framework which emphasizes freedom of entry instead of protection, managerial autonomy to earn a profit through competition instead of access to the national treasury, laws of the marketplace instead of day-to-day bureaucratic involvement and antimonopoly regimes instead of the political influence of dominate groups. This framework would provide an incentive to the port community to carry out its activities in an innovative, productive and cost-effective manner.

Regulatory regimes operate just as imperfectly as do markets and such a regime for ports must be formulated in recognition of that reality. In 1979, for instance, the U.K. began privatizing numerous public-sector enterprises and new single-industry regulatory agencies were established to oversee their activities, and others such as the Office of Fair Trading (OFT) and the Monopolies and Mergers Commission (MMC) were given certain powers over all industries. Prior to initiation of that program, the MMC had little opportunity to examine monopoly practices of nationalized industries, as nearly all cases referred to it related to efficiency and cost. The specialized regulatory agencies have been given the authority to monitor performance, prices and service quality to ensure that consumers are afforded protection, and to refer possible instances of monopoly abuse to the OFT and MMC.⁹¹ For example, the sale of Sealink (originally part of British Rail) to European Ferries was prohibited by the Secretary of State after a report was received from the MMC which indicated that the latter's share of the cross-channel market would increase to 80%.⁹² Thus, if private interests are to participate in the provision of port services and port facilities, governments must establish similar regimes to ensure that such interests utilize market forces to benefit users and the national economy.

This would require governments to formulate an institutional framework that creates and preserves competition, and which would promote a dynamic commercial environment for users. The exact contents of each mechanism in that framework would vary according to national goals, but as a general guideline deregulation would remove bureaucratic constraints to the interplay of market forces in port activities; decentralization would make each port autonomous and responsible for the value consequences of its own operations, planning and investments; economic policies would promote trade and stress inter- and intra-port competition for all those providing services; antimonopoly laws would permit national judiciaries to correct competitive distortions on an after-the-event basis; and, finally, government agreements with private interests for the provision of port services and port facilities would integrate, focus and strengthen the above mechanisms by taking into account any special risks and policy goals. If such a framework is appropriately formulated and implemented, it should ensure better allocation of national resources, minimize the demands for fiscal revenues, reduce the cost of goods to domestic consumers, enhance the competitiveness of exports in international markets, increase foreign exchange receipts and strengthen the capacity of public ports to resist the pressures of dominant groups.

Most Latin American and Caribbean countries have antimonopoly commissions, but they were established at a time when competition between those providing port services and port facilities was largely an abstract possibility, rather than an actual fact. In a deregulated port environment which facilitates the entry and exit of enterprises, both actual and potential competition would be the primary incentives for ports to offer modern installations and cost-effective services. Private terminal operators would probably price their services competitively to avoid government intervention through antimonopoly laws or the non-renewal of their contracts. Such commissions should have an unambiguous mandate to protect competition, not specific firms or an industry from competition, enforce property rights and to initiate investigations as well as to follow-up on complaints submitted by other parties. Gov-

ernments should authorize their antimonopoly commissions to hear and decide cases of abuses of dominant positions, issue cease and desist orders, and to assess damages. Thus, statutory authority for private participation in port services and port facilities, deregulation, decentralization and antimonopoly laws are part of an institutional framework which can be utilized to implement a government's policy to restructure public-sector ports.

2. Balance of interests between the private sector, labor and governments. Most Latin American and Caribbean governments have adopted laws, regulations and policies which strongly support the demands of dominant port groups. The purposes of these measures were to (i) establish a basis for industrial peace, but they have fostered disputes and inhibited their resolution, (ii) facilitate the acceptance and utilization of new technologies, but they have delayed their adoption or resulted in their inefficient utilization, and (iii) bring about greater social justice, but they have been administered with a bias that would not be so easily accepted if fully understood beyond the port community. The disproportionate weight given to such groups when decisions are being made has led to overstaffing on a grand scale, avoidance of labor-saving technologies, monopoly profits, overly generous wages and low productivity. For years, such laws, regulations and policies have privatized port profits by allowing them to fall into the hands of dominant port groups, and socialized losses by utilizing the public treasury to subsidize non-commercial operations. In a competitive port environment the monopoly rents now enjoyed by such groups would be shared among those in the distribution chain and any commercial losses would be, in the absence of government subsidies, born by private investors. Thus, the claim that the participation of private interests in the provision of port services and port facilities will lead to a socialization of losses and a privatization of profits is simply untrue.

The primary objective of a market-oriented institutional framework for ports is to enhance the capacity of exporters to compete in world markets. The framework should encompass the entire port community -- private interests, port labor and governments. The private sector is inherently weak when compared to both labor and governments, and such framework must balance the political and economic strengths of each group. Port labor enjoys a monopoly in the provision of cargo-handling services and usually exerts an enormous influence over port operations and planning. This is not unique to ports and has occurred, for instance, in the Mexican railways and petroleum industry following their nationalizations in 1937 and 1938, respectively. In both cases, government administrators regained their authority to manage only after numerous strikes, political disputes and a major railway accident.⁹³ Government agencies that administer ports can no longer carry out their duties in a manner that ignores commercial realities and displays partiality towards dominant groups. The institutional framework must balance the interests of the private sector, labor and the government so that changes might be made which respond to evolving market conditions and user requirements. This is normally accomplished through the publication of draft legislation and rules, and the convening of public hearings to obtain the views of all interested parties. Such procedures should ensure that any new regulations reflect commercial goals and that no group benefits at the expense of another.⁹⁴

Balancing the interests of such groups should promote the competitiveness of exporters' goods in international markets and permit public administrators to be more effective in carrying out their mandates. Of course, the balancing of such interests must be based on the legal and economic realities of each country. As an illustration, the U.S. Shipping Act of 1984 provides an antimonopoly exemption for agreements which establish or regulate rates among marine terminal operators as well as for agreements between them and liner vessel operators.⁹⁵ The rationale behind such exemption can be seen from the proliferation of ports in that country and the competition between them, the tradition of private sector participation in port activities and the desire of the legislators to strengthen ports in the light of new intermodal powers accorded carriers through deregulation.⁹⁶ The deregulation of ocean and land carriers permits them to formalize agreements which not only focus services on a limited number of ports but also enormously strengthen their negotiating position vis-a-vis ports. Such an exemption seeks to balance the interests of marine terminal operators, carriers and government, but care must be taken to ensure that it does not lead to a cartel pricing structure among terminal operators and jeopardize a country's foreign trade.

The authority of governments must be clearly defined and limited to ensure that they do not attempt to control the discretion of private-sector managers or to engage in competitive port operations. As examples of the latter point, the U.S. Urban Mass Transportation Act of 1964, as amended, seeks to establish a basis for the participation of private interests in that industry. Section 3(e) of the Act specifically protects private interests from unreasonable and unwarranted competition from public mass transportation companies.⁹⁷ Similarly, article 85(1) of the Treaty Establishing the European Economic Community (Treaty of Rome) prohibits anticompetition clauses in contracts for the sale or transfer of enterprises unless they are necessary, in terms of both their duration and geographical scope of application, for the reasonable and fair protection of purchasers of such enterprises.⁹⁸ As a consequence, the institutional framework for ports should ensure that following the execution of an agreement by a government with private interests for the provision of port services and port facilities, it could not offer competitive services or facilities which are directed toward substantially the same market. However, such a framework should permit governments to execute similar agreements with other private interests which would compete in the same markets. If a government were to determine that it would be in the public interest for it to offer such services and facilities, private interests should be fairly compensated for any loss of contractual rights.

3. Changes to national port administrations. There are numerous options for port administrative structures, but the guiding principle for governments should be to establish an institutional basis which would make the greatest contribution to service and facility innovation, productivity and cost-effectiveness, while, at the same time, encouraging a wide-range of economic activities in the hinterland served. There are limited exceptions, but the ownership, administration and operation of ports in Latin America and the Caribbean is either wholly private or public; that is, private cargo facilities are usually limited to the handling and storage of the owner's cargoes, and public-sector installations are dedicated to the handling and storage of all other cargoes. In contrast, most ports of Northern Europe are owned and admin-

nistered by municipalities and state governments, but cargo-handling and storage services are usually offered by private interests.⁹⁹ All cargo-handling services at the ports of Bremen and Bremerhaven are carried out by private companies at terminals leased from the City of Bremen for periods of from 15 to 20 years. The cargo-handling superstructure --warehouses and equipment-- at the ports is provided by private stevedores and in most cases by the major stevedore, Bremer Lagerhaus Gesellschaft (BLG). There are no government grants or loans for the construction of major infrastructure projects.¹⁰⁰ This administrative structure permits the City of Bremen, port managers and private terminal operators to create a coherence in their activities so that they might earn a reasonable return on investments.

Port administrations have a wide range of functions which combine characteristics of both public bodies and commercial businesses. A common form of port administration in industrialized countries would be the independent board, which consists of persons appointed by the state or municipal governments. A study carried out in the U.K. recommended that the maximum size of an effective port board should be no more than 15, and the boards of British ports usually have 13 members. For its part, the council of administration of the port of Le Havre has 26 members --four are appointed by the chamber of commerce and industry, five are appointed by neighboring local government authorities and local community organizations, three are appointed by trade unions to represent the staff of the port authority, one is appointed by trade unions to represent dockworkers at the port, three public-sector officials are appointed by the government to represent the state, two are appointed by the government on the nomination of the Le Havre chamber of commerce and industry to represent port users, and eight are appointed by the government for their experience with port problems, maritime navigation, transport and economic matters. In addition, the government appoints a commissioner who is a civil engineer and a controller who is a financial expert.¹⁰¹ The functions of the board of directors are normally limited to activities such as formulating general policy guidelines, approving major capital projects and, most important, hiring expert port managers who usually participate on the board as ex officio members.¹⁰²

A possible variation of this structure for Latin America and the Caribbean would be to utilize the commonly understood three-tier relation between stockholders, boards of directors and professional managers of publicly held companies. Applied to ports, this structure would permit governments, as owners of port properties, to invest in port infrastructures and to participate in the deliberations and decisions of boards of directors. The latter would include representatives of ship operators, shippers, consignees, dockworkers, ships' agents, freight forwarders, Customs brokers, banks, the Customs administration and municipalities, which encompasses both the public and private sectors.¹⁰³ To avoid the owners or governments from having an excessive degree of control over board activities, each of the aforementioned groups should be allowed to select its own representative. This should ensure that each representative on the board is accountable to a specific sector of the industry and that board decisions are not subject to the undue influence of any one group. If the membership on boards of directors is balanced, the selection of port administrators and private terminal operators should be based on proven capacities and not on political connections. This is not to say

that there will be no disagreements among board members, but that by balancing the interests of board participants the results should be reasonably acceptable to all and should have a better commercial orientation than if made solely by public-sector officials.

Private investors have an interest not only in profitability but also in the utilization of new technologies, productivity and cost-effectiveness, and they would have to respond to boards of directors whose membership encompasses the entire port and trading community. To achieve a balance between the interests of private investors, port administrators and the board of directors, and to ensure that no decisional deadlocks occur, governments should give consideration to the procedures for decision making and the possibility of weighted voting. For example, government guarantees are frequently required on loans for capital improvement projects, so its mere presence on the board would give it a greater influence than other members. Under these circumstances, it might be useful to give a greater weight to the votes of exporters and importers on the board, as they are the fundamental reason for the ports existence. In addition, to ensure that key port positions are attractive to recognized industry specialists, the board would probably have to offer renewable employment contracts of no less than three to five years. Except in cases of serious misconduct, it should not be permitted to terminate such contracts before the expiration of the term for which a person was appointed. Of course, the activities which constitute such misconduct must be clearly defined. This would preclude the discharge of capable persons for politically inspired reasons.

IV. MIXED PUBLIC-PRIVATE OPTIONS FOR RESTRUCTURING PORTS

The options presented in this part provide governments and private investors with numerous alternatives for shared participation in port services and port facilities. Mixed public-private participation should ensure that the institutional framework will be compatible with market requirements and economic growth goals, as well as their individual expertise and investment capacities. The globalization of trade and the adoption of export-oriented macroeconomic policies emphasize the mutually dependent roles of the public and private sectors not only in the achievement of economic growth goals but also in the provision of port services and port facilities which are innovative, productive and cost-effective. Even the last option presented in this part, the sale of ports, demonstrates that governments retain an important and ongoing interest in services and facilities through their regulatory regimes, articles of incorporation and contractual arrangements. The options presented are tools which, if supported by an appropriate institutional framework, can ensure port services and port facilities are utilized to meet the needs of users, not those of dominant groups.

To privatize or to make private is often viewed as making something exclusive, closed or non-public and without public purpose. In practice, a marine terminal can be dedicated to one shipping line, but the considerable investments required usually preclude such exclusivity unless the ship operator has control of substantial volumes of cargoes. Even where a port is small or where there are limited alternatives for additional installations, the process of competitive bidding by private interests for cargoes, contracts, concessions, joint venture arrangements and others contributes to the promotion of commercially oriented port services. The reason governments have come to consider the private provision of port services and port facilities is the same for all of the options presented in this part: if they can be provided more effectively by private interests, with either service improvements or cost savings or both, then serious consideration should be given to the accommodation of socio-political goals within a commercially oriented institutional framework. The options for restructuring port services and port facilities presented in this part are not mutually exclusive, in that the selection of one does not preclude the simultaneous utilization of others. Except for the sale of a port, government port administrations can grant concessions, while, at the same time, entering into joint ventures and authorizing the handling of third-party cargoes at single-user terminals. In other words, they can be joined in different configurations to form separate units within a single port so that different services and facilities might be offered.

To assume that any of the mixed public-private options presented in this part would lessen government control over ports is simply untrue. Government participation will continue through its institutional framework, the monitoring of private-sector activities, participation in earnings, incentive schemes and contractual arrangements. Whether governments retain title to port equipment and properties is not the major issue. The decisive question is not who has ownership of port equipment and properties, but if they are utilized on a commercial basis. The choice is not public or private provision of port services and port facilities, but which of many possible mixed public-private options can be utilized to achieve the desired commercial objectives. The op-

tions for such involvement which would contribute to those objectives range from the installation and maintenance of navigational aids, wreck removal and dredging to pilotage, towage and the provision of berths, storage areas, and cargo-handling services and equipment. Of the many options which might be utilized to enhance the productivity and cost-effectiveness of cargo-handling services and facilities, some of the more important include (i) private stevedoring companies, (ii) management contracts, (iii) concessions, (iv) joint ventures between the public and private sectors, (v) authorizing single-user terminals to handle third-party cargoes, (vi) the conversion of public-sector ports into limited liability companies and (vii) the sale of ports.

A. PRIVATE STEVEDORING COMPANIES

The basic reason governments utilize private stevedoring companies is to create a competitive environment for the provision of cargo-handling and storage services. The utilization of private stevedores does not, however, eliminate the responsibility of governments to promulgate regulations in areas such as the rights of workers to form and participate in unions, right to strike, use of arbitration boards, and employer responsibilities regarding maximum number of hours of work, minimum wage, and retirement and health benefits. Such regulations do not lessen the commercial base for port operations, but, rather, balance competing interests so that no one group can obtain monopoly rents. Indeed, private stevedores are more flexible than their public sector counterparts, since the former utilize market-oriented employment regimes and are not required to follow government regulations to hire, promote, discharge and discipline employees. This arrangement avoids many of the problems facing public-sector ports, such as deterioration of equipment and facilities, and low productivity by replacing the seemingly inexhaustible budgets and socio-political obligations of governments with the profit motive of private companies, while leaving the port and its facilities under the direct public ownership. Governments would continue to receive all revenues generated by the port, except those related to cargo-handling and storage services. They would, however, participate in the latter through taxes on the incomes of private stevedoring companies, and through the rental of equipment and facilities.

For governments desirous of utilizing this option, they should consider adopting legislation which requires private stevedores to obtain licenses prior to rendering cargo-handling and storage services. Such licenses should ensure that stevedores comply with certain minimum levels of fitness and authorize them to provide services at one or more port terminals. To encourage competition between private stevedores, governments should allow carriers and cargo owners to contract freely with the company of their choice. Private stevedores often rent facilities and cargo-handling equipment from governments, but they are contracted by, provide services to and receive remuneration from carriers and cargo owners. Private stevedores often invest in their own mobile, non-site specific equipment. The utilization of private stevedores permits governments to retain ownership of ports, installations and most equipment, and to participate in port earnings through payments received from users in the form of dockage and wharfage, and equipment rental and taxes. Governments maintain control over port equipment and properties through their regulatory regimes and the monitoring activities of public-sector port administrations, while cargo-handling operations are carried out by private com-

panies. The national transport secretariat of Brazil is considering the elimination of the monopoly and management privileges of dock labor in order to increase port productivity and reduce costs. Of the measures being evaluated, one involves the creation of private stevedoring companies.¹⁰⁴

Without an appropriate market-oriented labor regime and institutional framework, as presented at parts II and III, the utilization of private stevedores can lead to numerous problems. As an illustration of this point, in October 1990, the Government of Peru issued a decree allowing private companies to provide port services. Even though dockworkers were receiving only US\$130 per month in December 1990, port users had to pay over US\$1 000 per month per worker to the maritime employee's coordinating commission (CCTM) for social benefits --that is, for wage payments to unemployed, but registered, dockworkers. The private sector was given an opportunity to establish enterprises for the loading and discharge of vessels and handling of cargoes, and was to utilize existing port equipment. In theory, the private stevedores were to operate in competition with the CCTM, a state-owned monopoly which has controlled the provision of port labor for 55 years. An estimated 16 stevedore enterprises were established, but some of them saw the new law as an opportunity for immediate enrichment and a chaotic situation resulted. The enterprises seeking such enrichment contracted cheap and unqualified labor to operate cranes and cargo-handling equipment, as well as to handle and stow cargoes. As a consequence, the CCTM was able to retain its monopoly and continue loading and discharging vessels in its traditional non-competitive fashion.¹⁰⁵

To rectify this situation, in January 1991, the Government of Peru issued additional decrees ending the monopoly of CCTM and stevedore charges for loading refined and concentrated metals at the port of Callao immediately dropped over 76% to US\$0.95 a metric ton. The impact of such a reduction in charges can be seen from the number of ships using the port. In February 1991, 23 ships utilized the port of Callao, while only three in December 1990, and utilization is expected to increase two or three times by mid-1991. The Government also issued decrees ending the storage monopoly of the national Customs administration, and now permits private individuals to manage Customs warehouses. To assist the national port enterprise (ENAPU) permanently transform its cost structure, the compensation of laborers and CCTM personnel is calculated by a formula which takes into account highest salary, years worked, the union to which they belong, and the port in which they worked. The amounts paid have reached US\$22 000, with the average being US\$10-12 000, and it is estimated that the total should be around US\$22 million. In this context, the port of Callao has increased its operations from 18 to 24 hours per day and dockworkers are expected to earn four or five times more than that received from the CCTM, as they will no longer have to make contributions to the wages of unemployed port labor.¹⁰⁶ Thus, mixed public-private options for restructuring ports should not be utilized in isolation, but as part of a broader program of institutional reform which is designed, among other things, to ensure that private interests will carry out their activities in a commercial manner.

B. MANAGEMENT CONTRACTS

Governments often utilize management contracts for public-sector ports when they lack sufficient expertise to operate them efficiently.¹⁰⁷ They are agreements between governments and private companies to provide management control of certain functions of a port for a specified period and at an agreed compensation. Management contracts are flexible and can be utilized for any service, group of services or for an entire port. They permit governments to retain ownership and, at the same time, obtain needed management expertise, reduce costs and respond to changes in market conditions through greater enterprise flexibility. Most governments preselect potential contractors on the basis of demonstrated competence and make the final choice through competitive bids. Contractors are given extensive management authority and operational control of port activities, and are paid by governments regardless of the profitability of the port. To provide contractors with a stimulus to control costs and improve productivity, governments often utilize incentive payments as part of their compensation, even though the public port administration retains full responsibility for the commercial risks facing the port, as well as for negotiating labor agreements, ensuring sufficiency of working capital and payments on existing liabilities.¹⁰⁸ The principal means for monitoring management contracts are regulatory regimes, the agreement itself and the very real risk facing private contractors that the arrangement might be invalidated or not renewed for non-performance.

The attractiveness of management contracts lies primarily in the capacity of governments to oversee and control the provision of port services more effectively and, possibly, at a lower cost than if they were provided directly. Management contractors have only the control and authority specifically granted in the agreement with the government. Contractors may have wide authority over existing personnel, but the latter usually remain public-sector employees, and subject to government pay scales and conditions. A major concern of governments is the profit motive of private contractors. For example, what would prevent a contractor from reducing its own personnel requirements, engaging in contraband or providing commercially appropriate services only to selected carriers and cargo owners so as to enhance its profitability? Part of the answer lies in the continuing on-site presence of government port administrations, another is found in the natural desires of private entrepreneurs to safeguard a lucrative enterprise and a final lies in the regulatory regime which should require financial strength, experience and accountability of contractors. In addition, governments can withhold a portion of payments to contractors for any deficiencies in carrying out the agreement, and adopt additional regulations to correct any service or facility inadequacy. Thus, management contracts do not eliminate government control over port activities, but, rather, redirect it to ensure they are carried out according to contract provisions.

For governments utilizing this option, it has been found that they can change contractors much easier than discharge employees and the possibility of such a change has a positive impact on the former. In addition, private companies usually employ their human, physical and financial resources more efficiently, and achieve greater economies of scale by consolidating operations and making better use of cargo-handling equipment. Contractors can pay higher

salaries to attract key skills and utilize part-time employees which are not subject to government employment regulations. Governments considering this option might prepare a study to establish the costs of existing public-sector port services and of possible cost reductions if private companies were to carry out the same activities. Reputable accounting firms can be utilized to establish public sector costs and a comparative basis can be established by requesting estimates from potential contractors. Once a cost study has been prepared, it will probably be easier to obtain support for the execution of a management contract. The same accounting firms can be utilized as independent third-parties to ensure that bids are truly competitive and that the amount of the contract, its period or conditions do not favor one bidder.¹⁰⁹ The agreement should be drafted utilizing the cost study to ensure that all activities contemplated are included. Once a contractor has been selected, governments must monitor its activities, through the port administration, to verify compliance with the agreement.¹¹⁰

As with all restructuring options, management contracts must be supported by economic policies which seek to promote trade, an institutional framework which allows market forces to govern port activities, a productive workforce whose collective agreement permits the attainment of commercial goals and an attractive environment for private-sector investments, or the risk of transferring a public-sector monopoly to private interests could become a reality. As an illustration of this point, without deregulation and decentralization, which promote competition between ports and between terminal operators of the same port, exporters and importers are not likely to participate in the cost savings that should result from such contracts. Even where port services are not financially viable, governments can enter into management contracts with private interests. The reason is that the cost of unprofitable activities are already being assumed by governments and will be reflected in the amount paid to the contractor. In addition, such contracts could be part of an intermediate step leading to greater private participation in the provision of port services and port facilities. Governments could contract with skilled private managers to make the port commercially viable and then transfer it to the private sector. In any event, the primary criterion for the selection of contractors is not price, although that factor is important, but the capacity to succeed in a competitive environment and to implement certain policies deemed important by the government.

C. CONCESSIONS

Governments commonly grant port concessions to private interests when they wish to reduce the demands on fiscal revenues, or seek to improve the commercial operations of their ports. Concessionaires assume all commercial risks for operating the port or terminal and must make payments to the government regardless of their own profitability. As a consequence, they usually require a guarantee of operational autonomy and decision making with freedom from interference by government ministries during the term of the agreement. In addition, concessions permit private interests to collect charges directly from carriers and cargo owners for services rendered.¹¹¹ Concessions permit governments to retain ownership of capital assets and to utilize the specialized skills of the private sector, to participate in the income generated through lease payments and to benefit from the receipt of tax revenues. They are usu-

ally awarded on the basis of competitive bidding. If the same dockworkers are utilized, they generally move from the regulations governing public-service employment to market-oriented arrangements. This allows governments to reduce the costs involved in their own managerial, as compared with regulatory, endeavors. Private interests often prefer concessions to ownership, because they can avoid certain risks, reduce their investments and negotiate contracts of a sufficient duration to permit them to recover their investments. Governments of the ECLAC region have begun to utilize concessions to modernize infrastructure.

In 1987, the Government of Brazil adopted Decree No. 94.002 which authorizes the national highway department (DNER) to execute contracts with private interests for the construction, operation and maintenance of federal highways. These concessions must be controlled by Brazilian citizens and are to include an agreed formula for the calculation and collection of tolls.¹¹² In 1989, the Government of Mexico began offering concessions to its private sector for the construction, maintenance and operation of 3 200 miles of highways. Private interests are permitted to collect tolls for 12 years, after which the highways revert to the Mexican Government.¹¹³ Mexican private interests are also to be granted concessions to invest in and operate port storage areas, docks and cargo-handling equipment.¹¹⁴ The Government of Argentina decided to grant 12-year concessions to domestic interests for the improvement and maintenance of 9 800kms of roads, about one-third of the national network. The first five concessions of 900kms to 1 538kms were awarded, encompassing investments of US\$1.2 billion, with private interests allowed to charge tolls of up to US\$2.30 per 100km for private automobiles and US\$16.80 for five-axle trucks. Due to opposition from the business community and the public, such tolls were suspended and later reinstated at greatly reduced amounts.¹¹⁵ Finally, Argentina is to modernize its 21 200-mile railway network, which had an estimated operating deficit of US\$400 million in 1990. The Government has commenced by awarding a 30-year concession involving 5 200kms of its lines to a consortium of domestic and foreign interests, with the state retaining 16% and workers taking 4% of the shares, which is to invest US\$112 million in the first five years.¹¹⁶

Port concessions can be utilized in a similar manner to create a basis for private sector involvement in the provision of port services and port facilities. At the ports of Bremen and Bremerhaven (Federal Republic of Germany), all cargo handling operations are carried out by private companies at terminals leased from the city of Bremen for renewable periods from 15 to 20 years. Similarly, all cargo handling and warehousing services at the port of Le Havre (France), are carried out by private stevedores. They utilize berths and equipment under the terms of concessions from the public-sector port authority, and certain stevedores are to be granted preferential use of particular berths so that they might install their own equipment.¹¹⁷ With regard to the ECLAC region, the national shipping line of Colombia, Flota Mercante Grancolombiana, was authorized by the national political, economic and social council (CONPES) to construct a US\$55 million private 43 hectare container terminal at the port of Cartagena. The Flota is to provide 50% of the funds, with the remainder from both the public and private sectors, and it is to be completed in 1992.¹¹⁸ The public-sector port of Santos (Brazil) has leased three warehouses to private investors and is in the process of negotiating two

more. The lessees have agreed to make investments of US\$40 million, which include increasing the capacity of two government-owned, dry-bulk loaders from 700 to 2 000 tons per hour.¹¹⁹ Finally, the Government of Mexico is seeking private participation in the construction and operation of bulk-cargo ports in Mazatlan, Altamira, Guaymas and Progreso, and facilities for passenger ships in Alcapulco, Cozumel and Puerto Vallarta.¹²⁰

Concessions, in common with management contracts, create a contractual relationship between private interests and governments, and provide a very flexible institutional arrangement through which the latter can regulate port services and port facilities. The distinction between them can be blurred and depends on the specific terms of the agreements. For example, a government may require contractors to invest in a port or terminal to ensure a greater commitment to contractual objectives or it may allow concessionaires to reduce their financial risks through rental payments based on profitability. The selection of concessionaires is often based on the largest payments that will be made to governments, while the selection of contractors is on the lowest expenditure made by governments. A policy which requires selection of concessionaires and contractors on such a basis ignores many factors other than price which control entrepreneurial fitness and service quality. Put another way, concessionaires should be selected not only on the basis of the largest monetary sum offered and contractors on the least bid, but also on their demonstrated expertise to carry out the identified port activities in an innovative, productive and cost-effective manner. Both management contracts and concessions may be utilized as a means to make a port attractive to potential investors.¹²¹ As a result, the institutional framework should be sufficiently flexible to permit the establishment of committees composed of experts to select the most appropriate contractors and concessionaires from all aspirants.

D. JOINT VENTURES BETWEEN PUBLIC AND PRIVATE SECTORS

A joint venture is an undertaking by two or more independent economic actors to collectively carry out a commercial undertaking for profit. They usually involve dissimilar entities that cooperate through a contribution of skills, and resources to reach a common goal, and can be organized as partnerships or corporations. Joint ventures may be temporary, for a fixed period, or of an indefinite duration. For purposes of this document, joint ventures encompass the participation of a government and private interests in the provision of port services and port facilities. Joint ventures allow governments to utilize the commercial, technical and managerial expertise of private interests, while maintaining a high degree of control over their activities. Participants share not only profits and losses but also the collective management of properties.¹²² For ports, joint ventures are often structured around governments furnishing docks and jointly financing with private interests any required investments in cargo-handling equipment and storage facilities, while such interests make contributions of services, skills, knowledge and materials. In Mexico, for instance, cargo-handling services are provided by corporate joint ventures between the government and labor unions, known as port service enterprises, which are owned 25% by the former and 75% by the latter. However, without the balancing influence of other private sector interests such as shippers, consignees and carriers, an excessive number of unions and

national employment requirements have complicated the provision of services, raised costs and limited productivity.¹²³

A joint venture is a mutual undertaking which requires a commitment on the part of all venturers to the common objective. The commitment should form part of the agreement between them and have a high degree of specificity concerning the rights and duties of each, capital and service contributions, sharing of profits and losses, transferability of shares, right to subcontract obligations and procedures for the resolution of disputes. The risks should be divided in a joint venture according to the strengths and expertise of the participants. For example, the private sector might best accept short-term risks associated with operating a port, and governments could assume long-term investment risks for docks and cranes, as well as the obligation to obtain necessary licenses and permits. Offsetting these factors are the potential delays in government decision making, and of being subject to political influences that often conflict with commercial priorities of the trade community, the joint venture and private-sector participants. It is important that management act in the common interest of all venture participants, so provisions for identification and selection of commercial objectives, and decisional authority are very important. Finally, provisions must also be made for the discontinuance of the venture, and should include provisions which permit a determination of value of the assets, mutual buy and sell options for the parties and procedures for a sale to third parties.

Joint ventures in ports are attractive to both governments and private interests, but for different reasons. Governments utilize joint ventures to reduce their administrative and financial burdens, promote competition, improve efficiency and lower costs, as well as to participate in earnings that might otherwise be reserved for the private sector. For private interests, joint ventures are viewed favorably where complete ownership of assets and operational control are not allowed, or where the magnitude of the commercial risks or capital requirements are beyond their capabilities. A joint venture permits the public sector to retain its status as a port operator, even though certain activities are executed jointly with private interests. However, when the government is a participant, the question of each venturer's authority and responsibility is especially important, as it can become a fundamental determinant of the commercial viability of the venture itself. For example, a government may have policies of cross-subsidization between profitable and loss-making activities, and the creation of employment for persons in port cities. Governments that burden their ports in this manner might not be able to find private interests willing to enter into a joint venture. To avoid conflicting economic, political and social goals in joint ventures, the agreement which establishes that relationship must clearly define those areas in which social and political objectives are overriding. Finally, the management of joint ventures should be the responsibility of full-time executives or a dedicated committee.¹²⁴

Most ports of Belgium, the Federal Republic of Germany and the Netherlands are owned and administered by local government authorities and are not legally or economically independent entities. Nonetheless, they enjoy great commercial and managerial autonomy because governments utilize experts from the private sector to operate them. Cargo-handling services at the ports of

Bremen and Bremerhaven are the responsibility of one stevedore, BLG, a limited liability company in which the city of Bremen owns 51% of its stock. The BLG is responsible for handling approximately 80% of the cargoes at Bremen and all of those at Bremerhaven, except for oil and certain other bulk cargoes. To ensure that BLG does not abuse its dominant position and operate as a commercial enterprise, it is governed by supervisory and executive boards. The supervisory board has 16 members -- eight are elected by shareholders and eight represent different employee groups. The executive board consists of six members who are appointed by the supervisory board for renewable five-year periods. One member of the executive board is appointed as president and the others are responsible for operations, finance, technical matters, marketing and labor. The supervisory board provides general policy guidelines and approves major investment proposals, while the executive board is responsible for the operations of BLG.¹²⁵ Thus, mixed public-private joint ventures can optimize the provision of port services and port facilities by drawing upon the relative strengths of each.

E. AUTHORIZING SINGLE-USER TERMINALS TO HANDLE THIRD-PARTY CARGOES

The long-term success of any program to restructure public ports is largely determined by the extent to which it promotes inter- and intra-port competition. One of the most readily available means open to governments to reach that goal would be by authorizing single-user terminals to handle third-party cargoes. As was brought out in the introduction, Latin American and Caribbean governments own and operate general-cargo ports, and the private sector is allowed provide port facilities and services for their own cargoes. Public-sector general-cargo ports are usually monopolies that are overstaffed, inefficient and costly, while their single-user counterparts find themselves with efficient installations which are often underutilized. In 1989, for instance, the 244 single-use private terminals in Brazil handled 279.4 million tons of goods, or 76% of the 363.1 million tons which passed through all ports of that country. The Brazilian Association of Private Terminals (ABTP) has indicated that the 1989 tonnages could be substantially increased if existing laws did not prohibit them from handling third-party cargoes.¹²⁶ During a recent strike of some 7 000 employees at the public-sector port of Santos (Brazil), the only vessels that managed to load and discharge cargoes were those calling at privately owned and operated terminals.¹²⁷ Finally, representatives of Chile's US\$850 million forestry sector (CORMA) believe that the government should privatize the public sector port administration (EMPORCHI) so that private port companies might better compete.¹²⁸

For most countries of the ECLAC region, the regulatory systems and policies formulated for public-sector ports create non-commercial service configurations and an extensive network of socio-political obligations which must be overcome to achieve national economic growth goals. To authorize private ports to handle not only their own goods but also those of third parties would create competition in the ports sector and, hopefully, a lower cost distribution system for small producers. Small producers do not have large enough volumes of goods to justify the construction and operation of their own port facilities, so they must utilize public ports. Due to the price sensitivity of most export commodities of Latin American and Caribbean nations in interna-

tional markets, the higher costs of public ports means that small producers simply do not utilize idle capacity to produce goods that might not be able to compete in world markets. Access to private ports would permit them to utilize specialized installations for their limited quantities of goods. In addition, small producers are not always small, and the very real possibility exists that through access to world markets some of them would grow into major companies that make proportionately larger contributions to national economic growth goals. Thus, to the extent that regulations might be adopted which permit private ports to handle third-party cargoes, a new competitive element would be introduced into public ports activities which would contribute to a transformation of their institutional structures.

Within each country there is an enormous wealth of experience in the ownership and operation of private ports for the handling and storage of dry and liquid bulk commodities that could be adapted to other cargoes. As an illustration of this point, for many decades the port of Port-of-Spain (Trinidad and Tobago) and its docklabor enjoyed a monopoly position in that country's trades. However, with the establishment of an industrial park at Point Lisas, to take advantage of that nation's abundant supply of natural gas, and the construction of a port the situation began to change. The original installations at Point Lisas were temporary berths constructed for the import of factory and construction equipment, buildings and other materials so as to avoid the high cost, low productivity and pilferage which was common at Port-of-Spain. Once the fertilizer, steel, ammonia and urea plants were completed, additional deep-water facilities were constructed to receive raw materials and distribute finished goods. The temporary berths then began to be utilized for the handling of general cargo imports and exports. Thus, the Government of Trinidad and Tobago introduced needed competition into the activities at its main port of Port-of-Spain when it did not object to the handling of liner cargoes at the industrial port of Point Lisas.

The ports of Point Lisas and Port-of-Spain must negotiate with the same dock labor unions and comply with the same government regulations. The major difference between the two ports lies in the application of that common institutional framework to create totally distinct commercial environments. Point Lisas must ensure the competitiveness of the products of its tenants through a highly productive, cost-effective dock labor force and a minimal bureaucratic interface, as well as actively marketing its facilities to increase the number of tenants in order to lower its overhead cost to each. The competition facing the tenants of the industrial park at Point Lisas led to negotiations with unions and a reduction in gang sizes, three shift operations, weekend work without overtime payments and elimination of container-lashing gangs. In contrast, Port-of-Spain commenced as the country's only port, and has a more restrictive labor agreement, high overtime rates for weekend work and a requirement that container-lashing gangs be utilized. Port-of-Spain reacted to the loss of its dominant position through, for instance, the nomination of its first director of marketing in January 1989, a reduction in the number of dock workers and the initiation of various training programs. Thus, the Government of Trinidad and Tobago permitted the competitive market mechanisms of supply and demand, profit and loss, freedom of entry and exit, scale economies, and customer likes and dislikes to restructure the managerial and operational environments at the public port of Port-of-Spain.

F. CONVERSION OF PUBLIC-SECTOR PORTS INTO LIMITED LIABILITY COMPANIES

The conversion of public-sector ports into limited liability companies is one of the most flexible mixed public-private restructuring arrangements. It permits governments and private interests to divest themselves of ownership by selling shares and, at their option, to become partial or total owners through open-market purchases of shares. Where a public offering is contemplated, it usually requires a range of traditional investment banking services -- valuation of the enterprise, advice on share pricing, preparation of documentation, share purchase schemes for employees and handling the actual sale. Such a divestiture by governments is very similar to an outright sale, which is evaluated in the next section of this part, but with the saving grace that public ownership might be more easily reacquired through open market stock purchases. This option has been utilized extensively by the Government of the U.K.¹²⁹ For example, the BTDB was a government agency dedicated to managing and operating 21 public-sector ports. In 1983, the BTDB was converted into a publicly held company, the ABP, and 51% of its shares were sold at a fixed price to the public. An additional 48.5% was sold by tender offer the following year.¹³⁰ The success of this conversion has led to a legislative proposal which would permit the privatization of the statutory or trust ports such as Tilbury, Dover, Harwich, Belfast and over 100 others.¹³¹ For its part, the Government of New Zealand adopted similar legislation in 1988 to privatize its ports.¹³²

The U.K. Government has found ready receptivity for its privatization program, even though many companies were not profitable, by offering shares of enterprises at substantial discounts to workers and entire companies to managers and workers. The offer price of stock of BTDB, for instance, attracted a thirty-fold oversubscription and an immediate premium of 25% was recorded when the shares were first traded.¹³³ The management of the BTDB became the first board of directors of ABP, dockworkers were allocated a portion of the stock at reduced prices -- with 90% of them purchasing shares -- and the public was also offered shares at discount prices. By including all groups in the privatization of BTDB, the British Government reduced the number of disagreements concerning losses of privileges and rights. Indeed, the preferences and discounts in the purchase of stock given to small investors avoided claims that large institutions would profit from port privatizations. The involvement of many small investors was considered important for a strategic reason: a subsequent government might attempt to nationalize ports if they were held by foreigners or even domestic institutional investors, but it was considered highly improbable with shares held by management, employees and the general public.¹³⁴ As a consequence, a balance between economic efficiency and social equity was achieved through widespread employee and citizen stock ownership. Thus, the Government of the U.K. created an attractive investment package for potential investors and avoided the political costs of a failed share offering.

Another illustration would be the state-owned Japanese National Railroad (JNR). Due to its public enterprise structure and an excessive number of workers, the JNR was losing US\$25 million a day and had an accumulated debt of US\$285 billion. In April 1987, the JNR was converted into 12 limited liabil-

ity companies --six for passengers, one for the bullet train, one for cargo, one for a research institute, one for computer services, one for telecommunications services and, finally, an account settlement corporation. The latter company holds the stock of the other 11 companies, is to sell non-operating assets for the payment of debts, has assumed pension obligations and must retrain excess employees. The new lines have assumed about 62% of JNR debt, with Japanese taxpayers assuming the remainder. The six passenger lines were deregulated and decentralized by island and by areas on the principal island of Honshu.¹³⁵ Following initial difficulties with unions and political groups, such changes permitted the management and labor of each company to establish commercial goals, begin eliminating excess personnel and make commercial use of real property holdings.¹³⁶ By April 1988, one year later, the three lines on Honshu made a profit of US\$1.12 billion, after making debt payments of US\$2.4 billion.¹³⁷ The conversion of JNR into 12 limited liability companies was much more than a change in form --individual rail companies were suddenly exposed to strong competition from numerous private railways, workers were shifted to market-oriented employment regimes, and they were required to comply with the accountability and disclosure standards of publicly-traded companies.

To understand why market forces and institutional changes had such a profound impact on the JNR, even though it remains 100% state-owned, one must go behind them to the Japanese corporate culture. Most corporate directors and workers in Japan identify with the successes and failures of the companies in which they work --it is not just a place to earn money so that they will be able to do what they want, but an environment in which they can develop themselves in trades and professions, receive various medical and retirement benefits, and satisfy their social needs. That culture also emphasizes the importance of belonging to an established enterprise and there is a stigma attached to employees who leave one employer for another.¹³⁸ Before conversion, the JNR was part of a bureaucracy controlled by government policies and objectives, and it was necessary to determine the nature and value of its assets, liabilities and staff. Once the 12 companies were subject to market forces, it became clear to corporate directors and workers that only through their own endeavors would they avoid bankruptcy and that focused their minds and efforts on one specific common goal --providing the services demanded by the public so that they might commercially survive. In this context, Latin American and Caribbean governments considering the conversion of their public ports into limited liability companies, whatever the percentage of stock to be retained, must give careful attention not only to market forces and an institutional framework but also to any economic, political and social factors that could preclude, inhibit or distort such a transformation.

The conversion of loss-making public-sector enterprises into state-owned limited liability companies avoids the major difficulty of a direct sale to private interests --a determination of the value of the enterprise to be sold. Any group opposed to a direct sale can claim that the government enterprise is being sold at a discount to favored purchasers. Only the purchaser would appear to benefit from the sale, so public support is likely to be limited and opposition from relevant ministries, labor, the military and others could be substantial.¹³⁹ As an illustration of such problems, the private Brazilian textile producer Nova America became bankrupt in 1984 and was taken over by

creditor banks when they exchanged their loans for equity ownership. The earlier mentioned state-owned national bank for economic and social development (BNDES) held 51% of the shares of Nova America which, according to Brazilian law, made it part of the public sector. In 1987, BNDES announced that its shares would be auctioned to citizens of that country at a minimum total price of US\$12.5 million. The auction was held in June 1987 at the stock exchange in Rio de Janeiro and BNDES received US\$15.3 million.¹⁴⁰ In contrast, a proposal for the sale of 18 Brazilian public-sector enterprises in 1989 was discontinued following claims that the companies had been intentionally undervalued.¹⁴¹

Limited liability companies are subject to all existing national laws which govern publicly traded enterprises. In this context, the U.K. Government chose to retain a reduced percentage of shares in many companies so that it might vote as an ordinary shareholder, but without the intention to intervene in commercial activities.¹⁴² To avoid the possibility of foreign exploitation of domestic companies which have been privatized, the British Government also decided to retain a special or "golden" share which allows it to control 51% of the votes of privatized companies. This permits it to reject any acquisition by foreign purchasers if the transaction is considered to be in conflict with national interests.¹⁴³ The "golden share" has been utilized not only in the U.K., but also by the governments of Brazil, France, Malaysia and Senegal.¹⁴⁴ Just as governments have authority and control over all real property within their individual national boundaries, even if owned by foreign nationals, they have a similar degree of authority and control over national ports through antimonopoly laws, regulatory regimes and contractual arrangements with private interests. Indeed, article 2 of the United Nations Charter of Economic Rights and Duties of States provides that each State has the right to regulate foreign investment within its borders in accordance with its laws and regulations, as well as national objectives and priorities.¹⁴⁵

G. SALE OF PORTS

The final mixed public-private option for restructuring a nation's ports is a sale of the entire operation as a going concern to private investors. This is the most complete form of private participation, but it does not eliminate government interest in ports. As a fact, the rights of private investors over such properties are not absolute and are limited by provisions in numerous international conventions, as well as by others in each nation's constitution, laws and regulations. An institutional framework, such as that presented at part III, should be structured to provide governments with assurances that port services and facilities would be furnished without their direct ownership and operation so that national economic growth objectives would be attained. In addition, contracts of sale between the public sector and private investors are much more than a technical device for transferring identified properties and establishing the compensation to be paid. Such contracts are an arrangement by which the conditions of an ongoing interdependent relationship in areas such as participation in profits, employment rights of workers, government utilization of facilities in times of national emergencies and environmental protection would be established. Governments would relinquish their ownership and enterprise functions, but would retain their sovereign control

and decisional authority through the above mentioned instruments and agreements with purchasers. Thus, the sale of a port represents a change in roles for governments from owners, investors, operators and employers to regulators and facilitators.

A government usually considers selling its public-sector ports for one or more of the following reasons: to isolate ports from influence groups, to lessen demands on fiscal revenues, to avoid the creation of or an increase in the public deficit, or as part of a program to restructure its national economy so that the private sector might become the primary motor of economic growth. Many public-sector ports are without adequate financial reporting systems, have improperly valued assets and lack financial discipline, so a sale would require a thorough examination of port finances and operations, real and contingent liabilities, capital structure, labor agreements and earnings history. External auditors could be utilized to make such an examination, establish preliminary values for cargo-handling equipment and properties, recommend a restatement of account values and suggest alterations to the existing accounting system. Private-sector purchasers, which could include port managers, labor and other relevant groups, would utilize such an examination to restructure the enterprise, modify wages and salaries, adopt a more aggressive commercial policy and sell or lease non-essential assets. This requires governments to formulate an institutional framework which creates and preserves competition, and which promotes a dynamic commercial environment for users. Thus, the real impact of a sale is not the withdrawal of governments from ports, but the transformation and focusing of their functions to assist the commercial endeavors of private interests.

There is an important legal dimension to the sale of port properties. For example, the constitution of Brazil does not authorize the government to sell waterfront properties.¹⁴⁶ This mirrors article 27 of the Mexican constitution, and articles 10, 11, 18 and 45 of its Law of Navigation and Maritime Trade, which provide that maritime properties belong to the nation, are inalienable and can only be utilized by private interests through concessions or permission granted by the Federal Executive, with investments reverting to the nation at the end of the agreed period. On 18 July 1991, however, article 45 was amended and licenses can now be granted to private interests so that they might provide services at public ports for periods of up to 30 years.¹⁴⁷ Other obstacles to the sale of port properties are clauses in loan agreements which preclude any transfer without creditor approval, as well as commitments to pension funds, suppliers, contractors, concessionaires, customers and employees. Even though such obstacles will vary greatly from country-to-country, the restructuring team must prepare studies which identify such impediments and make concrete recommendations for legislative changes to encourage the participation of private interests in port services and port facilities. Such recommendations should include statutory authority for the sale to private individuals or to state and municipal governments, and the promulgation of an institutional framework to govern private investors.

Those opposing the sale of public-sector ports often allege that governments have a greater capacity to accept very low returns on investments over extended periods and to absorb unprofitable operations so that longer term goals might be met, and that private interests would have to seek funding from

private sources and this would result in higher capital costs. The capacity of private individuals to obtain funds does depend on the potential return on investment, but this ensures a market allocation of resources and their commercial utilization. In other words, capital markets play a key "regulatory role" in promoting the commercial performance of private industries.¹⁴⁸ A sale does not preclude governments from making low-cost investment funds available to private interests so that desired long-term goals might be achieved. It is also claimed that port charges would increase if they were required to pay property and income taxes. Such tax payments would reduce others paid by the general public and should create an incentive for ports to improve their productivity and cost-effectiveness in order to remain competitive. Public-sector ports can only do what a nation's laws, regulations and policies grant them the power to do. For example, efforts of the port of Seattle (U.S.) to invest in an intermodal rail system were halted by claims of private railroads that it was not an activity for the public sector.¹⁴⁹ Thus, to create an appropriate environment for purchasers, governments must elaborate a market-oriented institutional framework, as was presented at part III.

The setting of a sales price which is acceptable to both governments and purchasers is subject to an appropriate basis for valuation, arms-length bargaining between parties and, often, political influences. For example, the Government of Chile is investigating the sale of numerous public-sector enterprises by the state development agency (CORFO) which allegedly produced losses of US\$2.2 billion because prices were less than book value and, in some cases, less than stock market value.¹⁵⁰ In response to claims that six hotels were sold at reduced prices to political favorites, the Government of Venezuela adopted a law in 1986 to ensure that it would receive a market-determined compensation from the sale of public assets. The law created a five-member commission to sell certain "non-strategic" public properties at prices established by a variety of methods, including discounted cash flow, and formulated a process for bidding as well as numerous other procedural requirements.¹⁵¹ Another closely related problem involves how the sale is to take place and the extent to which purchasers are to assume existing liabilities and employment obligations. The sale can be carried out at an auction, through competitive bidding or simply by making an offer to preidentified parties. In the latter case, it will often be preceded by an indepth search for appropriate purchasers. The extent to which existing port obligations are to be transferred to purchasers is a case-by-case matter which largely depends on factors such as the willingness of creditors to accept private investors, the need for government guarantees, port profitability, condition of its physical infrastructure and many others.

Where public-sector ports cannot be sold as going concerns, governments might have to create a basis which is attractive to private investors. The private sector might find that ports with extensive debt, non-commercial labor agreements, and deteriorated plant and equipment present too great a risk for the achievement of profitability within a reasonable period of time. Under these circumstances, governments might have to write off existing liabilities, assume the responsibility for compensation payments to redundant workers and, possibly, make or guarantee loans to private investors for the rehabilitation of plant and equipment. Such measures should be of limited duration and so

specified in the agreement between a government and private investors. It could also be appropriate to commence the sale of a public-sector port through the creation of private stevedoring companies, joint ventures and awarding of concessions in order to eliminate inefficiencies and create an attractive investment environment for private interests. Where governments cannot or do not wish to create such an environment, a port might be dissolved and the assets sold under a contractual arrangement which obligates purchasers to employ a substantial portion of the workers in exchange for various limited-term government incentives. Thus, the methods by which ports might be sold depend on the actual conditions and objectives sought in each case.

V. THE IMPLICATIONS OF RESTRUCTURING PORTS

Government is a social contract between citizens to administer their common interests. It is the function of a government to respond to the needs of the people it represents and, without a carefully formulated institutional framework, it is most difficult to avoid the transmission of economic, political and social pressures of dominant groups to public-sector enterprises. Since most Latin American and Caribbean public-sector ports do not operate in a competitive environment, as they have been isolated from market forces by government decrees, regulations and policies, the potential for progressively improving productivity and cost-effectiveness through the adoption of new technologies, improved work rules and incentive pay schemes is, at best, reduced. Public-sector port administrators have acquiesced to the demands of dominant groups and this has led to the continued utilization of labor-intensive cargo-handling technologies far beyond their economic and technical lives, the employment of an excessive number of workers and work rules which are incompatible with trade requirements. In addition, existing labor regimes and agreements either preclude the utilization of more productive cargo-handling equipment or require that the same number of workers be employed regardless of the fact that they are unnecessary. Thus, the isolation of public-sector ports from market forces has had a negative impact on productivity, costs, labor relations and the scale of operations, and has led to a disregard of the penalties and rewards of the marketplace in decision making.¹⁵²

The involvement of private interests in traditional public sector activities is not new for Latin American and Caribbean governments. At all levels, governments of the region have utilized private sector interests to identify problems, to suggest institutional and regulatory reforms, to design buildings, docks, roads, bridges and even uniforms for stewardesses on their national airlines, and to build, man, house and operate government owned enterprises. However, the historical justifications for government control and ownership of ports are so strong that private sector involvement in port services and port facilities has met with substantial resistance from public port administrations, dockworkers, the military and other dominant groups. Public-sector ports are expected to achieve a wide-range of conflicting objectives such as raising productivity while utilizing inappropriate technologies and controlling costs while employing an oversize workforce. Usually, public-sector ports are the only employer in surrounding communities, a source of political strength, part of a nation's defense structure and there are multiple ministries involved in every detail of port activities, all of which limit the possibility that commercial decisions might be made. This legacy greatly transcends that faced by the private sector in the earlier mentioned activities and establishes the (i) economic, (ii) political and (iii) social parameters which must be considered in an evaluation of the implications of such involvement in port services and port facilities.

A. ECONOMIC

Numerous studies have been carried out in an effort to determine whether public, private or mixed public-private ownership and operation of enterprises will result in greater productivity, earnings, cost savings and investments. There are enormous problems of isolating such variables from other factors

that influence performance, but as a whole they have assign greater earning capacity and commercial flexibility to the private sector.¹⁵³ Such studies have usually focused on municipal services, public utilities and health care institutions of industrialized nations. For example, in 1979, a study of refuse collection in New York City concluded that when that activity is carried out by the public sector it costs from 29% to 37% more than by private interests. The reasons for such a difference in costs are that municipal governments use 3.2 workers for a collection crew compared to 2.1 for a private firm, absenteeism for municipalities amounts to 12% of all workers and only 7% for a private company, and the public sector employs less productive vehicles.¹⁵⁴ In another case, the per diem costs of U.S. Veterans' Administration hospitals, when compared with private hospitals, were found to be approximately 50% less expensive.¹⁵⁵ When total costs were considered, however, the same hospitals were found to be 70% more expensive for acute inpatient care, 48% greater for surgical care, and 140% higher for nursing home care than private ones. The higher total cost is a result of using average bed occupancy as a basis for government funding, which creates an incentive for Veterans' hospitals to not discharge patients until another is admitted.¹⁵⁶

These and other studies are frequently cited by those seeking to advance or retard the participation of private interests in public-sector activities. The absolute adherence to the experiences of one industry, as an indication of what might happen in another, is usually misleading. Undoubtedly, such experiences are instructive and provide a useful orientation, but they must be utilized with caution because of widely varying structures of the industries being compared. As an illustration, for many years port deficits were considered of minimal importance and a matter that could be corrected with larger budget allocations or simply by raising charges. However, such increases for nations which have adopted export-oriented macroeconomic policies will ultimately affect the price of both exports and imports. The recognition of such impact also leads to an awareness that ports are structurally competitive; that is, even though in possession of monopoly positions vis-a-vis their hinterlands, they must respond to the competition faced by the goods they handle in order to commercially survive. The cost of port services directly influences the capacity of goods to compete in international markets, while the costs of refuse collection and hospitals, mentioned in the previous paragraph, are non-tradeables and do not attach to tangible goods that must compete in such markets. Thus, comparisons of privatization experiences between industries with different structures are subjective at best and often create an untrustworthy basis for decision making.

Many Latin American and Caribbean producers have found that the competitive advantages of their goods in international markets have been eroded by inefficient, high cost ports. The restructuring of public-sector ports to permit private involvement would impose the market system of penalties and rewards, and would identify inefficiencies, monopoly rents paid to dominant groups, and the extent of excessive budget allocations and unnecessary subsidies. A reduction in government contributions implies that previously committed public funds can be utilized more productively elsewhere in the economy. This may generate additional employment, reduce the current fiscal deficits, and raise domestic savings and public investment. Nonetheless, such involvement has been resisted on the basis that private interests will have a domi-

nant position, demand monopoly rents and distort the efficient allocation of resources. Paradoxically, most public sector port administrations already have dominant positions, allow numerous groups such rents and distort resource allocation. The very government agencies which were established to preclude such consequences have transformed a structurally competitive industry into a monopoly. Under these circumstances, the economic impact of the private provision of port services and port facilities is best evaluated from its influence on (i) productivity and service quality, (ii) commercial performance, (iii) institutional modernization and (iv) transaction costs.

1. Productivity and service quality. The continuous stream of laws, regulations and policies adopted over many decades to improve the productivity and service quality in Latin American and Caribbean ports demonstrate clearly that those factors cannot be mandated by government fiat. The laws of supply and demand result in equilibrium and maximum efficiency only in an idealized, perfectly competitive market. Since these markets seldom occur, the factors which determine the commercial viability of both public and private ports, such as productivity and service quality, must specifically be taken into account. For example, four months after the October 1988 bankruptcy sale of Aeromexico to the company's union (35%) and Banco de Mexico (65%) for US\$330 million, 97% of its flights arrived on time, compared with an earlier average of 75%, and complaints concerning customer service declined dramatically. These improvements were accomplished even though the number of Aeromexico employees decreased from 11 373 to around 3 500.¹⁵⁷ By employing regulatory regimes and policies which are largely divorced from productivity and service quality, governments have placed little or no priority on entrepreneurial aggressiveness, restrained technological innovation and created ports which are overstaffed, inefficient and very expensive. It has become far easier for public port administrations to persuade a regulatory agency to increase port charges and government contributions to cover higher labor rates than it is to generate ideas acceptable to labor leaders which might improve productivity and service quality.

The competitiveness of internationally traded products is greatly influenced by the overall transit time required for moving goods from origin to destination. To the extent that port services are overly time consuming, they represent an unnecessary increase in transit times and a loss of earnings on the capital invested in inventory.¹⁵⁸ An exhaustive study on price competitiveness in international trade found that buyers are often willing to purchase more costly goods if they have shorter, highly reliable delivery times.¹⁵⁹ The capacity of exporters of the ECLAC region to offer more dependable and frequent delivery times than producers of other regions is an important competitive advantage. For ports that do not offer cost-effective services 24 hours-a-day, seven days-a-week, the consequences can be enormously detrimental to a country's foreign exchange receipts, domestic investments, employment creation and to the earnings of exporters. Ports cannot increase vessel speeds, but they can eliminate the time goods remain in ports due to the above mentioned factors by being more productive, negotiating labor agreements that reflect trade requirements, carrying out training programs, and by working with user groups to facilitate trade documentation and procedures. Thus, ports can create an important competitive advantage for a country's pro-

ducts in international markets through improvements in productivity and service quality.

Most ports carry out similar cargo-handling and storage activities, but the diversity of variables which relate to the types of vessels served, infrastructures and cargo-handling technologies utilized, types and volumes of cargoes, and institutional requirements make it difficult to select a basis for comparing changes in productivity and service quality between ports. Notwithstanding such difficulties, certain inferences can be made from ports which have recently permitted private interests to participate in the provision of services and facilities. For example, since the U.K. Government abolished the Registered Dock Labour Scheme in July 1989, the productivity of dockworkers handling containers has risen by 87% for the fiscal year ending July 1990, and productivity in the handling of conventional cargo increased by 28.4% per port worker during the same period. The removal of traditional task demarcation requirements for dockworkers, together with a radical restructuring of the labor force and a redefinition of work to be carried out in the cargo-handling areas are the main reasons for this dramatic improvement in productivity.¹⁶⁰ Likewise, privatization of the container terminal at the port of Klang (Malaysia) in March 1986 led to a lowering of costs and an increase in productivity, both of which contributed to a growth in the number of containers handled from 394 000 TEUs in 1989, which was a 23% increase over 1988, to 497 000 TEUs in 1990.¹⁶¹ Due to its success with the container terminal, the Government of Malaysia is to privatize the remainder of port Klang and the port of Malacca by mid-1991, as well as all ports in the country by 1993.¹⁶²

The Government of Chile created competition in cargo-handling and storage operations by authorizing the private sector to establish stevedoring companies, which led to the formation of 79 companies. These changes had a positive impact on costs, productivity and service quality. Cargo handling productivity at the port of Valparaiso increased from 2 060 boxes of fruit per hour in 1978-1979 to 6 500 in 1985-1986, which decreased vessel port-stay times from 129 to 40 hours and per box costs from US\$0.54 to US\$0.26, without any major infrastructure investments. During the 1983-1984 fruit export season, a total of 34 million boxes were shipped from Valparaiso and by 1987-1988 the volume rose to 65 million boxes. The cost for handling tree trunks in the port of San Vicente fell from US\$6.47 per cubic meter in 1980 to US\$3.11 in 1986.¹⁶³ Following the conversion of New Zealand harbor boards into limited liability companies and a rationalization of the workforce, ports of that country immediately became more productive and have generated cost savings for users. For example, the port of Tauranga is handling 60% more cargo per ship per day and the productivity of log handling gangs has risen by 150%. The country's dairy industry, whose annual freight charges amount to US\$107 million, saved US\$5 million or US\$3 500 for each farmer in 1990.¹⁶⁴ Thus, improvements in productivity and service quality can lead to enormous cost savings for port users.

2. Commercial performance. The obstacles public-sector enterprises must overcome to produce goods at cost-effective levels arise out of the need to comply with price controls and socio-political policies, as well as the reduced extent to which administrators, employees and other dominant groups must bear the value consequences of their decisions. As illustrations of this

point, an analysis prepared by the International Monetary Fund (IMF) on the performance of 64 public-sector enterprises in developing countries concluded that,

"... when a normal depreciation was included, and subsidies excluded, the companies showed a loss equivalent to 16 per cent of total activity (operating revenues less operating expenditures)." ¹⁶⁵

A 1988 report prepared by the government auditor (SIGEP) of Argentine public enterprises found that over a 22 year period 13 state-owned companies generated a combined deficit of US\$52.3 billion. ¹⁶⁶ By 1990, it was estimated that all Argentine state-owned enterprises were losing US\$5.5 billion annually. ¹⁶⁷ For its part, a study of Brazilian state-owned enterprises found that a larger rate of profit could have been attained had such industries been run privately. ¹⁶⁸ Thus, public-sector enterprises usually require greater capital contributions and earn less than their private counterparts.

The institutional framework which supports mixed public-private options for restructuring public ports creates a whole new system of penalties and rewards that provides both sectors with incentives to alter their activities. The specter of earnings, losses, competition and bankruptcy requires private interests to constantly adapt their activities to better serve port users so that they might commercially survive. Public-sector ports have a bias against risk-taking and innovation, and permit influence groups to play a dominant role in a wide range of activities, while private interests are largely governed by market forces. The efforts of public-port administrations to control costs are usually ineffective because they cannot demand commercial standards of behavior from dominant groups, as governments have isolated them from the market system of penalties and rewards. Public-port administrators are often required to provide permanent employment and high wages to dockworkers even though they face a cyclical demand which arises from the seasonality of many cargoes, the freedom of shipowners to choose other ports and the irregular arrival patterns of ships. Government operation of ports can be justified if public-port administrators are freed from social-political obligations and the market system of penalties and rewards applies to the entire port community. Otherwise, the cost of satisfying the demands of dominant influence groups can become a burden for even the strongest economy.

As can be seen from the following table, the market system of penalties and rewards greatly assisted ABP between 1983 and 1989 to increase its earnings and being its excess labor problem under control. Indeed, the profits for 1990 indicate a continuance of the trend with the profits before interest and taxes reaching 59.5 million pounds sterling. ¹⁶⁹

COMMERCIAL PERFORMANCE OF ASSOCIATED BRITISH PORTS SINCE PRIVATIZATION
(all amounts are in millions of pounds sterling)

	1983	1984	1985	YEARS 1986	1987	1988	1989
GROSS RECEIPTS*	154.2	138.7	143.9	157.1	196.7	211.8	213.0
PROFITS BEFORE INTEREST AND TAXES	17.0	(4.9)**	19.3	28.4	39.1	46.4	54.3
% RETURN ON CAPITAL EMPLOYED	11.2	----	12.2	16.5	19.7	17.5	19.5
NUMBER OF EMPLOYEES	8 956	8 231	6 872	6 355	5 968	5 478	4 471

* Gross receipts include earnings from cargo-handling and storage activities, as well as those from the rental and sale of office and apartment buildings on port properties.

** Losses due to a prolonged coal strike.

SOURCE: Based on information provided by ABP, London.

As a consequence, there is a compelling need for public-sector enterprises to function as authentic business entities within a commercially oriented institutional framework which is free from excessive bureaucratic constraints.

3. Institutional modernization. Almost without exception, the benefits of private sector participation in public enterprises are usually evaluated in terms of productivity and earnings, costs, service quality and new sources of funding for capital investments, but not in terms of its impact on government institutions. So important are the institutional changes, in terms of supporting efforts to restructure ports, that they far outweigh most other benefits. For decades Latin American and Caribbean governments have assumed the functions of promulgators and executors of regulatory regimes, port owners, operators and employers, and risk bearers, but they have been unable to elicit maximum support for economic growth goals. The participation of private interests in port services and port facilities, and the modernization of institutions through deregulation, decentralization, market-oriented labor regimes and others brought out in parts II and III of this document reduce the role of governments in day-to-day commercial activities and, as a consequence, limit the opportunities for dominant groups to influence such activities for their own benefit.

Existing regulatory regimes have isolated port activities from market forces and created large formal and informal sectors which absorb resources for the payment of unnecessary costs, wages and privileges. For the most part, these payments have become institutionalized as a cost of doing busi-

ness, and they severely distort resource allocation and reduce the funding available for productive investments. This can be seen from the prevailing practice of registered port workers independently subcontracting tasks which are considered dirty, difficult or otherwise undesirable to others of the informal sector, and Customs inspectors increasing their low wages through non-tariff assessments to facilitate the processing of trade documentation. Such practices unnecessarily increase the prices of a nation's exports in international markets. The underlying problems are directly related to the cost of the regulatory bureaucracy and pervasive government intervention that discourages the establishment of efficient business enterprises and probity on the part of government officials, and leads to the creation of a large informal sector.¹⁷⁰ These and other institutional deficiencies are much more serious today than before the oil crisis of 1973, when Latin American economies enjoyed a much greater degree of autonomy. As a consequence, the fundamental issue facing governments is whether they have the political will and bureaucratic resources to establish a modern institutional framework which supports the mixed public-private options for restructuring ports.

Latin American and Caribbean port administrations have been utilized for decades by dominant groups such as labor and carriers to enhance their control over particular activities, to preclude or limit competition and to exact monopoly rents. In a global trade environment, the benefits such groups have been able to exact can no longer be tolerated. Governments must balance the influence of dominant groups by actively seeking out the views of all members of the port community. This will permit governments to gather information which will help them establish commercially appropriate institutions and formulate equally relevant laws, regulations and policies. Certain countries have adopted procedures that permit all interested individuals to comment on proposed regulatory and policy changes. Such procedures ensure participation of affected individuals, transparency in the elaboration of regulations, minimal risk of collusion and corruption, and that the public is informed about possible regulatory changes. The goal of such participation is to ensure that government agencies act in a predictable and systematic manner, treat all those involved fairly, take their opinions into account when decisions are being made and inform them of the results.¹⁷¹ Thus, governments might wish to consider the participation of affected individuals in the formulation of regulations for ports, as well as in the preparation of analyses of alternatives to and the cost-benefits of proposed changes.¹⁷²

4. Transaction costs. The mixed public-private options for restructuring public-sector ports, presented at part IV of this study, involve numerous transaction or start-up costs. Once the appropriate statutory authority for private participation has been adopted, governments must alter the financial and operational structures of public-sector ports in order to create an attractive investment environment for the private sector. The costs involved in such alterations encompass the employment of stock and bond brokers, accountants, attorneys, engineers and consultants, the funding of employee compensation and retirement programs, and, at times, financing the rehabilitation of cargo-handling equipment and facilities.¹⁷³ There are so many variables involved for each country and port that an analysis of such costs is best undertaken with reference to a specific situation. In addition, the financial restructuring and physical rehabilitation of public-sector ports often involve

political questions regarding debts owed to the government, and state loan guarantees.¹⁷⁴ The transaction costs surrounding such questions could be substantial, but they should be viewed as one-time payments which should be much more reasonable than the continuing disbursements required to support inefficient, high cost and grossly overstaffed ports, and the distortions in trade relations and resource allocation that they produce. Finally, governments usually assume transaction costs, but they should adopt a strong policy opposing the utilization of any incentive which would reduce competition.¹⁷⁵

Numerous illustrations of transaction costs have been presented throughout this study. For example, the compensation programs for redundant workers at the ports of Chile cost a total of US\$30 million and New Zealand's expenditure was US\$28 million, while Peru expects to pay approximately US\$22 million to dockworkers employed at that nation's ports and the U.K. made payments up to a maximum of US\$58 000 per worker. In addition, the one-time expenses to establish a monitoring agency and to provide limited-term incentives must also be considered. The costs of valuing an enterprise depend directly on the number and expertise of the consultants utilized. The Government of Brazil, for instance, seeks to ensure transparency in the restructuring of its public-sector enterprises and requires the employment of two independent accounting firms to determine market value. Many countries require the utilization of national specialists in such activities. This would support the growth of professional activities in a country, and promote a base of expertise and knowledge that should strengthen newly restructured ports. Such professionals are also highly qualified opinion leaders within a country who could provide information to potential investors on the advantages and disadvantages of private sector involvement in public-sector ports. Finally, where cargo-handling equipment and facilities must be rehabilitated, private investors often prefer to undertake such activities themselves in order to ensure that they respond to anticipated commercial requirements.

B. POLITICAL

An opportune moment has arrived to commence restructuring of Latin American and Caribbean port services and port facilities. Cargo owners and carriers assert that public-port administrations have failed to provide needed services and installations. The quality of port services required, in terms of productivity, innovation and cost-effectiveness, are far too customer specific, technologically based and dynamic to be subject to the day-to-day intervention of public sector regulatory bodies and influence groups. A growing number of enterprises providing and receiving services at ports --including freight forwarders, carriers and ship's agencies-- contend that, if permitted, they could offer cargo-handling services and equipment on a more competitive basis. Whether these declarations are correct has been given little attention, as much of the debate over private participation in port services and port facilities is political in nature, rather than economic, operational, technical and legal. Indeed, because such participation involves the functions and powers of governments, it is the national sovereignty issues, often voiced in terms of economic independence and defense capabilities, that must be resolved before any initiative in the matter might succeed. Thus, governments must determine whether private participation in public-sector ports would limit their ability to implement various domestic policies judged to be of national importance.

In every age governments have had to adapt themselves to the changing dimensions of national sovereignty. Today, the concept of sovereignty is usually prefaced with words like economic, political, environmental or strategic so that meaningful discussions might be held. As an illustration of this point, the recent changes in that concept have been brought about by a reduction in tensions between superpowers (political) in Eastern Europe, the creation of regional groupings (economic) throughout the world, joint management of shared resources (environmental) and mutual assistance agreements (strategic) in cases of national emergencies. Nonetheless, many Latin American and Caribbean governments still adhere to a singular concept of sovereignty as though they were still in the latter part of the XIX Century. Goods from the region must compete in demanding international markets, yet a historical concept of sovereignty all but precludes a vision of their shared roles with the private sector in a global economy of the XXI Century. The absence of an understanding of the different dimensions of modern day sovereignty and the multitude of ways in which it can be meaningfully expressed lead to circular debates that obstruct the participation of private interests in Latin American and Caribbean ports. Thus, even though it is broadly recognized that private sector involvement in ports would provide additional support for national economic growth goals, many governments contend that such involvement would lead to economic dependence and compromise defense capabilities.

This debate has relevance for many industries, but it is inapplicable to ports. As an illustration of the circumstances under which it would be relevant, the manufacture of highly-competitive consumer electronics in Asia and the Far East has resulted in efforts by a growing number of internationally known companies to lower their production costs through the establishment of factories in developing countries.¹⁷⁶ Similarly, a publisher in Thailand and a group of Hong Kong industrialists are considering the purchase of United Press International (UPI), a U.S. news agency, and a British publisher has announced its intention to purchase a New York daily newspaper.¹⁷⁷ Trade names of consumer electronics are ambulatory in the sense that they can be attached to goods wherever they are produced, and, in the age of satellite communications, the only site absolutely necessary for UPI and a newspaper is the one where newsworthy events occur. The employment opportunities which arise from the manufacture of consumer electronics can and do move from country-to-country depending on competitive factors such as labor cost and productivity, the proximity of manufacturing and assembly plants to purchasers, and the availability of cost-effective ports and transport services. Whether consumer electronics are produced domestically or in foreign countries is of crucial importance because it involves considerations such as the creation or elimination of employment opportunities and favorable or unfavorable trade balances.¹⁷⁸

In contrast, if ports were leased or sold to foreign interests for commercial operations, they could not be relocated in another nation nor would it create large-scale employment opportunities for non-citizens or decrease the inflow of foreign exchange. Ports are site and customer specific, and purchasers would make investments in those sites and in those customers, and would earn a return-on-investment from them. Dockworkers would be recruited locally, as most Latin American and Caribbean countries have immigration laws which permit the employment of foreigners only when the skills required cannot be

obtained from the citizens of a country. Paradoxically, governments express concern regarding a potential lack of control over their ports which might result from leases and sales, but such arrangements would actually increase the amount of public control. This would be achieved through an appropriately formulated institutional framework, as presented at part III, which clearly limits and balances the influence of government agencies, dominant groups and private interests. Ports which are leased or sold to private interests would still be subject to all the laws of the countries in which they are located, and governments would formulate regulations to govern the conduct of business in order to protect what it perceives to be of domestic interest and which would allow it to operate them directly in times of national emergencies. Thus, governments are strategic actors in ports, even if they do not own and operate them.

The authority of a nation to control domestic properties such as ports that are owned by foreign interests is not an abstraction, and is recognized at article 2 of the United Nations Charter of Economic Rights and Duties of States which provides, in part, that each State has the right

"(a) To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investment;"

"(c) To nationalize, expropriate, or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant law and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals..."¹⁷⁹

Such rights should be exercised with caution because the price that purchasers might be willing to pay could be lower if they fear that a government would go beyond the scope of an emergency utilization of facilities and nationalize them.¹⁸⁰

A global trade environment does not mean that a nation's borders will become irrelevant. It does mean, however, that Latin American and Caribbean countries must compete in a world where borders have multiple meanings which correspond to the multiple definitions of sovereignty. For example, the countries of the River Plate Basin of South America recognize that there are at least five definitions of the area it encompasses -- political, geographic, hydrographic, economic and cultural -- and each has validity depending on the particular matter under discussion. By correctly matching the definitions of sovereignty to the matters under discussion, commercial goals will be given priority, government involvement in day-to-day commercial activities will decrease and the political influence of dominant port groups will be lessened. Just as the globalization of trade cannot be separated from the comparative advantages possessed by a nation, the competitiveness of a nation's goods in international markets cannot be divorced from the restructuring of public-sector ports. Rather than placing limits on any of the multiple definitions

of sovereignty, such restructuring can strengthen a country's position in the global trade environment and in important international negotiations related thereto. Thus, private sector participation in port services and port facilities would not compromise a country's economic goals or its defense capabilities.

C. SOCIAL

Most political leaders in Latin America and the Caribbean do not oppose the basic principles of private participation in public-sector ports, but efforts in that area have been only minimally successful. They have found that the inefficiencies and extra costs of public ports are distributed throughout an entire nation, and that it is almost impossible to find support for their restructuring equal to its opposition. Public-sector port administrations, labor representatives and, frequently, the military believe that government port monopolies are both necessary and desirable, and consider that such participation in public-sector ports would not only alter the desired balance of economic, political and social privileges but also create a major threat to the benefits they receive and their career goals. Such groups ardently oppose port restructuring proposals which involve private interests and they are able to obtain substantial support for their position from both elected and appointed officials. According to the theory of public choice, government officials provide such support because they respond to the same principles that guide the behavior of entrepreneurs and consumers; that is, they seek to maximize their own well-being, subject to the limitations facing them.¹⁸¹

In this context, it was suggested at page 48 of the ECLAC study entitled Structural changes in ports and the competitiveness of Latin American and Caribbean foreign trade (LC/G.1633-P, October 1990) that

"The excess of dockworkers in Latin America and the Caribbean is not a port problem, but rather a political problem with important commercial and social implications. Over many years a strong network of alliances has been created between port labor unions and political parties. These alliances involve the objective of job security for port labor and the aspirations of political parties, and they make it extremely difficult to bring about labor reforms. Dockworkers' unions and political parties, for instance, may bring pressure on port managers to restrict their efforts to lease terminals to private operators, since they see such steps as part of an effort to reduce their numbers. Ports have such an intimate relation with national politics that an understanding of the political processes available to governments for resolving port-labor problems is an important first step in dealing with them."

Such alliances are most visible when programs to increase port productivity and cost-effectiveness have to contend with social goals of job and benefit preservation.

Public-sector ports of Latin America and the Caribbean operate in a socio-political environment that gives only cursory attention to the commercial aspects of trade. Put another way, port administrators are more sensitive to

socio-political pressures than those of a commercial nature. Such pressures isolate port activities from the interplay of market forces and preclude the attainment of international levels of productivity and cost-effectiveness which are required to enhance the competitiveness of a nation's exports in world markets. In the future, market forces will come to exert an enormous influence on the resolution of socio-political port problems. For example, following deregulation of the U.S. airline industry, carriers obtained an agreement from labor to utilize two different wage scales --one for existing and another for new employees-- in order to lower their costs so that they might meet competitive pressures.¹⁸² At the U.S. east coast port of Philadelphia, dockworkers formulated a plan for unloading Chilean fruit during labor disputes so that shippers would not move their perishable cargoes to other ports.¹⁸³ Finally, the state-owned carrier Aeromexico was losing money because its labor costs exceeded those of private sector airlines by 300% and when employees struck for additional wages the Government of Mexico declared it bankrupt and liquidated the enterprise. This avoided application of the earlier mentioned provisions in Title VI of the Mexican constitution, which require purchasers of an enterprise to offer employment at the same conditions to workers, and canceled existing labor agreements.¹⁸⁴

A growing number of governments are beginning to recognize the benefits of private participation in port services and port facilities --a source of additional funds to finance port projects, and a way to lower operating costs and increase productivity. However, such participation is considered an appropriate mechanism only if private interests share cost savings with port users. This should occur if there is freedom of entry and exit, a competitive environment and a decentralized institutional structure which makes each port and terminal operator financially autonomous. It is often suggested that the higher costs of Latin American and Caribbean ports are the result of social investments, or those which no commercial enterprise would or could make. The social investment rationale for higher port costs has led dockworkers to justify their higher than normal domestic wages by declaring that "we are paid for what we know, not for what we do". It would probably be more correct to say that dockworkers are paid higher wages for where they are, rather than for what they do. A mere comparison of the daily wage rates for drivers of fork-lift trucks at port warehouses and at those in the surrounding city would reveal the "locational dividend" in dockworkers' earnings. The social investment argument creates a bias for maintaining government ownership and operation of ports, but it need not. A properly drafted institutional framework for ports, as presented at part III, should ensure that dockworkers are paid competitive wages and given incentives to increase productivity.

VI. CONCLUSIONS AND RECOMMENDATIONS

The initiative to create a basis for private participation in public-sector port services and facilities in Latin America and the Caribbean is only a small part of a much larger effort to restructure national economic activities. The major problem of public-sector ports lies in the priority given to socio-political objectives, such as employment creation, national defense and awarding key positions to loyal party members, over service and facility innovation, productivity and cost-effectiveness. There is a tendency to view privatization as a simple transfer of either services or facilities, or both, to private interests, but this is not the case. As an illustration of this point, the conversion of a public-sector port into a limited liability company, whether the stock is held entirely by the government or private interests, would require a complete restructuring of the enterprise in order to comply with the requirements of disclosure, voting, employment and others of profit making entities, but it would not eliminate or preclude participation of governments. Such participation could encompass ownership of stock, membership on the board of directors, making loans for infrastructure investments and the regulation of private sector activities. Thus, the restructuring of a nation's ports to enhance the competitiveness of goods in world markets involves such a wide range of issues that the participation of private interests is but one component of an entire scheme of interrelated measures.

Due to the impact of port costs and productivity on the competitiveness of a country's exports in international markets, this study has presented an evaluation of mixed public-private options for restructuring port services and port facilities. Government ministries, the military, labor organizations and others frequently express their opposition to private participation in public ports because it would amount to a relinquishment on their part of numerous privileges and benefits. If public-sector ports are to contribute to national policies related to trade growth, expansion of foreign exchange receipts and the generation of domestic employment opportunities, then such participation would seem fully justified. Dominant groups can no longer demand and receive monopoly rents which impair the growth of a nation's entire economy. Governments are well equipped to own and operate ports in a stable, unchanging trade environment; that is, they have an inexhaustible capacity to deal with the well-known and well-defined on a repetitive basis. However, that capacity has become a burden on the competitiveness of the region's exports in global markets because trade, policy and technological changes have created an extremely dynamic and rapidly evolving port environment that requires a more flexible management expertise to deal effectively with the unfamiliar, non-reoccurring and speculative. Thus, the new institutional framework must build into government bureaucratic structures and private sector organizations an openness and responsiveness to change.

For Latin American and Caribbean countries to compete successfully in a global trade environment, they must have ports with modern facilities which are operated in an innovative, productive and cost-effective manner. It is quite possible that private marine terminal operators of the ECLAC region would show only minimal cost reductions and efficiency gains over their public sector counterparts because the accumulation of policies, regulatory requirements and monopolies over the last four decades distort market forces, hinder

productivity, and impose unnecessary additional costs on them and their users. To remedy this situation, governments can no longer support the dominant positions of labor unions, inland carriers and others in ports. Public-port administrators must be industry specialists and not mere passive caretakers, and the private sector must be allowed to participate in the provision of port services and port facilities. Such participation, however, will not lead to innovation, productivity and cost-effectiveness unless it forms part of a commercially oriented institutional framework that brings about the interplay of market forces on all those of the port community. Thus, for the decade of the 1990s, Latin American and Caribbean governments should have the following goals: (i) ensure that ports respond to macroeconomic mandates, (ii) identify and define appropriate roles for the public and private sectors in ports, (iii) elaborate a process or scheme of measures to restructure public-sector ports, and (iv) formulate an implementation strategy.

A. MACROECONOMIC MANDATES FOR RESTRUCTURING PORTS

In many countries, ports have been structured as domestic undertakings which provide services to international trade. That structure views the prosperity of ports and of cargo owners as separate or, at best, only indirectly related. For Latin American and Caribbean countries, it has led to enormous distortions in operations, planning and charges, and it has lessened the competitiveness of their exports in world markets. Today, however, it has been overshadowed by factors such as the globalization of trade, external indebtedness, changes in economic policies and new ways in which sovereignty might be meaningfully expressed, and ports of the region desperately need an institutional framework which more clearly reflects that reality. In the intensely competitive markets of a global economy, such a framework must ensure that ports form an integral part of trade policies, and that governments and private interests are each permitted to make their unique and important contributions. That is, both governments and private investors have an interest in ports and must combine their mutually-dependent strengths to create cost-effective, productive structures which will provide a favorable base for exporters to enjoy the maximum benefits which might result from their competitive advantages. The view that public and private sectors are largely independent is false and dangerous. A dynamic private sector and a well-run public sector are the fundamental prerequisites for economic growth. Thus, all those of the port community must unite to create such a structure so that they might better respond to increasingly competitive markets.

Such an undertaking by all those providing services to cargo owners and carriers is not optional. The goods handled at ports have always had to compete in international markets, but for many years Latin American and Caribbean governments were able to separate the prosperity of ports and cargo owners through the use of measures such as subsidies, tariffs and exclusive dealing arrangements. Ports came to enjoy monopoly control over their hinterlands, and many of those offering services acquired dominant positions and were able to earn above-average profits. With intense fiscal pressures brought on by national indebtedness and the globalization of trade, however, policy makers at all levels must understand that ports are not a domestic industry and that the extra costs and inefficiencies in port operations resulting from such measures are transmitted to the prices of a country's exports and reduce their

competitiveness in international markets. They also must recognize that each nation's exports are not unique and products ranging from leather goods and minerals to fruit juices and grains can be purchased from other regions, and that they must be handled at cost-effective, highly productive ports which form part of equally cost-effective and productive distribution systems. Thus, the globalization of trade results in a globalization of competition which all members of the port community must reflect or the entire national economy will suffer through reduced competitiveness of domestic goods in international markets.

High port charges and low productivity attach to the goods handled in the form of price increases, inflated inventory levels for importers and lost commercial opportunities for entrepreneurs, and they have a direct influence on the competitiveness of such goods in international markets. Traditionally, port costs and inefficiencies were considered to have an insignificant impact on trade. This view continues to be supported by many economic studies on the cost structure of trade, where distribution (transport and port) costs are considered negligible and assigned a zero value. With the globalization of trade and the adoption of export-oriented macroeconomic policies, however, the possibility of utilizing subsidies, tariffs and exclusive dealing arrangements to separate the prosperity of ports from that of the goods being handled has been enormously restricted, if not eliminated. The major point here is that whereas all those providing services at ports under earlier macroeconomic policies were able to capture hinterlands and hold them ransom to numerous cost-increasing monopoly practices, the situation has been reversed with the adoption of export-oriented policies and ports have been captured by the goods they handle and their destinies are irreversibly intertwined. As a result, governments must identify feasible mixed public-private options for their ports, and formulate an institutional framework to restructure services and facilities in order to create a more cost-effective environment for trade and to ensure the achievement of macroeconomic growth goals.

The transformation of port structures which are focused on satisfying domestic needs into those which are internationally viable is a systemic undertaking. All those providing services and facilities must surrender their dominant positions, monopoly rents and efficiency reducing activities, and agree to work together to establish a commercial port environment. Ports cannot be cost-effective and productive unless all those providing services are cost-effective and productive. The dilemma facing governments is found between two extremes --none of those providing services will voluntarily relinquish their dominant positions and governments cannot repeal the laws of the marketplace nor ignore global economic changes. However, governments are not helpless and can formulate an institutional framework within which each member of the port community will, by his own accord, seek to bring about such alterations. This can be accomplished by means of a judicious utilization of the mixed public-private options and the elaboration of an institutional framework --statutory authority for private participation, deregulation, decentralization, market-oriented employment regimes, and a balancing of the interests of governments, labor and private interests-- to create a commercial port environment. It does not mean the absence of governments in ports, but a focusing of public sector efforts in order to shape the commercial and institutional

structures that surround ports and all those providing services and facilities.

Any shift from a domestic theory of ports to an internationally viable one for the 1990s requires an understanding of what successful ports around the world have done and a basis to judge the suitability of the measures they have taken for others facing similar problems. Successful ports differ from each other in almost every respect except one; that is, they respond to trade requirements in an innovative, productive and cost-effective manner. The responsiveness to trade requirements does not ignore the needs of port labor or Customs administrations, for instance, but such needs are unquestionably secondary to those of trade. Ports are processes that must promote the movement of cargoes and information between shippers, carriers, consignees, government agencies and many others, and a permanent effort is required by the entire port community to constantly improve, diversify and expand each component of that process. Put another way, innovation, productivity and cost-effectiveness are not static concepts, but, rather, part of a relentless dynamic endeavor to improve the way ports respond to market forces. The measures taken to reach such goals should be beneficial to the extent that they create a competitive advantage in terms of price, delivery times and damage avoidance for a country's exports in international markets when compared to those of producers of other nations. In the trade-driven environment of the 1990s, a major tool that can be utilized to attain such competitiveness is through the participation of private interests in port services and port facilities.

B. NEW ROLES FOR THE PUBLIC AND PRIVATE SECTORS IN PORTS

We have come full circle and return to the issue introduced in the preface to this document: the need to identify and define roles for the public and private sectors in ports vis-a-vis international trade. Ports which are owned and operated by governments face enormous obstacles to reach international levels of innovation, productivity and cost-effectiveness. Most port users of the region consider that the major problems with public-sector ports are in the areas of unsatisfactory physical and human resource management, and burdensome bureaucratic requirements. The suitability of public sector port administrations in a global economy is a function of their effectiveness in reaching commercial goals. To the extent that governments have the will to permit the free play of market forces in their ports and to sever the demands of pressure groups from port activities, they will be able to achieve those goals. However, there can be no competitive behavior in public ports, real or potential, without being subject to the laws of the market place. Most Latin American and Caribbean public-port administrations find themselves unable to accomplish such tasks, so many governments have begun to consider private sector involvement. The justification for the participation of private interests in activities traditionally reserved for the public sector is that the underlying conditions which warranted government control and operation of ports have changed with the advent of a global trade environment and the adoption of export-oriented macroeconomic economic policies, and that private involvement has become necessary to establish commercial discipline.

Latin America and Caribbean port users are increasingly unwilling to accept services which are inefficient and expensive, and are demanding service

and facility innovations, enhanced productivity and cost-effectiveness without increases in charges. It is essential that governments begin to view their role in ports in terms of facilitating activities; that is, as owners, investors, partners, facilitators and regulators. The process of change in government bureaucracies is often long and tedious, as ideas must work their way slowly through many levels. In contrast, private interests constantly seek new ideas which might give them a competitive advantage, and can change policies, plans and operations much more quickly than their public-sector counterparts. Dockworkers employed by private terminal operators are well aware that they must carry out remunerative tasks, instead of merely being physically present for an agreed period of time at public facilities, and this contributes to the cost-effectiveness of a private terminal. The commercial implications of government proposals for private sector participation in port services and port facilities will be carefully analyzed by potential contractors, concessionaires, joint venturers and purchasers. Public port administrations will probably be given the task of monitoring private-sector activities, without authority to make day-to-day commercial decisions, through an appropriate institutional framework. This would not preclude governments from operating ports, where the private sector could not or chose not to do so.

Public-sector enterprises are usually less efficient than their private counterparts because opportunities exist for firms and individuals to manipulate them for their own benefit through national political processes. The goal of deregulation is to remove bureaucratic and dominant group constraints on market forces so that both public and private enterprises might function in a competitive environment bounded by the laws of supply and demand, profit and loss, freedom of entry and exit, customer likes and dislikes, scale economies, managerial and financial autonomy, and the threat of bankruptcy. To achieve that goal, it is not enough for governments to simply eliminate the regulations which limit or preclude competition. Rather, governments must create a basis for private interests to become involved in public ports through an appropriately structured institutional framework which balances the interests of the entire port community. In short, regulations are the norm, not the exception, and through them governments fulfill their ultimate responsibility of ensuring port services and port facilities are provided. Without such a framework private interests may understandably hesitate to become involved in public ports. These issues must be resolved in a manner which creates an attractive environment for investments to encourage the participation of private interests in port activities. With many carriers, ship's agencies and freight forwarders desirous of investing in and operating their own port terminals, governments might wish to consider meeting with them and others to identify regulatory obstacles which limit or preclude their participation.

Most Latin American and Caribbean governments have begun to accept the use of market forces as a controlling mechanism in their economic activities. As yet, however, many retain a continuing faith in the primary role of the state as both regulator of private-sector enterprises and direct actor in a wide range of commercial activities. There is no doubt that such enterprises should be regulated and that governments should be involved in certain commercial activities, but answers to the questions of how to regulate, what should be regulated and in which endeavors should they participate must be continuously reformulated in the light of changing trade needs, economic conditions

and national goals. Probably the only useful guideline is that such regulations should create a basis for free and uninterrupted competition between ports, as well as among those providing services at a port, whether governments provide services and facilities on an exclusive basis, jointly through contracts with private interests or entirely through the private sector. The extent to which Latin American and Caribbean manufacturers must pay port charges in excess of international levels and assume the high costs of cargo-handling inefficiencies will have a negative impact on their competitive position compared with similar goods from countries of other regions and may result in a decision not to export or demands for protection. To avoid such consequences, public-sector ports must be restructured and a modern institutional framework established so that market forces might exert a guiding influence on port activities.

Latin American and Caribbean countries face enormous external indebtedness, fiscal deficits and requirements for capital investment that have generated a strong demand for funds and led governments to consider private sector involvement in activities traditionally reserved for the public sector. With the globalization of trade, ports must reflect macroeconomic policies and the competition faced by exporters and importers. Even with the participation of private interests in ports, greater productivity and cost reductions are not guaranteed. The major obstacles to private involvement in public-sector ports are social and political, rather than financial and legal. In addition, there is no one competitive structure for ports that will endure, but constantly unfolding arrangements which progressively respond to ever-changing users needs in an innovative, productive and cost-effective manner. Governments can no longer structure their ports as domestic industries, but must alter them to take advantage of the positive influence they can have on the competitiveness of exports in world markets. Public-port administrations, and all those providing services and facilities, must understand that while serving a local hinterland they participate in global trade relations. Thus, governments must assume the role of catalyst and utilize the mixed public-private restructuring options and a market-oriented institutional framework to encourage, challenge and even compel members of the port community to innovate, compete and invest so that productivity and cost-effectiveness will continually be improved.

C. THE PROCESS OF RESTRUCTURING

To create an understanding of the bases required for the participation of private interests in public-sector ports, a wide range of operational, institutional, political and social factors have been evaluated in parts II, III and V of this study. Due to the diversity of such factors and the multiplicity of options for private participation, presented at part IV, only a general outline can be suggested for the process or sequence of measures which might be taken to restructure such ports. At the outset, however, each Latin American and Caribbean government should appoint a director and team of highly qualified persons who are committed to the restructuring public-sector ports from the ministries of finance, trade, transportation, public works and labor, as well as from the central bank and port administration. The objectives of such teams are to identify, evaluate and recommend a series of economic, legal and social measures that their individual governments should adopt to create a new institutional framework for its public-sector ports which will (a) transform

the national port administration into a regulatory agency, (b) remove bureaucratic constraints to entry, competition and private participation, and (c) create an attractive investment environment for private interests. To ensure a full-time commitment of the director and team members, governments must provide them with adequate funding and high-level political support.

To achieve such objectives, restructuring teams must recommend and governments must promulgate economic, legal and social measures to protect private property, facilitate the entry of new competitors, grant control of port activities to local authorities, ensure managerial autonomy of private interests, permit port employers to negotiate market-oriented labor agreements and establish antimonopoly regimes applicable to both management and labor. It is important for such teams to understand that the alterations which have occurred to global trade relations and national economic policies are not pure theory, that the legal measures which must be adopted to create new port institutions are not abstractions, and that the social implications of such changes cannot be avoided. Indeed, economics and law are social disciplines and it is in the area of labor relations where teams must first direct their attention. Restructuring teams should be given the authority to utilize the services of port specialists, accountants, attorneys, economists, exporters, importers, carriers and labor representatives to prepare studies and supervise bidding, auction and sale procedures, so that all matters will be transparent, equitably handled and commercially resolved. Such teams should also be given the authority to coordinate the adoption of measures to restructure port services and port facilities. The utilization of consultants avoids undue pressures being placed on them by dominant groups and promotes the growth of professionals in a country which should continue to strengthen newly restructured ports.

The labor relations dimension of the restructuring process is largely related to government employees and dockworkers, and encompasses a willingness to accept changes in their number, tasks, jurisdiction, remuneration, benefits, hours of work and utilization of new cargo-handling technologies. Numerous countries have attempted to resolve the social issues surrounding a reduction in the number of employees and dockworkers, and changes in tasks and wages through the utilization of monetary payments to compensate them for the cancellation of acquired rights, early retirements and, to a lesser extent, retraining programs. Few studies, however, have been carried out to determine the medium-to-long-term consequences of such schemes. For example, efforts should be made to ensure that early retirements do not eliminate the critical mass of skills necessary to operate, repair and maintain equipment, as occurred at the port of Montevideo (Uruguay). At the same time, redundant dockworkers eliminated through single compensatory payments should be provided with counseling to ensure that the funds received are utilized for training courses, annuities or in other employment generating activities. Thus, economic and legal measures adopted by governments to restructure their public-sector ports must resolve social problems related to port employees and dockworkers, not simply transfer them to another area of the national economy.

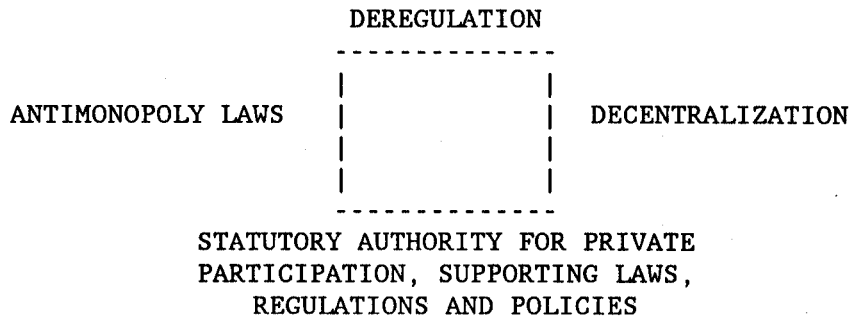
National restructuring teams might wish to consider commencing their activities by identifying the present goals and objectives of public-sector ports, or the lack thereof. Most likely, a realistic statement of such goals

and objectives will not exist and these will have to be deduced. To obtain information from which they might be inferred, restructuring teams might make a careful analysis of current operations, documentary requirements and labor agreements. For example, labor agreements often restrict employment to registered dockworkers, protect overlarge gang sizes, either preclude or make inordinately expensive weekend and evening work, limit task rotation and impede innovations which would enhance productivity. At the same time, discussions with major users, freight forwarders, Customs brokers and service providers should permit teams to formulate more commercially oriented goals and objectives. The next task would be to evaluate the existing economic, legal and social framework in order to determine the measures which must be adopted by governments to reach desired goals and objectives; that is, to create innovative, productive ports which offer cost-effective services and facilities. Such measures must expose public-sector ports to market forces, thereby ensuring service and facility providers are governed by the laws of supply and demand, profit and loss, freedom of entry and exit, scale economies, customer likes and dislikes and the threat of bankruptcy. They should also eliminate government financial support, subjecting them to the discipline of private sources of capital, and the influence dominant port groups have over commercial decisions.

The most appropriate response of the restructuring team to regulatory experiences of the past is not to sanction an institutional framework for public-sector ports governed totally by market forces, as markets alone cannot resolve health, environmental and safety problems, but to formulate one that utilizes the mixed public-private options and support concepts to create a commercial structure which limits and balances the influence of dominant groups. The major objective is to ensure that the institutional framework keeps pace with market requirements and that together they promote the achievement of national economic growth goals. This does not mean that teams can simply recommend the removal of anticompetitive provisions from existing policies, laws and regulatory regimes. The capacity of dominant groups to perpetuate their positions through new opportunities created by unforeseen regulatory imbalances must be given careful consideration or the benefits of such changes will be minor, non-existent or even detrimental. Restructuring teams should meet with all groups of the port community in an effort to determine how such a framework and market forces can be jointly utilized to create and preserve a more competitive commercial environment. The success with which public-sector ports of a nation are restructured depends to a great extent on the expertise of the restructuring team and this, in turn, is directly related to the political awareness, resources and mandate of the government itself.

To orient the efforts of both governments and restructuring teams, the following is a summary of the measures required:

THE INSTITUTIONAL FRAMEWORK



DEREGULATION: removal of government created obstacles to the free interplay of the laws of supply and demand, profit and loss, freedom of entry and exit, scale economies, customer likes and dislikes, and the threat of bankruptcy in order to ensure that all those providing port services and port facilities operate in a commercial environment bounded by such such mechanisms.

DECENTRALIZATION: place local bodies in charge of ports and allow them to create from all those providing and receiving services a governing organization whose primary functions are to make planning and operational decisions in accordance with trade requirements, national policy objectives and the competing demands for utilization of waterfront properties.

STATUTORY AUTHORITY FOR PRIVATE PARTICIPATION: define with precision the properties and services to which private interests will have access and the standards for approval of private sector proposals, provide guidelines that can be utilized to determine their values, safeguard the property rights of investors through compensation if they are compromised by changes to existing regimes, and specify any advantages or consideration accorded the private sector of the country in which the port is located. In addition, governments must enact **SUPPORTING LAWS, REGULATIONS AND POLICIES** which:

1. transform the public-port authority into a normative agency with the task of monitoring private sector and labor activities to ensure that the institutional framework precludes them from manipulating market forces to obtain monopoly rents, and updating it to respond to changing market conditions,
2. sanction labor representatives and employers to negotiate on an individual enterprise basis, and to commence such efforts with national minimum wage and benefit standards,
3. encourage private-sector participation in port services and port facilities, and ensure that whether undertaken by the public-sector or private operators they will be conducted according to commercial criteria, and
4. create competitive options --stevedores, concessions, management contracts, joint ventures, private terminals handling third-party cargoes and the conversion of public-sector ports into limited liability companies-- for private participation. The overall goal of such statutory authority, laws, regulations and policies is to balance government interests with those of private investors, labor and users to create institutional practices which are trans-

parent and which clearly assign responsibility so as to ensure that public-sector ports are operated on a commercial basis.

ANTIMONOPOLY LAWS: protect competition, not competitors, through the intervention of the judiciary when private interests utilize market forces to restrain consumers' choices or exact monopoly rents.

Within the aforementioned institutional framework, private interests must have the freedom to:

1. select workers, organize activities and autonomously manage their enterprises
2. enter and leave the industry,
3. establish tariffs for services,
4. invest in infrastructure and equipment,
5. negotiate with employees on an enterprise basis in areas such as wages, contract duration, health and retirement benefits, gang sizes, hours of work, work rotation and others,
6. discharge workers after payment of appropriate compensation for the loss of any acquired rights, and
7. participate in the deliberations and decisions of local public-port governing bodies along with representatives of ship operators, shippers, consignees, dockworkers, ships' agents, freight forwarders, Customs brokers, banks, the Customs administration and municipalities. The objectives sought are to isolate investment, employment and commercial decisions of the private sector from the influences of dominant groups so as to enhance the competitive position of their services vis-a-vis those of similar enterprises at the same port and at other ports.

Within that framework, workers must have the right to:

1. enter and leave the industry,
2. organize into enterprise based unions for wage, contract duration and benefit negotiations,
3. invest in and operate ports either individually or with private interests or with the public sector,
4. compensation for the loss of acquired rights to achieve a balance between economic efficiency and social equity, and
5. participate in the deliberations and decisions of local public-port governing bodies with other members of the port community. The purpose of such measures is to create an employment environment in which job security and remuneration depend on the services rendered by labor so that there will be a serious effort on their part to increase productivity, innovate, utilize modern technologies and to control costs.

D. AN IMPLEMENTATION STRATEGY

At the introduction to this document, privatization was defined as a shift of functions from the public to private sectors. It was also brought out that there are important supportive links between mixed public-private options for restructuring public-sector ports and export-oriented macroeconomic policies, commercial labor regimes, deregulation, decentralization, antimonopoly laws, and contracts between the public and private sectors. Private participation in public ports cannot transform bureaucratic constraints into commercial

choices, but when the above support concepts are utilized to create a market-oriented institutional framework such a result can be achieved. The response of governments and ports to privatization and such concepts will probably become an exercise in competitive matching on an international scale; that is, each country will seek to adopt those options and support concepts which create a competitive advantage for its goods in international markets by raising productivity and lowering port costs. The capacity of governments to avoid pressures from dominant groups, especially docklabor, often determines which restructuring options and support concepts can be utilized. For governments of the ECLAC region the message is clear: either they restructure their ports according to the dictates of an increasingly dominant global trade environment or accept a decrease in the competitiveness of their goods in international markets.

The adoption of measures by governments to shift port functions from the public sector to private interests and to establish a market-oriented institutional framework will probably be on a piecemeal basis. It is likely that only those options and support concepts will be utilized which permit governments and pressure groups to preserve the status quo in terms of non-commercial objectives, privileges and monopoly profits. However, as the economic process of international competitive matching begins to grow stronger, governments will find that the unavoidable rigors of global trading will require them to continually restructure their public-sector ports so that productivity might be improved and costs reduced in order to enhance the competitiveness of their goods in international markets. As an illustration of this point, only three months after the introduction of containers into liner shipping between New York/New Jersey and Houston (U.S.A.) in 1956, port handling costs for general cargoes in such units were reduced from US\$5.83 to only US\$0.15 a ton.¹⁸⁵ With such cost savings one would think that liner operators the world over would have accepted containers rapidly, but this did not happen. Many did not believe that the growing utilization of such units could lead to the construction of specialized vessels which would replace general-cargo ships, and for over a decade they were carried as deck cargo. By the early 1970s, however, containers had become the predominant liner transport unit and ocean carriers were rapidly joining liner consortia to spread the cost of acquiring specialized vessels.

The logic of piecemeal restructuring of public-sector ports appears unchallengeable --it would permit all those in the port community to slowly implement changes in order to reduce political and social costs. From a practical point of view, however, it could result in self-defeating regulatory strategies which achieve objectives precisely opposite to those intended. For example, the earlier mentioned privatization of JNR was successful, even though the government holds 100% of the stock, because there were no political or social factors which precluded the establishment of a new corporate framework or which would lead to its deformation. In contrast, for years Latin American and Caribbean governments have adopted a seemingly endless stream of policies and regulations to establish a more commercial administration for their ports, while permitting various groups to preserve their dominant positions, privileges and benefits. The adoption of such policies was positive, but the continued influence of such groups and the almost constant personnel changes in government ministries and port administrations have led to enormous variations

in implementation and charges of policy failure by opposing political parties. Thus, an implementation strategy must be structured around governments compensating docklabor for the forfeiture of acquired rights, nominating appropriate persons to carry out restructuring programs, and formulating an institutional framework that commercially balances its interests with those of the private sector, users and labor.

Ports are at the confluence of public funds, political influence, jobs and a wide range of commercial activities, and it would be unrealistic to suggest that such divergent factors could be harmonized simply through the participation of private interests in the provision of port services and port facilities. Prior to restructuring public-sector ports, governments must undertake extensive preparatory work to ensure that all segments of both the port and trade communities understand that such measures are required for the well-being of the nation, and that it is possible to satisfy affected groups, principally port labor and various regulatory bodies, through compensation, early retirement programs and new job assignments. The preparatory work should include the elaboration of studies, convening of conferences and seminars, use of media and individual meetings with industry leaders so that a broad base might be created for acceptance of the economic, political and social changes that the institutional framework and mixed public-private restructuring options will bring. The goal of such preparatory work should be to provide information which can reassure doubting and recalcitrant individuals and groups of the merits of such changes and their impact. Thus, the social issues are a major consideration when restructuring public-sector ports and the control of political processes by dominant groups is a major obstacle to their resolution.

The period of time required by a government to carry out the restructuring process will vary greatly depending principally on its own political mandate, the opposition and support of the port and trade communities, and the availability of resources to finance dockworker compensation, retirement and retraining programs. Due to the variation in emphasis that can be placed on such efforts by individual governments, even when of the same political party, the major risk is that it will be initiated and altered, distorted, reversed or terminated before completion by a new government. For this reason, it is crucial that the restructuring of public-sector ports be initiated and concluded by the same government. That is, the time required by a government to restructure its public-sector ports should not exceed the period or term of its own authority. However, the four-to-six year period of a newly elected government would probably be too long and subject the program to the risks of policy drift and distorted objectives. To avoid such consequences and limit the confusion which often results from gradual changes to existing practices, many Latin American and Caribbean governments have begun to adopt fundamental and abrupt changes to their economic policies, often referred to as shocks. As a consequence, the restructuring team should not agree to any delay unless the parties requesting it can establish that no damage will occur to the export potential of the nation or to the competitiveness of its goods in international markets.

ENDNOTES

¹ IADB Reports Rise in Latin Debt, The Journal of Commerce, 9 April 1991, p. 2A, and The World Bank, Annual Report 1990, Washington, D.C., p. 129.

² Hadi Salehi Esfahani, Exports, imports, and economic growth in semi-industrialized countries, Journal of Development Economics, Vol. 35, No. 1, January 1991, pp. 93-116, at pp. 113-114.

³ C. Fred Bergsten, ed., Global Economic Imbalances, Institute for International Economics, Washington, D.C., 1985, p. 72.

⁴ Mexican debt, to him that hath not, The Economist, 27 April 1991, p. 82, Eugene Robinson, Argentina Stepping Up Effort to Collect Taxes, The Washington Post, 2 April 1991, pp. D1 and D5, Rudiger Dornbusch, Economic Outlook, Freer U.S.-Mexican Trade Would Be Golden, U.S. News & World Report, 18 June 1990, p. 46, Doing the impossible takes a little longer, The Economist, 9 June 1990, p. 43, Christopher Whalen, Will Mexico make it?, Across the Board, Vol. XXVII, No. 6, June 1990, pp. 36-43, Lucy Conger, The challenge of the campesinos, Institutional Investor, April 1990, pp. 165, 166 and 169, Gary Hector, Why Mexico is looking better, Fortune, 15 January 1990, pp. 135-137, and Manuel Pastor, Jr., Capital Flight from Latin America, World Development, Vol. 18, No. 1, 1990, pp. 1-18, at p. 5. The capital outflow problem is not unique to the countries of Latin America and the Caribbean. In Korea, for instance, capital markets are weak and the Government has played a decisive role in the allocation of public funds and subsidies. To support such efforts, in 1960, legislation was adopted which made it a crime to transfer US\$1 million or more out of the country and established a minimum punishment of 10 years imprisonment and a maximum sentence of death. By 1985, compliance with the law was in doubt, but in the two preceding decades its harsh terms are believed to have been an important factor in deterring private investors who might have otherwise used such funds and subsidies to build personal fortunes abroad. See, Michael E. Porter, The Competitive Advantage of Nations, The Free Press, New York, 1991, pp. 112, 467, 474-476, 639 and 687, and Alice H. Amsden, Private Enterprise: The Issue of Business Government Control, Columbia Journal of World Business, Vol. 23, No. 1, Spring 1988, pp. 37-40, at p. 40.

⁵ ALAMAR, Informativo (Uruguay), No. 584, January 1990, pp. 35-36, and James Bruce, Costs at Port of Santos Are a Major Concern, The Journal of Commerce, 27 June 1989, p. 10B.

⁶ On the Waterfront, LatinFinance, March 1991, p. 6.

⁷ James Bruce, Brazilian Exporters Slam Steep Charges by Ports, The Journal of Commerce, 25 April 1991, p. 1B.

⁸ The policy promulgated in 1978 did not include either private sector participation or decentralization, but that of 1979 first introduced those two changes and they also appeared in 1980. See, Republic Argentina, Plan Nacional de Transporte, Plan de Corto Plazo, Programa del Sector Transporte-1978, Vol. 2, Poder Ejecutivo Nacional, 1978, pp. 74-75, Republic Argentina, Plan Nacional de Transporte, Plan de Corto Plazo, Programa del Sector Transporte-1979, Poder Ejecutivo Nacional, 1979, pp. 125-126, and Republic Argentina, Plan Nacional de Transporte, Plan de Corto Plazo, Programa del Sector Transporte-1980, Poder Ejecutivo Nacional, 1980, pp. 141-142.

⁹ Jeffrey Ryser and Richard Kessler, Argentina gets ready for surgery without anesthetic, Business Week, 2 October 1989, p. 46, and Tim Golden,

Argentine Prescribes Painful Economic Cure, Miami Herald, 10 July 1989, pp. 1A and 6A.

¹⁰ Jeffrey Ryser, Amy Borrus, Paul Magnusson and John Pearson, Turning the Hemisphere into a Free-Trade Bloc, Business Week, 24 December 1990, p. 37, Privatisation gathers pace, Euromoney (Special Supplement), September 1990, pp. 20, 21 and 24, Jeffrey Ryser, Richard Kessler, Joseph Weber and John Pearson, Going Private With No Holds Barred, Business Week, 24 September 1990, pp. 60-61, Central Feature: Acquisitions and Mergers, Multinational Business, No. 3, Autumn 1990, Pablo Mass, Argentina Privatizations Take Major Leap Forward With Awarding of Entel, Business Latin America, 9 July 1990, p. 214, Jeffrey Ryser, Richard Kessler and John Pearson, Argentina gets ready for surgery without anesthetic, Business Week, 2 October 1989, pp. 46 and 50, and Privatisation so far, The Review of The River Plate, 30 September 1988, pp. 287-288.

¹¹ Vincent Champion, Change and prosper, Cargo Systems International, January 1991, pp. 33, 35 and 37, BA blow, Cargo Systems International, December 1990, pp. 11 and 13, and Bolsa de Comercio de Buenos Aires, Jornadas sobre puertos Argentinos: Problemática y Soluciones, September 1989, pp. 24-30.

¹² Jeremy Morgan, Privatization of Ports In Argentina on Hold, The Journal of Commerce, 27 June 1989, p. 9B.

¹³ El Senado sancionó la Ley de Puertos, Proamar, La Revista del Empresario Marítimo, No. 50, Año VI, p. 3, Menem's dilemma, Fairplay International Shipping Weekly, 7 March 1991, p. 3, Argentina, Country Report, The Economist Intelligence Unit, No. 1, 1991, p. 16, Romeo Medina, Freno para las exportaciones, Clarin (Argentina), 20 August 1990, pp. 10-11, and Argentina's Privatisation Aspirations, Multinational Business, Summer 1990, pp. 48-53.

¹⁴ ALAMAR, Informativo (Uruguay), No. 584, January 1990, pp. 34-35, and Folha de Sao Paulo, Portofolha (Brazil), 31 August 1989, p. J-1.

¹⁵ Armando Akio and Fernando De Maria, Sistema portuário está em um momento decisivo de história, A Tribuna (Brazil), Porto & Mar, 22 August 1991, p. 8, People, Seatrade Business Review, May/June 1991, p. 9, Leeann Lodder, Kerr Becomes Sole Agent In US for Nacional Line, The Journal of Commerce, 27 February 1991, p. 3B, James Bruce, Santos Strike, Blue-Collar Firings May Accelerate Brazilian Port Reforms, Journal of Commerce, 22 February 1991, p. 12B, Santos Agency Fires 5 300 Striking Dockers, Journal of Commerce, 21 February 1991, p. 12B, James Bruce, Brazilian Legislators Get Port Reform Bill, 20 February 1991, p. 8, Shipping curbs lifted, Latin American Regional Reports, Brazil Report, 14 February 1991, p. 4, and James Bruce, 8 Ports Could Benefit From Brazilian Reform, The Journal of Commerce, 20 November 1990, p. 3B.

¹⁶ Colombia Approves Ports Privatization, The Journal of Commerce, 18 December 1990, p. 8B, Colombian Port Unions Oppose Privatization, The Journal of Commerce, 11 December 1990, p. 8B, and Colombian dockers Consider Strike Action, The Journal of Commerce, 5 December 1990, p. 8B.

¹⁷ Letter from the Minister of Public Works and Transport of Colombia, Juan Felipe Gaviria Gutierrez, dated 20 August 1991, Seminarios sobre los cambios estructurales en los puertos y la competitividad del comercio exterior de America Latina y el Caribe, Boletín FAL, Mayo-junio 1991, pp. 1-2, Port Workers Threaten Strike at Santa Marta, The Journal of Commerce, 5 April 1991, p. 12B, and Stevedores move into consultancy, Fairplay International Shipping Weekly, 28 February 1991, p. 29.

¹⁸ B.S. Hoyle and D. Hilling, eds., Seaport Systems and Spatial Change, John Wiley & Sons Ltd., Chichester, 1984, pp. 402-407.

¹⁹ James Bruce, Rescue Plans Offered For Lloyd Brasileiro, The Journal of Commerce, 20 December 1990, p. 1B, Ben Ross Schneider, Partly for sale: Privatization and state strength in Brazil and Mexico, Journal of Interamerican Studies and World Affairs, Vol. 30, No. 4, 1988-1989, pp. 89-116, at p. 98, and Raymond Vernon, ed., The Promise of Privatization, the Council on Foreign Relations, Inc., U.S., 1988, p. 144.

²⁰ Laing Gray Cowan, Privatization in the Developing World, Greenwood Press, New York, 1990, pp. 6-7, Calvin A. Kent, ed., Entrepreneurship and the Privatizing of Government, Quorum Books, New York, 1987, pp. 4-5, and Stuart M. Butler, ed., The Privatization Option: A Strategy to Shrink the Size of Government, The Heritage Foundation, Washington, D.C., 1985, p. vii.

²¹ Laws Nos. 6.222/75 and 8.029/90, and Tsuneo Akaha, ed., International Handbook of Transportation Policy, Greenwood Press, New York, 1990, pp. 30 and 35.

²² Bolsa de Comercio de Buenos Aires (Argentina), Jornadas sobre puertos Argentinos, problemática y soluciones, August 1988, p. 27.

²³ Richard Clayton, Uruguayan shipping remains dependant on the fortunes of other economies, Fairplay International Shipping Weekly, 18 April 1991, pp. 37-38.

²⁴ Alan S. Harding, Restrictive Labor Practices in Seaports, WPS 514, The World Bank, Washington, D.C., October 1990, pp. 4, 6-11, 13 and 17-18, and Robert T. Brown, Transport and the Economic Integration of South America, The Brookings Institution, Washington, D.C., 1966, p. 218.

²⁵ James Bruce, Brazilian Port Users Stress Need To Continue Reform of System, The Journal of Commerce, 12 October 1990, pp. 3B and 8B, and Craig Becker, With Whose Hands: Privatization, Public Employment, and Democracy, Yale Law & Policy Review, Vol. VI, No. 1, 1988, pp. 88-108, at p. 89.

²⁶ David Metcalf, Water notes dry up: The impact of the Donovan reform proposals and Thatcherism at work on labour productivity in British manufacturing industry, Centre for Labour Economics, London School of Economics, Discussion Paper No. 314, 1988, p. 32.

²⁷ Klang can also be spelled Kelang, the latter being an equally acceptable but older version. Klang ready for privatisation, Fairplay International Shipping Weekly, 8 November 1990, p. 24, Hashir H. Abdullah, Public and Private Partnership: Port Klang, Malaysia, presented at the Pacem In Maribus Conference, Rotterdam, the Netherlands, 27-31 August 1990, pp. 8 and 16-17, Roger S. Leeds, Malaysia: Genesis of a Privatization Transaction, World Development, Vol. 17, No. 5, 1989, pp. 741-756, at pp. 748-750, Ngam Su May, KTM Privatisation: Which track?, Malaysian Business, 1-15 May 1989, pp. 5-8, Helen Nankani, Techniques of Privatization. Selected Country Case Studies, Vol. II, World Bank Technical Paper No. 89, Washington, D.C., 1988, pp. 83-92, Dato Seri Radin Soenarno Al-Haj and Zainal Aznam Yusof, Privatization in Developing Countries: The Experience of Malaysia, Asian Development Bank, 1 February 1985, pp. 21-22, and Guidelines on Privatization, Government of Malaysia, Economic Planning Unit, Prime Minister's Department, Kuala Lumpur, 21 January 1985, p. 5.

²⁸ Venezuela, Suriname, Netherlands Antilles, The Economist Intelligence Unit, No. 3, 1991, p. 19, Jose Marcus Menezes, Agustin Perez Aguirre, Federico Klein, Arthur H. Darling and Terry A. Powers, Venezuela Public Enterprise Reform Loan (VE-0070), The Inter-American Development Bank, 22 October 1990, pp. 21-22 and 26, and p. 5 of Annex I, En Puerto Cabello comienza regionalización portuaria, El Nacional (Venezuela), 22 October 1990, p. D10, Ports -- the

pressure grows, Fairplay International Shipping Weekly, 11 October 1990, pp. 31-32 and 34, Portly conduct, Fairplay International Shipping Weekly, 4 October 1990, p. 5, and Changes in Venezuelan ports, Fairplay International Shipping Weekly, 27 September 1990, p. 24.

²⁹ The Dock Work Act 1989, The Industrial Law Journal, Vol. 18, No. 4, December 1989, pp. 230-231, UK strike collapse, Containerisation International, September 1989, pp. 7 and 11, Edwin Unsworth, Dockworkers End Strike in the U.K., The Journal of Commerce, 2 August 1989, p. 8B, Edwin Unsworth, Dockers Remain Defiant in UK, The Journal of Commerce, 31 July 1989, p. 1B, UK dockers drifting back, Fairplay International Shipping Weekly, 27 July 1989, p. 6, Why July will be remembered on the UK east coast, Fairplay International Shipping Weekly, 27 July 1989, pp. 21-23, Edwin Unsworth, UK Dockers Turn to Europe, The Journal of Commerce, 18 July 1989, p. 3B, and Janet Porter, UK Official Says Strikes Won't Hurt Economy, The Journal of Commerce, 12 July 1989, pp. 1A and 8B.

³⁰ The Mexican constitution contains detailed provisions regarding hours of work, overtime pay, employee participation in the earnings of companies in which they work, maternity leave and many other matters, and has been amended on 209 occasions between 1917 and 1987. The latest amendment occurred in May 1990 when the Mexican Congress authorized the privatization of banks that had been nationalized in 1982. See, Luis R. Luis, Why Privatize in Latin America, Privatization in Latin America, A Supplement to LatinFinance, March 1991, pp. 5, 6, 8 and 9, Jane Bussey, Mexico moves to free its banks, U.S. News & World Report, 18 June 1990, p. 44, Robert W. Hahn, Regulation: Past, Present, and Future, Harvard Journal of Law & Public Policy, Vol. 13, No. 1, 1990, pp. 167-228, at p. 208, and Albert P. Blaustein & Gisbert H. Flanz, eds., La Constitución Política de los Estados Unidos Mexicanos, Constitutions of the Countries of the World, Oceana Publications, Inc., New York, April 1988, Vol. X, article 123, at pp. 123-129.

³¹ Diana Shoreham, Privatisation gains new momentum, Euromoney, March 1990, pp. 105, 106 and 109.

³² Frida Johansen and Adhemar Byl, Land transport: Liberalization process, current problems and possible solutions, Chile, Sector Issues Paper, Report No. 6314-CH, The World Bank, Washington, D.C., 24 June 1986, Annex 1, pp. 1-2.

³³ Alice Galenson, Labor redundancy in the transport sector: A review, Report INU 36, The World Bank, Washington, D.C., January 1989, pp. 28 and 33.

³⁴ Cámara Marítima de Chile, Memoria Anual, No. 47, 1990, pp. 12 and 26, PROAMAR (Argentina), July 1989, pp. 18-21, and John O'Brien, Valparaiso Envy of South American Ports, The Journal of Commerce, 27 June 1989, p. 8B.

³⁵ NZ Sees the Fruits of Privatisation, Lloyd's Maritime Asia, March 1991, p. 21.

³⁶ David Steel and David Heald, eds., Privatizing Public Enterprises: Options and Dilemmas, Royal Institute of Public Administration, London, 1984, pp. 70-73.

³⁷ Private undertaking, Lloyd's Maritime Asia, April 1991, pp. 20-21, and Carla Sydney Stone, The Great Globe Itself, The Delaware Lawyer, Vol. 6, No. 3, 1988, pp. 4-6.

³⁸ William B. Cassidy, Entering the Global Market, Fleet Owner, Vol. 85, No. 1, January 1990, pp. 10 and 12.

³⁹ Eileen Byrne, Trucking to an Open Market, Business Mexico, Vol. VI, No. 4, December 1989, pp. 24 and 26-27.

⁴⁰ United Nations Department of Technical Co-operation for Development, Role and Extent of Competition in Improving the Performance of Public Enterprises (TCD/SEM.89.2 and INT-88-R59), Proceedings of a United Nations Inter-regional Seminar on Performance Improvement of Public Enterprises, New Delhi, India, 12-19 April 1989, pp. 7-16, and Richard Hemming and Ali M. Mansoor, Privatization and Public Enterprise, Occasional Paper No. 56, International Monetary Fund, Washington, D.C., 1988, pp. 13-14.

⁴¹ Heidi Vernon-Wortzel and Lawrence H. Wortzel, Globalizing Strategies for Multinationals from Developing Countries, Columbia Journal of World Business, Vol. 23, No. 1, Spring 1988, pp. 27-35, at p. 33.

⁴² Janet Porter, Study Says US Should Follow UK Example of Port Reform, The Journal of Commerce, 2 July 1991, p. 8B.

⁴³ Emanuel S. Savas, Private and Public -- The Record, Government Union Review, Special Edition, March 1982, pp. 31-47, at p. 33.

⁴⁴ Albert P. Blaustein & Gisbert H. Flanz, eds., Constituicao da Republica Federativa do Brasil, Constitutions of the Countries of the World, Oceana Publications, Inc., New York, August 1990, Vol. III, article 177, Raymond Vernon, ed., The Promise of Privatization, The Council on Foreign Relations, Inc., U.S., 1988, pp. 60-63 and 82, and Albert P. Blaustein & Gisbert H. Flanz, eds., Constitution of the Republic of Venezuela, Constitutions of the Countries of the World, Oceana Publications, Inc., New York, April 1983, Vol. Supplement, articles 136 and 137,

⁴⁵ Cosmo Graham and Tony Prosser, Privatising Nationalised Industries, The Modern Law Review, Vol. 50, January 1987, pp. 16-51, Tony Prosser, Nationalised Industries and Public Control, Basil Blackwell, Ltd., Oxford, 1986, pp. 83-84, 86 and 89, and David Steel and David Heald, eds., Privatizing Public Enterprises: Options and Dilemmas, Royal Institute of Public Administration, London, 1984, pp. 51-52.

⁴⁶ Argentina's Privatisation Aspirations, Multinational Business, Summer 1990, pp. 48-53.

⁴⁷ Helen B. Nankani, Lessons of Privatization in Developing Countries, Finance & Development, March 1990, pp. 43-45, and Guy P. Pfeffermann, Private Business in Developing Countries, Discussion Paper No. 1, International Finance Corporation, 1988, p. 22.

⁴⁸ Steve H. Hanke, ed., Privatization & Development, International Center for Economic Growth, San Francisco, 1987, p. 18.

⁴⁹ Laing Gray Cowan, Privatization in the Developing World, Greenwood Press, New York, 1990, pp. 16-19.

⁵⁰ Abner J. Mikva, Deregulating Through the Back Door: The Hard Way to Fight a Revolution, The University of Chicago Law Review, Vol. 57, No. 2, 1990, pp. 521-541, Congressman Edward Markey of Massachusetts (U.S.), Chairman of the Telecommunications and Finance Subcommittee of the House Committee on Energy and Commerce, Independent Agencies -- Independent from Whom?, Administrative Law Review, Vol. 41, 1989, pp. 493-501, at pp. 494-495, Alfred E. Kahn, The Economics of Regulation: Principles and Institutions, Vols. I and II, John Wiley & Sons, Inc., New York, 1970 and 1971, at pp. 209-220 of Vol. II for airlines (republished by the MIT Press, Cambridge, 1988, in one volume under the same title), David Steel and David Heald, eds., Privatizing Public Enterprises: Options and Dilemmas, Royal Institute of Public Administration, London, 1984, pp. 48-50 and 62, and Thomas K. McCraw, Prophets of Regulation, The Belknap Press, Cambridge, 1984, pp. 222-299. Not all U.S. Federal executives placed in charge of deregulating industries carried out their tasks in

such an exemplary manner. For example, Emanuel S. Savas resigned as assistant secretary of the U.S. Housing and Urban Development (HUD) agency after learning that he was about to be dismissed for "abuse of office". Among such abuses were misuse of travel privileges, award of contracts to companies he had worked for as a consultant prior to entering Federal service and the utilization of several HUD employees to type and proofread drafts of his book entitled Privatizing the Public Sector: How to Shrink Government, Chatham House Publishers, Chatham, 1982. For additional details see, Haynes Johnson, Sleepwalking Through History: America In The Reagan Years, W.W. Norton and Company, New York, 1991, pp. 168-169.

⁵¹ Diana Shoreham, Privatisation gains new momentum, Euromoney, March 1990, pp. 105-106 and 109, Gill-Chin Lim and Richard J. Moore, Privatization in Developing Countries: Ideal and Reality, International Journal of Public Administration, Vol. 12, No. 1, 1989, pp. 137-161, at p. 154, John A. Rehfuss, Contracting Out in Government, Jossey-Bass Publishers, San Francisco, California, 1989, pp. 184-190, and Ben Ross Schneider, Partly for sale: Privatization and state strength in Brazil and Mexico, Journal of Interamerican Studies and World Affairs, Vol. 30, No. 4, 1988-1989, pp. 89-116, at p. 97.

⁵² Mike Radford, Competition Rules: The Local Government Act 1988, Modern Law Review, Vol. 51, 1988, pp. 747-767.

⁵³ Laing Gray Cowan, Privatization in the Developing World, Greenwood Press, 1990, pp. 33-35, and Charles Vuylsteke, Techniques of Privatization of State-Owned Enterprises. Methods and Implementation, Vol. I, World Bank Technical Paper No. 88, Washington, D.C., 1988, pp. 94-116.

⁵⁴ Thomas Atkinson, Brazil's Costly Ports System Inches Toward Modernization. Entry of Private Operators, Business Latin America, 9 July 1990, pp. 211 and 214.

⁵⁵ William P. Statsky, Bruce L. Hussey, Michael R. Diamond and Richard H. Nakamura, West's Legal Desk Reference, West Publishing Company, St. Paul, 1991, p. 107, Words and Phrases, West Publishing Company, St. Paul, Vol. 24A, 1991, p. 70, and Black's Law Dictionary, 6th ed., West Publishing Company, St. Paul, 1990, p. 894.

⁵⁶ Privatization in Latin America, Business International, December 1990, pp. 90-94, Emilio J. Cárdenas, Argentina: A Privitisation (sic) Law Enacted, International Business Lawyer, Vol. 17, No. 11, December 1989, pp. 517-519, Emilio J. Cárdenas, Argentina: Privatisation Law in Place, International Financial Law Review, Vol. 7-9, No. 11, November 1989, pp. 30-31, and Emilio J. Cárdenas, Legal Memoranda. Argentina, University of Miami Inter-American Law Review, Vol. 21, No. 1, 1989, pp. 217-223.

⁵⁷ Irene Dias da Silva and Ana Eliza Antunes Salgado, Brazil, Privatization in Latin America, A Supplement to LatinFinance, March 1991, pp. 41-45, and Privatization in Latin America, Business International, December 1990, p. 112.

⁵⁸ Law allows 100% foreign ownership, Latin American Regional Reports, Brazil Report, 10 January 1991, p. 7.

⁵⁹ Title 49 United States Code, section 10922 (b)(1)-(2).

⁶⁰ Ports partial privatisation plans, Fairplay International Shipping Weekly, 19 April 1990, p. 24, ALAMAR, Informativo (Uruguay), No. 579, 1-15 September 1989, p. 20, and Folha de Sao Paulo, Portofolha (Brazil), 7 July 1988, p. D-1, 14 July 1988, p. D-2, 6 October 1988, p. H-1, and 20 October 1988, p. H-1.

⁶¹ The U.S. Airline Deregulation Act of 1978 permits new carriers to enter the industry and removed the Civil Aeronautics Board's control over air fares. With the adoption of the Civil Aeronautics Board Sunset Act of 1984, Pub. L. No. 98-443, 98 Stat. 1703, the CAB was abolished 1 January 1985 and its remaining functions such as enforcement of international conventions, antitrust laws, energy conservation statutes and legislation to encourage air travel were transferred to the U.S. Department of Transportation. See, Pub. L. No. 95-504, 92 Stat. 1705, amending the Federal Aviation Act of 1958, and codified in 49 U.S.C. sections 1301-1542.

⁶² Avishai Gil, Air transport deregulation and its implications for flight attendants, International Labour Review, Vol. 129, No. 3, 1990, pp. 317-331, at pp. 324-327, and Nancy Brown Johnson, Rakesh B. Sambharya and Philip Bobko, Deregulation, Business Strategy, and Wages in the Airline Industry, Industrial Relations, A Journal of Economy and Society, Vol. 28, No. 3, Fall 1989, pp. 419-430, at p. 422.

⁶³ For a variety of viewpoints of economists and attorneys on U.S. airline deregulation, see William G. Shepherd, Potential Competition Versus Actual Competition, Administrative Law Review, Vol. 42, No. 1, 1990, pp. 25-28, Robert W. Hahn, Regulations: Past, Present, and Future, Harvard Journal of Law & Public Policy, Vol. 13, No. 1, 1990, pp. 167-228, Michael E. Levine, Airline Competition in Deregulated Markets: Theory, Firm Strategy, and Public Policy, Yale Journal on Regulation, Vol. 4, 1987, pp. 393-494, Alfred E. Kahn, Airline Deregulation -- A Mixed Bag, But a Clear Success Nevertheless, Transportation Law Journal, Vol. 16 (2), 1988, pp. 229-251, Alfred E. Kahn, Regulation: Theory and Application, Antitrust Law Journal, Vol. 55, April 1986, pp. 177-184, Thomas Gale Moore, U.S. Airline Deregulation: Its Effects on Passengers, Capital, and Labor, The Journal of Law & Economics, Vol. 29 (1), 1986, pp. 1-28, Robert M. Hardaway, Transportation Deregulation (1976-1984): Turning the Tide, Transportation Law Journal, Vol. 14 (1), 1985, pp. 101-151, and Alfred E. Kahn, The Economics of Regulation: Principles and Institutions, Vol. II, 1970, John Wiley & Sons, Inc., New York, pp. 209-220. For the opinion of a professor of law who spent the early part of his career as an attorney with the U.S. Civil Aeronautics Board, a regulatory agency, see Paul Stephen Dempsey, Robber barons in the cockpit: The airline industry in turbulent skies, Transportation Law Journal, Vol. 18, Winter 1990, pp. 133-171, Paul Stephen Dempsey, The Social and Economic Consequences of Deregulation, Quorum Books, New York, 1989, Paul Stephen Dempsey, The Dark Side of Deregulation: Its Impact on Small Communities, Administrative Law Review, Vol. 39, No. 4, 1987, pp. 445-465, Paul Stephen Dempsey, Transportation Deregulation -- On a Collision Course?, Transportation Law Journal, Vol. 13 (1), 1983, pp. 329-392, and Paul Stephen Dempsey, Erosion of the Regulatory Process in Transportation -- The Winds of Change, I.C.C. Practitioners' Journal, Vol. 47, 1979-1980, pp. 303-320.

⁶⁴ Cosmo Graham and Tony Prosser, Privatising Nationalised Industries: Constitutional Issues and New Legal Techniques, Modern Law Review, Vol. 50, 1987, pp. 16-51.

⁶⁵ (1) Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31, (2) Natural Gas Policy Act of 1978, Pub. L. No. 95-621, 92 Stat. 335, (3) Household Goods Transportation Act of 1980, Pub. L. No. 96-454, 94 Stat. 2011, (4) Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, (5) Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793, (6) Depository Institutions Deregulation and Monetary Control Act of

1980, Pub. L. No. 96-221, 94 Stat. 132, (7) Bus Regulatory Reform Act of 1982, Pub. L. No. 97-261, 96 Stat. 1102, and (8) Shipping Act of 1984, Pub. L. No. 98-237, 98 Stat. 67.

⁶⁶ Hernando de Soto, The Other Path: The Invisible Revolution in the Third World, Harper & Row, New York, 1989, pp. 52 and 133-135, and Peter Schuck and Robert E. Litan, Regulatory Reform in the Third World: The Case of Peru, Yale Journal on Regulation, Vol. 4, No. 1, 1986, pp. 51-78, at p. 61.

⁶⁷ John Purcell, The rediscovery of the management prerogative: The management of labour relations in the 1980s, Oxford Review of Economic Policy, Vol. 7, No. 1, Spring 1991, pp. 33-43, at pp. 36-37.

⁶⁸ Peter Schuck and Robert E. Litan, Regulatory Reform in the Third World: The Case of Peru, Yale Journal on Regulation, Vol. 4, No. 1, 1986, pp. 51-78, at p. 51, and Stephen L. Snow, In Search of the Role of the Private Producer in the Argentine Petroleum Industry, Brigham Young University Law Review, Vol. 1984, No. 3, 1984, pp. 403-429, at pp. 403 and 419.

⁶⁹ James Bruce, Deregulation Moves In Brazil Prompt New Boxship Orders, The Journal of Commerce, 29 January 1991, p. 1B, and James Bruce, Brazil Frees Reins on Merchant Marine Industry, The Journal of Commerce, 17 January 1991, pp. 1B and 8B.

⁷⁰ Caludio Veliz, The Centralist Tradition of Latin America, Princeton University Press, Princeton, 1980, pp. 9, 150, 153, 264 and 289.

⁷¹ Rodolfo Carlos Barra Principios de derecho administrativo, Editorial A'baco de Rodolfo Depalma, Buenos Aires, Argentina, 1980, p. 42. In a similar manner, the Government of Trinidad and Tobago in its Third Five Year Plan 1969-1973, 1969, indicated that

"In the future all public utilities will be owned or substantially controlled by the public sector. The public sector will also not hesitate to enter either alone or in partnership with foreign or local private capital into the productive fields of industry, tourism and agriculture."

In response to that broad mandate, the Government utilized its oil wealth in the years 1973-1982 to become the principal force in the nation's economy. By the end of 1985, it was majority owner of 48 enterprises accounting for 16% of the GDP and directly employing some 53 700 persons. The Government contributed a total of around US\$1.0 billion to the national economy, which amounted to 26% of all capital investments of that country. This fiscal policy encouraged greater consumption, which, in turn, led to inflationary and external debt payments problems. As a result, the Government adopted numerous austerity measures suggested by the International Monetary Fund. Sources: The ruling National Alliance for Reconstruction (NAR) party continues to lose popularity as a result of IMF-imposed austerity measures, Business Latin America, 4 February 1991, p. 40, and Dennis J. Gayle and Jonathan N. Goodrich, eds., Privatization and Deregulation in Global Perspective, Quorum Books, New York, 1990, p. 379.

⁷² Albert Fishlow, The Latin American State, Journal of Economic Perspectives, Vol. 4, No. 3, Summer 1990, pp. 61-74, at p. 62.

⁷³ Alfonso Lopez Michelsen, Adios al proteccionismo, El Tiempo (Bogota), 8 May 1991, pp. 4A and 10A, Panama, The Financial Times (London), A Financial Times Survey, 18 February 1991, p. 19, Privatisation programme launched, Latin American Regional Reports, Brazil Report, 14 February 1991, p. 4, Sweeping

privatisation plans in Bolivia, Latin American Regional Reports, Andean Group Report, 31 January 1991, pp. 4-5, Manley explains new role of state, Latin American Regional Reports, Caribbean Report, 24 January 1991, p. 3, Peruvian liner firm technically bankrupt, Fairplay International Shipping Weekly, 20/27 December 1990, p. 7, John Guy, Out to lunch, Fairplay International Shipping Weekly, 13 December 1990, p. 60, Time to dance, Fairplay International Shipping Weekly, 25 October 1990, pp. 3-4, Lenny Glynn, Privatization Fever Hits Latin America, Global Finance, March 1990, pp. 49, 50, 52, 54 and 56, and Jeffrey Ryser, Brazil Finally Catches Free-Market Fever, Business Week, 16 October 1989, p. 51.

⁷⁴ Felipe Ortiz de Zevallos M., The Case of Peru: An Insider View, presented at the Conference on "State Shrinking: A Comparative Inquiry into Privatization", sponsored by the Institute of Latin American Studies, University of Texas, Austin, Texas, March 1984.

⁷⁵ James Bruce, Brazilian Ports Progress Toward Privatization, The Journal of Commerce, 1 August 1991, p. 1B, and En Puerto Cabello comienza regionalización portuaria, El Nacional (Venezuela), 22 October 1990, p. D10.

⁷⁶ Privatization in Latin America, Business International, December 1990, p. 113, Lauren Weiner, Some pain, big gains in Latins' free market bids, The Washington Times, 12 October 1990, pp. A1 and A9, Government names companies for sale, Latin American Regional Reports, Brazil Report, 20 September 1990, p. 3, James Brooke, Brazilian Leaders Take Aim at Big Government, The New York Times, 15 May 1990, p. D8, Walter Douglas Stuber, Brazil's new stabilisation programme, International Financial Law Review, May 1990, pp. 30-31, Paul Tharp, Dancing the samba of debt, Euromoney, March 1990, pp. 97, 100 and 102, and James Brooke, Economy of Brazil Still Ails, The New York Times, 3 December 1989, pp. D1 and D5.

⁷⁷ James Bruce, Deregulation Ends 10-Year Battle Waged by Transroll in Brazil, The Journal of Commerce, 8 March 1991, p. 11A, Import duties have been reduced in a tariff reform effective February 15, Business Latin America, 25 February 1991, p. 63, Shipping curbs lifted, Latin American Regional Reports, Brazil Report, 14 February 1991, p. 4, James Bruce, Brazilian Transport Plan Singles Out 11 Ports for Future Federal Funds, The Journal of Commerce, 1 February 1991, p. 8B, James Bruce, Lloyd Brasileiro Expects Loan In Time to Avoid Ship Auction, The Journal of Commerce, 29 January 1991, p. 8B, and James Bruce, Brazilian Congress Called to Consider Fate of Lloydbras, The Journal of Commerce, 4 January 1991, p. 8B.

⁷⁸ Peter Cappelli, Bargaining Structure and Wage Outcomes in the British Coal Industry, Industrial Relations, A Journal of Economy and Society, Vol. 26, No. 2, Spring 1987, pp. 127-145.

⁷⁹ Arthur Shenfield, The Problems of Public Sector Supply, Government Union Review, Special Edition, March 1982, pp. 1-14, at p. 6.

⁸⁰ John Burton, Public Sector Unions in Britain and the United States, Government Union Review, Special Edition, March 1982, pp. 48-60, at p. 48.

⁸¹ John Leopold and Michael Jackson, Decentralisation of collective bargaining: A case study, Industrial Relations Journal, Vol. 21, No. 3, 1990, pp. 185-193, at pp. 190-191.

⁸² George Ruben, Master agreement covers Atlantic and Gulf ports, Monthly Labor Review, U.S. Department of Labor, July 1980, p. 57.

⁸³ Laurel Brubaker, Showdown on the Waterfront, Dun's Business Month, Vol. 128, No. 4, October 1986, pp. 66-67.

⁸⁴ Craig Dunlap, Dockers Reach Tentative Agreement In S. Atlantic, The Journal of Commerce, 4 December 1990, p. 8B.

⁸⁵ Mehdi Haririan, State-Owned Enterprises in a Mixed Economy, Westview Press, Inc., Boulder, 1989, p. 126.

⁸⁶ For an evaluation of the use of performance agreements in other countries see, John R. Nellis, Contract Plans and Public Enterprise Performance, World Bank Discussion Papers No. 48, Washington, D.C., 1989.

⁸⁷ Based on information provided by the U.S. Maritime Administration, Department of Transportation. For earlier figures see, Marc J. Hershman, ed., Urban Ports and Harbor Management, Taylor & Francis, New York, 1988, pp. 11, 40 and 58, and Henry S. Marcus, James E. Short, John C. Kuypers and Paul O. Roberts, Federal Port Policy in the United States, The MIT Press, Cambridge, 1976, pp. 6-7.

⁸⁸ Robert W. Hahn, Regulation: Past, Present, and Future, Harvard Journal of Law & Public Policy, Vol. 13, No. 1, 1990, pp. 167-228, at pp. 168 and 174-175, Robert H. Lande, Chicago's False Foundation: Wealth Transfers (Not Just Efficiency) Should Guide Antitrust, Antitrust Law Journal, Vol. 58, August 1989, pp. 631-644, at p. 631, and Stephen G. Breyer, Antitrust, Deregulation, and the Newly Liberated Marketplace, California Law Review, Vol. 75, No. 3, May 1987, pp. 1005-1047, at p. 1006.

⁸⁹ United Nations Economic Commission for Latin America and the Caribbean, The distribution chain and the competitiveness of Latin American exports: Port modernization in Chile (LC/G.1597, 29 December 1989), pp. 4 and 58.

⁹⁰ Michael E. Porter, The Competitive Advantage of Nations, The Free Press, New York, 1990, pp. 505 and 662-664, William J. Kilberg, Becoming Competitive, Employee Relations Law Journal, Vol. 13, No. 3, 1987-1988, pp. 379-381, at p. 380, and James C. Miller, Thomas F. Walton, William E. Kovacic and Jeremy A. Rabkin, Industrial Policy: Reindustrialization Through Competition or Coordinated Action, Yale Journal on Regulation, Vol. 2, 1984, pp. 1-37, at p. 37.

⁹¹ M. E. Beesley, and S.C. Littlechild, The regulation of privatized monopolies in the United Kingdom, Rand Journal of Economics, Vol. 20, No. 3, 1989, pp. 454-472, at pp. 454-455, Cento Veljanovski, Privatization in Britain -- The Institutional and Constitutional Issues, Marquette Law Review, Vol. 71, No. 3, 1988, pp. 558-582, at pp. 572-3, and Cento Veljanovski, Selling the State. Privatisation in Britain, Weidenfeld and Nicolson, London, 1987, pp. 165-167 and 172-174.

⁹² Charles Vuylsteke, Techniques of Privatization of State-Owned Enterprises. Methods and Implementation, Vol. I, World Bank Technical Paper No. 88, Washington, D.C., 1988, p. 24, and Tony Prosser, Nationalised Industries and Public Control, Basil Blackwell, Ltd., Oxford, 1986, p. 79.

⁹³ V.V. Ramanadham, ed., Public Enterprise and the Developing World, Croom Helm, London, 1984, pp. 31 and 33, Paul E. Sigmund, Multinationals in Latin America. The Politics of Nationalization, The University of Wisconsin Press, Madison, 1980, p. 36, and Raymond Vernon, ed., Public Policy and Private Enterprise in Mexico, Harvard University Press, Cambridge, 1964, pp. 60 and 62.

⁹⁴ Hernando de Soto, The Other Path, The Invisible Revolution in The Third World, Harper & Row, Publishers, New York, 1989, pp. 252-254, and Bernard Schwartz, Fashioning an Administrative Law System, Administrative Law Review, Vol. 40, number 3, 1988, pp. 428-431.

⁹⁵ U.S. Code, Congressional and Administrative News, 98th Congress, Second Session, 1984, Vol. 1, Sections 4, 5 and 7 of Public Law 98-237 (Statute 47), adopted 20 March 1984; also found at Title 46 U.S.C. Sections 1701 et. seq.

⁹⁶ U.S. Code, Congressional and Administrative News, 98th Congress, Second Session, 1984, Vol. 2, Legislative History, Shipping Act of 1984, Public Law 98-237, p. 177.

⁹⁷ Title 49 United States Code sections 1601-1621, amended in 1970, 1974, 1978, 1983 and 1987.

⁹⁸ J. Kodwo Bentil, Competition Ban Clauses in Enterprise Transfer Contracts under Common Market Law, The Journal of Business Law, July 1989, pp. 321-338, at pp. 322-323 and 337.

⁹⁹ Jean-Georges Baudelaire, Port Administration and Management, The International Association of Ports and Harbors, Tokyo, 1986, pp. 95-96, Alan E. Branch, Elements of Port Operation and Management, Chapman and Hall, London, 1986, pp. 179-185.

¹⁰⁰ R.A.P. Douglas, Port Administration. A Review of the Structural and Legal Aspects, Report INU 76, The World Bank, Washington, D.C., August 1990, pp. 21-23.

¹⁰¹ R.A.P. Douglas, Port Administration. A Review of the Structural and Legal Aspects, Report INU 76, The World Bank, Washington, D.C., August 1990, pp. 12 and 18.

¹⁰² United Nations, Port Administration and Legislation Handbook, New York, 1969, pp. 4-5.

¹⁰³ The right kind of capacity, Fairplay International Shipping Weekly, 25 October 1990, pp. 22 and 25.

¹⁰⁴ Port reform: Brazil's power struggle nears climax, Containerisation International, April 1991, pp. 39, 41 and 43, James Bruce, Santos Strike. Blue-Collar Firings May Accelerate Brazilian Port Reforms, The Journal of Commerce, 22 February 1991, p. 12B, James Bruce, Brazilian Legislators Get Port Reform Bill, The Journal of Commerce, 20 February 1991, p. 8, and James Bruce, 8 Ports Could Benefit From Brazilian Reform, The Journal of Commerce, 20 November 1990, p. 3B.

¹⁰⁵ ALAMAR, Eliminacion de la CCTM, Informativo (Uruguay), No. 600, May 1991, pp. 50-51, Always one, Fairplay International Shipping Weekly, 28 February 1991, pp. 2-3, Parallel privatisation prompts ports passion, Fairplay International Shipping Weekly, 24 January 1991, pp. 24-26, and Peruvian traffic down 60 per cent, Fairplay International Shipping Weekly, 10 January 1991, p. 35.

¹⁰⁶ Based on information provided by Comandante Sanchez Salazar, Director del Comité de Disolución, Government of Peru. See also, Newsround, Fairplay International Shipping Weekly, 11 April 1991, p. 10, and Privatization of Stevedore Services Expected to Boost Peru Port Business, The Journal of Commerce, 25 March 1991, p. 3B.

¹⁰⁷ For a detailed treatment of management contracts, see Sven Hegstad and Ian Newport, Management Contracts: Main Features and Design Issues, World Bank Technical Paper No. 65, Washington, D.C., 1987.

¹⁰⁸ Kate Ascher, The Politics of Privatisation: Contracting Out Public Services, Macmillan Education, Ltd., London, 1987, pp. 7-8 and 47.

¹⁰⁹ David Parker and Keith Hartley, Competitive Tendering: Issues and Evidence, Public Money & Management, Vol. 10, No.3, 1990, pp. 9-16, and Competitive Tendering, The Economist, 9 September 1989, pp. 71-72.

¹¹⁰ John A. Rehfuss, Contracting Out in Government, Jossey-Bass Publishers, San Francisco, California, 1989, pp. 43-49 and 63-105.

¹¹¹ Lawrence K. Finley, Public Sector Privatization, Quorum Books, New York, 1989, pp. 6 and 16.

¹¹² Pinheiro Neto, Legal Memoranda, Brazil, The University of Miami Inter-American Law Review, Vol. 19, No. 1, 1987, pp. 211-235, at pp. 211-212.

¹¹³ Privatization in Latin America, Business International, December 1990, p. 58, Christine MacDonald, Toll roads, railways, power stations and petrochemical plants all on Mexico's menu, Privatisation International, No. 26, November 1990, p. 18, Highways, Bridges to Handle Surge in US Trade, The Journal of Commerce, 30 October 1990, p. 2B, Christine MacDonald, Mexico looks to the private sector to make good the deficiencies of its infrastructure, Privatisation International, No. 18, March 1990, pp. 6-7, and William Newman, Private Funds for Public Projects, Business Mexico, Vol. VI, No. 3, September 1989, pp. 56-58.

¹¹⁴ John Maggs, Mexico Acts to Lure Private Investors To Transport Sector, The Journal of Commerce, 14 May 1991, p. 1B.

¹¹⁵ Los empresarios del transporte reiteraron que no pagaran peaje, Clarín (Argentina), 6 April 1991, p. 14, Vuelve el peaje con una rebaja del 60 por ciento, El Cronista Comercial (Argentina), 1 April 1991, The government is taking two steps forward and one step back with its privatization program, Business Latin America, 11 March 1991, p. 79, Ministry's musical chairs, Buenos Aires Herald, 19 January 1991, p. 5, Gary Mead, Argentina plans tolls over one third of road network, Privatisation International, No. 23, August 1990, p. 1, Privatisations, Aerolíneas sale nearing completion, Latin American Regional Reports, Southern Cone Report, 9 August 1990, p. 2, Argentina's Privatisation Aspirations, Multinational Business, Summer 1990, pp. 48-53, and Pablo Mass, Argentina Privatizations Take Major Leap Forward With Awarding of Entel, Business Latin America, 9 July 1990, p. 214.

¹¹⁶ Argentina privatizo 5.000 kilometros de ferrocarriles, Última hora (Paraguay), 15 June 1991, p. 2, Trabajadores repudian los ajustes, Informe Latinoamericano, 4 April 1991, pp. 6-7, Luis R. Luis, Why Privatize in Latin America, Privatization in Latin America, A Supplement to LatinFinance, March 1991, pp. 5, 6, 8 and 9, Suspension of Argentine Rail Service Unlikely to Hurt Grain Exports Much, The Journal of Commerce, 7 March 1991, p. 2B, Argentina Plans to Privatize Operation of More Rail Lines, The Journal of Commerce, 7 January 1991, p. 2B, Argentina Seeks Bids for Two Grain Rails, The Journal of Commerce, 16 November 1990, p. 2B, Geoffrey Brown, Argentine Railways In Need of Investment, The Journal of Commerce, 15 November 1990, p. 2B, 2 Groups Bid for Work On Argentine Railroad, The Journal of Commerce, 7 November 1990, p. 2B, United Nations Economic Commission for Latin America and the Caribbean, Simposio de la ALAF. Privatización de los ferrocarriles, El Boletín FAL, Sept.-octubre de 1990, pp. 1-2, and Privatizations are picking up momentum, Business Latin America, 24 September 1990, p. 307.

¹¹⁷ R.A.P. Douglas, Port Administration: A Review of the Structural and Legal Aspects, Report INU 76, The World Bank, Washington, D.C., August 1990, p. 20-23.

¹¹⁸ ALAMAR, Terminal de contenedores en Cartagena Informativo (Uruguay), No. 600, May 1991, p. 50, and Economic Commission for Latin America and the Caribbean, Structural changes in ports and the competitiveness of Latin American and Caribbean foreign trade (LC/G.1633-P, October 1990), p. 51.

¹¹⁹ James Bruce, Transport and Trade Problems Snag Brazilian Economic Liberalization, The Journal of Commerce, 23 April 1991, p. 1A.

¹²⁰ ALAMAR, Terminales de turismo, Informativo (Uruguay), No. 600, May 1991, p. 50, and William I. Neuman, Inversion publica, negocio privado, America Economia, La Revista de Negocios de America Latina, No. 33, November 1989, pp. 14-15.

¹²¹ Charles Vuylsteke, Techniques of Privatization of State-Owned Enterprises, Methods and Implementation, Vol. I, World Bank Technical Paper No. 88, Washington, D.C., 1988, pp. 34-40, and H.E. Wesemann, Contracting for City Services, Innovations Press, Pittsburgh, 1981, p. 59.

¹²² American Jurisprudence (2nd ed.) Vol. 46, pp. 21-22, 34-36, Corpus Juris Secundum, Vol. 48, pp. 801 et seq., and Words and Phrases, Vol. 23, p. 227.

¹²³ Edward Cody, Salinas Purges Port of Veracruz -- By Seizing It, The Washington Post, 15 June 1991, pp. A16 and A24, and Oscar de Buen and Juan Pablo Antun, Reglamentacion y practicas comunes del transporte de carga en Mexico: El punto de vista de los usuarios, Comercio Exterior, Vol. 39, No. 5, Mexico, May 1989, pp. 392-403.

¹²⁴ V.V. Ramanadham, ed., Public Enterprise and the Developing World, Croom Helm, London, 1984, p. 80.

¹²⁵ R.A.P. Douglas, Port Administration. A Review of the Structural and Legal Aspects, Report INU 76, The World Bank, Washington, D.C., August 1990, pp. 21-23, and Lawrence K. Finley, Public Sector Privatization, Quorum Books, New York, 1989, p. 172.

¹²⁶ Rosangela Vieira, Carga Combinada Reduz Tarifa, Folha de Sao Paulo, 28 September 1990, p. 4, ALAMAR, Informativo (Uruguay), Nos. 582 and 583, November and December 1989, p. 34, and No. 573, 16-31 May 1989, p. 6, Private Terminals Fill Port Services' Gap in Brazil, The Journal of Commerce, 27 June 1989, p. 10B, and Folha de Sao Paulo, Portofolha (Brazil), 15 June 1989, p. H-4.

¹²⁷ James Bruce, Strike by Blue-Collar Workers At Port of Santos Continues, The Journal of Commerce, 14 February 1991, p. 8B.

¹²⁸ Pablo Bachelet Norelli, Chile Investigates Pinochet Privatizations: State To Redefine Its Economic Role, Business Latin America, 18 February 1991, pp. 50-51.

¹²⁹ Dennis J. Gayle and Jonathan N. Goodrich, eds., Privatization and Deregulation in Global Perspective, Quorum Books, New York, 1990, p. 49.

¹³⁰ Francis Terry, Selling the Family Silver, Public Money & Management, Vol. 10, No. 1, Spring 1990, pp. 47-49, Charles Vuylsteke, Techniques of Privatization of State-Owned Enterprises, Methods and Implementation, Vol. I, World Bank Technical Paper No. 88, Washington, D.C., 1988, p. 113, Cosmo Graham and Tony Prosser, Privatising Nationalised Industries, Modern Law Review., Vol. 50, January 1987, pp. 16-51, and David Steel and David Heald, eds., Privatizing Public Enterprises: Options and Dilemmas, Royal Institute of Public Administration, London, 1984, pp. 101-102.

¹³¹ Danny Beeton, Privatisation of the UK trust ports, Fairplay International Shipping Weekly, 4 April 1991, pp. 28 and 30, Privatisation Bill for UK trust ports, Containerisation International, April 1991, p. 27, Vincent Champion, Private grief?, Cargo Systems International, March 1991, p. 63, Paul Richardson, Ports gear up for the future, Fairplay International Shipping Weekly, 14 February 1991, p. 28, Management/employee buy-out for Tilbury, Fairplay International Shipping Weekly, 7 February 1991, p. 7, Port privatisation

bill for UK, Fairplay International Shipping Weekly, 24 January 1991, p. 6, Janet Porter, UK Plans to Privatize Some Trust-Owned Ports, The Journal of Commerce, 18 January 1991, p. 1B, and Ports privatisation, Fairplay International Shipping Weekly, 6 September 1990, p. 37.

¹³² David Reade, New Zealand port plan disintegrates, Containerisation International, May 1991, pp. 81 and 83, and Ernst & Young, The Global Sweep of Privatization, Euromoney (Special Supplement), July 1990, p. 13.

¹³³ Frank Welsh, The Afflicted State. A Survey of Public Enterprise, Century Publishing Company, London, 1983, p. 47.

¹³⁴ Peter Young, Privatization in Great Britain, Government Union Review, Vol. 7, No. 2, Spring 1986, pp. 1-23, at pp. 2-6. For a summary of the procedures utilized for the privatization of 12 U.K. regional public utilities, see Floyd Norris, Market Place. Some Fast Profits In British Utilities, The New York Times, 12 December 1990, p. D6.

¹³⁵ Masami Sakita, Restructuring of the Japanese National Railways: Review and Analysis, Transportation Quarterly, Vol. 43, No. 1, January 1989, pp. 29-45, and President's Commission on Privatization, Privatization. Toward more Effective Government, Government Printing Office, March 1988, p. 4.

¹³⁶ After the Government of Japan announced that it was to convert the JNR into a limited liability company, the employees went on strike and 45 of them who believed they could not be trained for new activities committed suicide. At the same time, a clandestine group carried out a campaign of sabotage which damaged signaling equipment at 24 locations and paralyzed travel in Tokyo. The employees' union denounced the sabotage. See, Alvin Toffler, Pow-ershift, Bantam Books, New York, 1990, pp. 259-260, and Andrew Baxter, Bracing for the break-up, The Financial Times (London), 12 December 1986, p. 24.

¹³⁷ Shoji Sumita, Turning the Railways Around, Economic Eye, June 1988, pp. 30-32, and Where rail makes money, The Economist, 11 June 1988, pp. 70-71.

¹³⁸ Michael E. Porter, The Competitive Advantage of Nations, The Free Press, New York, 1990, p. 410, and Daniel E. Tierney, The United States-Japan Semiconductor Controversy: A Strategic Guide to the Use of U.S. Trade Laws as a Legal and Political Instrument, Albany Law Review, Vol. 52, No. 1, 1987, pp. 363-403, at p. 367.

¹³⁹ Steve H. Hanke, ed., Privatization & Development, International Center for Economic Growth, San Francisco, 1987, p. 27.

¹⁴⁰ Raymond Vernon, ed., The Promise of Privatization, The Council on Foreign Relations, Inc., U.S., 1988, pp. 137-143.

¹⁴¹ Ivo Dawney, Brazil State Bus Maker Auction Off, Financial Times (London), 12 October 1989, p. 3.

¹⁴² David Steel and David Heald, eds., Privatizing Public Enterprises: Options and Dilemmas, Royal Institute of Public Administration, London, 1984, pp. 104-105.

¹⁴³ Raymond Vernon, ed., The Promise of Privatization, the Council on Foreign Relations, Inc., U.S., 1988, p. 47, Steven L. Wolfram and Bruce C. Bennet, Multinational Offerings: A United States Perspective after British Telecom, British Gas and British Airways, Columbia Business Law Review, Vol. 1987, No. 2, pp. 339-356, and Tony Prosser, Nationalised Industries and Public Control, Basil Blackwell, Ltd., Oxford, 1986, pp. 99-100.

¹⁴⁴ Government names companies for sale, Latin American Regional Reports, Brazil Report, 20 September 1990, p. 3, John Barham, Brazil plans privatisation committee after Congress approves Collor's programme, Privatisation International, No. 20, May 1990, pp. 6-7, Helen B. Nankani,

Lessons of Privatization in Developing Countries, Finance & Development, March 1990, pp. 43-45, Charles Vuylsteke, Techniques of Privatization of State-Owned Enterprises. Methods and Implementation, Vol. I, World Bank Technical Paper No. 88, Washington, D.C., 1988, pp. 118 and 165-167, and article 10 of Law No. 86-912 of 6 August 1986, relative to the implementation of the privatizations decided by Law No. 86-793 of 2 July 1986, authorizing the (French) Government to take certain social and economic measures.

¹⁴⁵ On 12 December 1974, the United Nations General Assembly adopted the Charter of Economic Rights and Duties of States, contained in resolution 3281, (XXIX).

¹⁴⁶ Albert P. Blaustein & Gisbert H. Flanz, eds., Constituicao da República Federativa do Brasil, Constitutions of the Countries of the World, Oceana Publications, Inc., New York, August 1990, Vol. III, articles 48-50 and 84-86.

¹⁴⁷ Leyes Y Códigos de México, Ley de Navegación y Comercio Marítimos, Editorial Porrúa, S.A., Mexico, 1989, and Albert P. Blaustein & Gisbert H. Flanz, eds., Constitucion Politica de los Estados Unidos Mexicanos, Constitutions of the Countries of the World, Oceana Publications, Inc., New York, August 1990, Vol. X, article 27.

¹⁴⁸ Cento Veljanovski, Monopoly Manacles the Capital Market, Economic Affairs, February/March 1987, pp. 20-22.

¹⁴⁹ Marc J. Hershman, ed., Urban Ports and Harbor Management, Taylor & Francis, New York, 1988, pp. 30-31.

¹⁵⁰ Pablo Bachelet Norelli, Chile Investigates Pinochet Privatizations: State to Redefine Its Economic Role, Business Latin America, 18 February 1991, pp. 50-51, Elliot Berg, ed., Policy Reform and Equity. Extending the Benefits of Development, Institute for Contemporary Studies Press, San Francisco, 1988, p. 196, and Joseph Ramos, Neoconservative Economics in the Southern Cone of Latin America, 1973-1983, The John Hopkins University Press, Baltimore, 1986, pp. 18 and 66.

¹⁵¹ Ley Orgánica que Regula la Enajenación de bienes del Sector Público no Afectos a las Industrias Básicas, Gaceta Oficial, No. 3 951 extraordinario, 7 de enero de 1987.

¹⁵² As an illustration of the interplay of economic, political and social forces on efforts to privatize public-sector enterprises, numerous countries began liberalizing their economies after the oil crises of 1973 and 1979, but the Government of France, in 1982, undertook a program of nationalization that expanded the public sector from 16% to 22% of its gross domestic product. By 1986, however, that program was reversed through the adoption of two privatization laws and it initiated a five-year program to sell 65 banking, insurance and industrial groups, comprising 1 454 firms with some 775 000 employees, to private investors. The stated goals of this program were to reduce the extensive government control of commercial enterprises, create an environment in which they might be more competitive, decrease the nation's budget deficit, generate funds for public works projects, establish a broadbase of small national shareholders, encourage employees to own shares in the companies in which they work and, most important, create a major financial center in Paris with the expertise and capacity to take advantage of the single European market in 1992. To avoid problems with such transfers, as article 34 of its constitution precludes such transfers unless specific laws authorizing them are adopted by Parliament, in July 1987 a law was adopted which invalidates any challenge to them for lack of earlier legislative authority. Thirty of the 65 groups were sold, but the program was discontinued following the

stock market crash of October 1987 and the May 1988 election of a new president who promised that there would be no more sales or nationalizations. By September 1991, however, another change in the government led to a reinitiation of the program.

Sources: France's reluctant return to privatisation, The Economist, 7 September 1991, pp. 67-68, Dennis J. Gayle and Jonathan N. Goodrich, eds., Privatization and Deregulation in Global Perspective, Quorum Books, New York, 1990, pp. 64, 69, 257 and 379, John Vickers and Vincent Wright The Politics of Privatisation in Western Europe, Frank Cass and Company Limited, London, 1989, pp. 8-9, 14-15, 21, 23 and 49-60, Lawrence K. Finley, Public Sector Privatization, Quorum Books, New York, 1989, pp. 169 and 171-172, Albert P. Blaustein & Gisbert H. Flanz, eds., The French Constitution, Constitutions of the Countries of the World, Oceana Publications, Inc., New York, June 1988, Vol. V, Dominique Borde and Sharon Toffler, Privatisations in France, International Business Lawyer, Vol. 16, No. 4, April 1988, pp. 155-160, Law No. 86-793 of 2 July 1986, authorizing the Government of France to take certain economic and social measures, Law No. 86-912 of 6 August 1986, relative to the implementation of the privatizations decided by Law No. 86-793, United Nations, Economic performance of public enterprises: Major issues and strategies for action, (ST/TCD/SER.E/2), 1986, New York, p. 14, and David Marsh and Paul Betts, Socialists try to stop the bandwagon, The Financial Times (London), 13 January 1986, p. 12.

¹⁵³ For a review of privatization in terms of various measures of profitability and productivity for matched pairs of North American public and private enterprises, and a similar comparison of 500 non-U.S. industrial firms in both developed and developing countries (419 private corporations, 58 state-owned enterprises, and 23 mixed enterprises) see, Anthony E. Boardman and Aidan R. Vining, Ownership and Performance in Competitive Environments: A Comparison of the Performance of Private, Mixed, and State-owned Enterprises, Journal of Law and Economics, Vol. 32 (1), April 1989, pp. 1-33. See also, President's Private Sector Survey on Cost Control, Report on Privatization, U.S. Government Printing Office, Washington, D.C., 1983.

¹⁵⁴ John D. Donahue, The Privatization Decision: Public Ends, Private Means, Basic Books, Inc., New York, 1989, pp. 58-68, John A. Rehfuss, Contracting Out in Government, Jossey-Bass Publishers, San Francisco, 1989, p. 52, Richard C. Hula, ed., Market-Based Public Policy, St. Martin's Press, New York, 1988, pp. 69-83, Steve H. Hanke, ed., Prospects for Privatization, Capital City Press, Montpelier, 1987, pp. 83-92, Emanuel S. Savas, Private and Public -- The Record, Government Union Review, Special Edition, March 1982, pp. 31-47, at p. 39, and Kevin Norman, A Case Study In The Private Supply Of Public Goods, Government Union Review, Special Edition, March 1982, pp. 71-82, at p. 73.

¹⁵⁵ C.M. Lindsay, A Theory of Government Enterprise, Journal of Political Economy, Vol. 84, pp. 1061-1077, at p. 1070.

¹⁵⁶ Spencer Rich, Trying to Get A Handle On Hospital Spending, The Washington Post, 28 January 1991, p. A9, and President's Private Sector Survey on Cost Control, Report on Privatization, Washington, D.C., Government Printing Office, 1983, pp. 88-121.

¹⁵⁷ Werner Baer and Donald V. Coes, United States Policies and the Latin American Economies, Praeger Publishers, New York, 1990, p. 94, Matt Moffett, C.P. Work and J. Bussey, Bienvenidos to a fire sale, U.S. News & World Report,

16 October 1989, pp. 96 and 100, Rhona Statland, New Aeromexico Taxis Toward Take-off, Business Mexico, Vol. VI, No. 2, June 1989, pp. 26, 27 and 30, Service on Mexican Airlines Soars after Deregulation, Wall Street Journal, 17 April 1989, p. B1, and Latin America's new currency, The Economist, 29 October 1988, pp. 87-88.

¹⁵⁸ Perry A. Trunick, Trust Your Partners And Understand Their Goals, Transportation & Distribution, January 1990, pp. 14-16, and Ignacy Tarski, The Time Factor in Transportation Processes, Elsevier, Amsterdam, 1987, pp. 90-120.

¹⁵⁹ Irving B. Kravis and Robert E. Lipsey, Price Competitiveness in World Trade, Columbia University Press, New York, 1971, pp. 35, 59, 158-165, 321-324 and 472.

¹⁶⁰ Janet Porter, New Labor Laws Boost Productivity at UK Ports, Journal of Commerce Special Report, 20 September 1990, p. 6C.

¹⁶¹ P.T. Bangsberg, Malaysia's Port Kelang, Kuanton Register Strong Cargo Growth, The Journal of Commerce, 1 February 1991, p. 1B, and P.T. Bangsberg, Port of Kelang Offers Box Rebate For Off-Peak Moves, The Journal of Commerce, 4 December 1990, p. 1B.

¹⁶² Mark Magnier, Port Privatization in Malaysia Sparks Labor, Safety Concerns, The Journal of Commerce, 5 April 1991, p. 1B.

¹⁶³ United Nations Economic Commission for Latin America and the Caribbean, La cadena de distribución y la competitividad de las exportaciones latinoamericanas: Racionalización portuaria en Chile (LC/G.1597, 29 December 1989), p. 43, and Luis A. Escobar and Gustavo Contreras, La cadena de distribución y la competitividad de las exportaciones latinoamericanas: La fruta de Chile, (s/n) 5 June 1989, p. 108.

¹⁶⁴ Richard Prebble, The New Zealand Experience - Pioneers in Ports Privatisation, Ports and Harbors, July-August 1991, pp. 36-40, David Reade, New Zealand port plan disintegrates, Containerisation International, May 1991, pp. 81 and 83, and NZ Sees the Fruits of Privatisation, Lloyd's Maritime Asia, March 1991, p. 21.

¹⁶⁵ A. Gantt and G. Dutto, Financial performance of government owned corporations in less developed countries, International Monetary Fund, Washington, D.C., 1968, p. 52.

¹⁶⁶ The 13 state-owned companies are: Aerolineas Argentinas, YPF (petroleum), Entel (telephone), FA (railway), SEGBA (electricity), State Gas, Post Office, Water and Power Board, Hidronor, ELMA (shipping), General Ports Administration (AGP), YCF and OSN (waterworks). See, State Enterprises Versus the Nation, The Review of The River Plate, 9 November 1988, p. 407, State enterprise losses, The Review of The River Plate, 9 November 1988, pp. 411-412 and 414, and A report on state enterprise finances, The Review of The River Plate, 28 October 1988, pp. 379-380.

¹⁶⁷ Lenny Glynn, Privatization Fever Hits Latin America, Global Finance, March 1990, pp. 49, 50, 52, 54 and 56.

¹⁶⁸ Thomas J. Trebat, Brazil's State-Owned Enterprises. A Case Study of the State as Entrepreneur, Cambridge University Press, Cambridge, 1983, pp. 153-180, 240 and 246-247.

¹⁶⁹ Ports dominate ABP figures, Fairplay International Shipping Weekly, 21 March 1991, p. 27, and Janet Porter, Associated British Ports Holdings Reports Earnings Increase for 1990, The Journal of Commerce, 15 March 1991, p. 1B.

¹⁷⁰ Edward Cody, Salinas Purges Port of Veracruz -- By Seizing It, The Washington Post, 15 June 1991, pp. A16 and A24, Eugene Robinson, The South American Way of Graft, The Washington Post, 2 December 1990, pp. C1 and C4, Edward Holland, "Cuanto hay pa' eso?", America Economia, La Revista de Negocios de America Latina, No. 42, August 1990, pp. 10-11, Sergio Sarmiento, Cambiar la vida, America Economia, La Revista de Negocios de America Latina, No. 42, August 1990, pp. 11-12, Jonathan Cavanagh, El model peruano, America Economia, La Revista de Negocios de America Latina, No. 42, August 1990, p. 14, Hay cosas peores, America Economia, La Revista de Negocios de America Latina, No. 42, August 1990, pp. 16-17, Pablo Mass, Destapando la olla, America Economia, La Revista de Negocios de America Latina, No. 42, August 1990, p. 17, Como es la herencia?, America Economia, La Revista de Negocios de America Latina, No. 42, August 1990, p. 18, and Rik Turner, Todo vale, America Economia, La Revista de Negocios de America Latina, No. 42, August 1990, p. 20.

¹⁷¹ U.S. Administrative Procedures Act, adopted 11 June 1946, 60 Stat. 237-244, as amended at Title 5 U.S.C. sections 551-559, 701-706, 1305, 3105, 3344, 5362 and 7251. For an overview of the administrative procedures in the U.S. see, Glen O. Robinson, and Ernest Gellhorn, The Administrative Process, West Publishing Company, 1974, pp. 21-33.

¹⁷² Arturo Israel, The Changing Role of the State, WPS 495, The World Bank, Washington, D.C., August 1990, pp. 25-31, and Thomas O. McGarity, Regulatory Analysis and Regulatory Reform, Texas Law Review, Vol. 65, No. 7, June 1987, pp. 1243-1333, at pp. 1247, 1250 and 1259-1271.

¹⁷³ Canute James, Caribbean Bloc Puts Wisco Line Up for Sale, The Journal of Commerce, 22 February 1991, p. 1B.

¹⁷⁴ Susan K. Jones, The Road to Privatization, Finance & Development, March 1991, pp. 39-41, and Charles Vuylsteke, Techniques of Privatization of State-Owned Enterprises. Methods and Implementation, Vol. I, World Bank Technical Paper No. 88, Washington, D.C., 1988, pp. 138-141.

¹⁷⁵ Elliot J. Berg and Mary M. Shirley, Divestiture in Developing Countries, World Bank Discussion Papers No. 11, Washington, D.C., 1987, p. 18.

¹⁷⁶ Pat Choate, Japan and the Big Squeeze, The Washington Post, 30 September 1990, pp. D1 and D4.

¹⁷⁷ Howard Kurtz, British Publisher Announces Intent to Buy N.Y. Daily News, The Washington Post, 6 March 1991, p. A3, and Business Digest, The Washington Post, 2 February 1990, p. C1.

¹⁷⁸ John Burgess, Television Takeover, The Washington Post, 26 May 1991, pp. H1 and H4, and Lloyd Constantine, An Antitrust Enforcer Confronts the New Economics, Antitrust Law Journal, Vol. 58, August 1989, pp. 661-668, at pp. 666-667.

¹⁷⁹ On 12 December 1974, the United Nations General Assembly adopted the Charter of Economic Rights and Duties of States, contained in resolution 3281 (XXIX), annex.

¹⁸⁰ Dr. Martinez de Hoz on privatisation, The Review of The River Plate, 27 December 1985, pp. 553-554.

¹⁸¹ Giandomenico Majone, Deregulation or Re-regulation?, St. Martin's Press, New York, 1990, p. 216, Anne O. Krueger, Government Failures in Development, The Journal of Economic Perspectives, Vol. 4, No. 3, 1990, pp. 9-23, at pp. 17-20, Dennis J. Gayle and Jonathan N. Goodrich, eds., Privatization and Deregulation in Global Perspective, Quorum Books, New York, 1990, p. 99, Hernando de Soto, The Other Path, The Invisible Revolution in the Third World, Harper & Row Publishers, New York, 1989, pp. 190-192, Cento Veljanovski, Sell-

ing The State, Privatisation in Britain, Weidenfeld and Nicolson, London, 1987, p. 1, Steve Hanke, ed., Prospects for Privatization, Capital City Press, Montpellier, 1987, pp. 5-8 and 9, and James M. Buchanan, A public choice approach to public utility pricing, Public Choice, Vol. 5, 1968, pp. 1-18.

¹⁸² David J. Walsh, Accounting for the proliferation of two-tier wage settlements in the U.S. airline industry, 1983-1986, Industrial and Labor Relations Review, Vol. 42, No. 1, October 1988, pp. 50-61.

¹⁸³ William DiBenedetto, Chilean Fruit Exporters, Phila. Port Make Amends, The Journal of Commerce, 6 March 1991, p. 8B, Andrea Knox, Phila. Dockers Develop Plan To Keep Fruit Imports Moving, The Journal of Commerce, 4 February 1991, pp. 1B and 8B, and Daniel Benedict, Gulf Ports Are Vying For Latin America Trade, Global Trade, June 1990, pp. 28-29.

¹⁸⁴ Rhona Statland, New Aeromexico Taxis Toward Take-off, Business Mexico, Vol. VI, No. 2, June 1989, pp. 26-27 and 30, and Ben Ross Schneider, Partly for sale: Privatization and state strength in Brazil and Mexico, Journal of Interamerican Studies and World Affairs, Vol. 30, No. 4, 1988-1989, pp. 89-116, at pp. 104 and 108.

¹⁸⁵ Almarin Phillips, ed., Promoting Competition in Regulated Markets, The Brookings Institution, Washington, D.C., 1975, p. 114, and Moving Goods In The 1970s, The Economist (Supplement), 14 September 1968, pp. x-xlv, at p. x.