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INTRODUCTION

The present study was conducted by Mr. Amar Rachedi of INECOR (French consulting office : inecor@free.fr), under the supervision of Mr. Vincent Vesin, Transport Specialist and Task Team Leader, and Mr. Jean-Charles Crochet, Senior Transport Economist for the Middle East and North Africa region at the World Bank.

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This version of the report takes into account the Djiboutian Authorities' comments.

EXECUTIVE SUMMARY

Within a partnership framework with the Emirate of Dubai, the government of Djibouti has developed, during the last decade, an outstanding port and logistics hub with few precedents in other African countries.

Since 1985, the old port of Djibouti had a container terminal equipped with gantry cranes and around a dozen berths for bulk and conventional cargo. During the years 2000, it progressively expanded its facilities with a new oil terminal at Doraleh (2006), a new container terminal at Doraleh (end of 2008), a bulk terminal in the old port (end of 2006), the Djibouti Free Zone (DFZ) in 2004, the Djibouti Dry Port (DDP) and the logistics zone known as PK-12 zone.

Other than the quality of its infrastructures, the port of Djibouti is situated in a strategic geographic location on the straits of Bab-el-Mandeb, southern entry point to the Red Sea for a significant share of international maritime transit flows along the African coast.

Djibouti's second strategic advantage lies in its being the main sea-access route for Ethiopia and its market of 80 million inhabitants. Despite more extensive coastlines and terrestrial borders with Ethiopia, Eritrea and Somalia are not in a position to seriously compete with the port of Djibouti due to the current geopolitical situation in both countries.

From 2000 to 2009, the average share of Ethiopian traffic (excluding hydrocarbons) transiting through the port of Djibouti amounted to 86%. In this respect, the port of Djibouti is principally devoted to Ethiopian transit traffic. In 2009, total tonnage amounted to 7.77 million tons (excluding hydrocarbons) against around 939,000 tons of Djiboutian traffic and 7,400 tons of Somali transit traffic.

During the period 2000-2009, Ethiopian transit traffic increased by an average of +17% per year against a +10% annual growth rate for Djiboutian traffic. The development of Djibouti's port activities is thus driven by Ethiopian traffic of which the overall growth rate is estimated between +12% and +16% per year over the next ten years (all port transit included).

During the period 2001-2010, the breakdown of freight traffic handled in Djibouti was on average 37% container tonnage, 28% liquid bulk, 18% dry bulk and 17% general cargo (break-bulk, vehicles and livestock). Excepting in 2007, the share of general cargo systematically represents less than 20% of the total traffic handled in Djibouti. Since 2006, general cargo traffic has varied considerably from 1 to 2.2 million tons per year, representing less than a fifth of the cargo traffic handled in Djibouti. It is handled by several private stevedoring companies rather than specialized terminal operators benefitting from a monopolistic concession contract.

As defined by its terms of reference (ToR), the objective of the present study is "to strengthen the competitiveness of the ports of Djibouti (old port of Djibouti and new port of Doraleh) and ensure their medium-term and long-term development by designing a modern and efficient regulation system for private port operators, and specifically addressing issues related to the quality of service and pricing, in addition to institutional related issues".

The port of Djibouti's competitiveness can be measured by its capacity to counter competition from other ports through the quality of its infrastructures and services, performance and port costs. Real or potential competition facing the port of Djibouti concerns non-captive traffic and its two components, transit and transshipment traffic.

The ports of Aden and Salalah are real competitors to the port of Djibouti in that their port facilities are comparable in terms of quality. Competition between these ports and Djibouti is limited to the extremely volatile container transshipment traffic (107,800 TEU in 1997, 1,200 TEU in 2005, 176,000 in 2009 and 70,000 in 2010), which can be rapidly shifted by the ship owner to another port.

The port of Djibouti's natural competitors for Ethiopia's transit traffic are the ports of Berbera, Assab, Massawa, Port Soudan and Mombasa due to landlocked Ethiopia's extensive terrestrial borders with Somalia, Eritrea, Soudan and Kenya. But this competition remains potential and very marginal due to the unfavorable geopolitical context and/or the inferior quality of infrastructures of these ports.

Conditions of competition regarding transit traffic could nevertheless evolve as it is in Ethiopia's natural interest to diversify its sea-access routes so as not to depend on a single port that may be tempted to abuse of its dominant position with non-competitive tariffs.

Contrary to existing competition on container transshipment traffic, potential competition on transit traffic would have a more considerable impact on all Djibouti port operators in terms of tonnage handled and revenue loss, as it would affect all types of traffic (conventional and containerized, liquid and dry bulk) and because transit charges are considerably more lucrative than transshipment charges.

Port activities that need to be regulated to reinforce the port of Djibouti's competitiveness are the commercial services for cargos and vessels provided by port operators.

Port fees and dues collected by the Port Authority for non-commercial services also contribute to the port's level of competitiveness, but are beyond the scope of this study.

Cargo-handling operators concerned by the regulation of port activities aimed at reinforcing the port of Djibouti's competitiveness are:

- Around fifteen stevedoring companies handling general cargo: break-bulk, vehicles, livestock and dry bulk cargo, excluding SDTV cargo (clinker, cement and coal), amounting to 13% of the total traffic in 2010 and 19% in 2009;
- DPW as container terminal operator at DCT handling 44% of the total tonnage in 2010 and 45% in 2009;
- SDTV, the main dry bulk operator (cereals and fertilizer) handling 19% of the total traffic in 2010 and 17% in 2009;
- DID and HDTL handling petroleum products at the Doraleh oil terminal representing 25% of the total tonnage in 2010 and 20% in 2009.

The other port operators concerned by regulation to reinforce competitiveness in the port of Djibouti are:

- Around fifteen shipping agents consigning all types of vessel calling at the port of Djibouti: 1,404 commercial vessels in 2009 and 468 other types of vessel (war ships and diverse);
- The 50 to 100 freight forwarding agents in charge of port transit procedures and services for all types of cargos;
- The PAID for its commercial services provided to all types of vessel (tugboat services, mooring, pilotage…).

Port operations in Djibouti can be divided between around fifteen stevedoring companies competing for general cargo traffic representing less than 20% of the total traffic, and three private concessionaries handling more than 80% of specialized traffics (DCT for containers, DID-HDTL for petroleum products and SDTV for cereals and fertilizers). The port's regional competitiveness is thus dependent at over 80% on the performance, tariffs and service quality provided by three specialized terminal operators benefitting from a monopoly position within the framework of a concession agreement. But the specific focus of the present study is on port operators other than the specialized terminal concessionaries.

The effective regulation of activities in the port of Djibouti will require the official designation by the competent Authority of a regulatory authority whose powers and scope of intervention should be clearly defined, and perceived as legitimate by the port operators concerned. The designated Port Regulator could either be the Ports and Free Zones Authority (APZF) or the Ministry of Equipment and Transport, delegating to the PAID for certain on-site control missions. The choice between these two public institutions remains the prerogative of the Presidency of the Republic.

The lack of an organized Port Community neither favours regular consultations between the different parties concerned, nor their concerted efforts to maximize the port of Djibouti's efficiency, competitiveness and development. Instituting a consultative framework of this kind would facilitate and accelerate the elaboration of a port regulation action plan. It should notably have an advisory role in the key decisions taken by the public institution designated as port regulator.

The designation of representatives of the different professions within the Port Community will require particular attention to avoid potential contestation regarding their representativeness. Active representatives from both Djiboutian and Ethiopian shippers will need to be present in the Port Community to ensure that all parties directly benefitting from or subject to the different levels of port competitiveness are able to express their points of view concerning tariffs, performance levels and service quality.

The legal and regulatory framework governing the port sector in Djibouti is covered by two separate sets of laws: those relative to the Port Authority and its prerogatives, and those relative to port operators' licensing regulations and operating terms and conditions.

The first set of laws have progressively changed the Port Authority's organizational framework since 1980, without however clearly specifying the practical implications of

new laws on relations between the PAID, the APZFD and other state institutions, notably the Ministry of Equipment and Transport.

The second set of laws, enacted in 2000-2001, defines the operating terms and conditions governing the different port and maritime professions licensed to operate by the Ministry of Equipment and Transport. It includes an administrative order published in 1981 constituting the sole existing tariff for stevedoring operations, with consequent effects on port costs and performances as the same tariffs were still practiced in 2011.

Beyond the fact that the contents of these laws should be clarified and updated in accordance with developments in the port and shipping sector, numerous provisions in force are not applied. This general tendency not to comply with existing laws, observed in many countries, calls for serious reflection on the means and conditions of implementation to ensure that improvements to existing laws become an effective tool in the regulation of port activities.

The following table presents a synthesis of the recommended action plan to regulate port activities in Djibouti, following discussions with the main parties concerned. The action plan outlines 12 recommended actions to be implemented in order of priority, the conditions for implementation and provisional completion times.

The goals of the proposed actions aimed at updating and standardizing the existing legal and regulatory framework are to:

- Clearly define and delimit the prerogatives of each public institution concerned;
- Improve the licensing regulations and operating conditions for the different port professions, and more particularly stevedores, freight forwarders and shipping agents;
- Elaborate an effective regulation framework for the different port activities, notably by establishing realistic maximum tariffs acceptable to all the parties concerned (public authorities, Djibouti and Ethiopian shippers, stevedores, freight forwarding agents, shipping agents…) and taking into account the requirement of regional competitiveness.

REGULATION ACTION PLAN FOR PORT ACTIVITES IN DJIBOUTI

N°	ACTION	PILOT INSTITUTION	PRIORITY DEADLINE	OBJECTIVE	ORIENTATIONS & OPTIONS
1	Designate the Port Regulator	Presidency of the Republic	Priority 1 6 months	Clarify roles in order to improve the competitiveness of Djibouti ports	- Legal text designating the Port Regulator, its scope of intervention and prerogative powers - Option: Ministry of Equipment and Transport - Option 2: Ports and Free Zones Authority
2	Institute a Port Community	Port of Djibouti	Priority 1 6 months	Have a framework for regular consultations between all the parties concerned with improving the competitiveness of Djibouti ports	- Framework for consultations between all parties and advisory role to the Regulator and the public authorities - Composition to be defined, notably 1 to 2 representatives per profession and representatives of Djiboutian and Ethiopian shippers - Choice of representatives by professional organizations or their election by each of the professions represented
3	Update and harmonize the port and shipping legal framework	Presidency of the Republic	Priority 1 12 months	Have a framework adapted to the aims of regulation	- Clarify roles and the relationships between the different public institutions concerned - Improve the licensing regulation for port operators

N°	ACTION	PILOT INSTITUTION	PRIORITY DEADLINE	OBJECTIVE	ORIENTATIONS & OPTIONS
4	Update the maximum tariff rates for licensed handling operators	Ports and Free Zones Authority	Priority 2 12 months	Have competitive tariffs adapted to developments in port handling requirements	- Analytical study of different handling costs for main port cargos - Comparative study of regional competitiveness based on all port transit costs - Need for external technical assistance
5	Update the minimum productivity objectives for licensed handling operators	Ports and Free Zones Authority	Priority 2 12 months	Establish performance indicators to serve as a regulation tool	- Make the obligation of results in terms of performance a regulatory tool for stevedoring operations - Integrate the necessary technical assistance in the analytical study of handling costs
6	Update the decree and operating conditions relative to licensed freight forwarders	Port Regulator	Priority 2 12 months	Have legal texts adapted to regulation objectives for activities concerned	- Option 1: Separate official licensing requirements for customs brokers exclusively in charge of documentation services from those governing the freight forwarders and logistic providers in charge of both documentation services and material services - Option 2: Maintain the Djiboutian definition of freight forwarder but improve the means of controlling compliance with the regulatory requirements for the profession

N°	ACTION	PILOT INSTITUTION	PRIORITY DEADLINE	OBJECTIVE	ORIENTATIONS & OPTIONS
7	Establish reference tariffs for services supplied by licensed freight forwarders	APZF & Port Community	Priority 2 12months	Regulation of freight forwarding tariffs	- Establish a standardized list of billing items and reference tariffs for freight forwarding services - Preparation carried out by a technical commission associating representatives of the profession and Djiboutian and Ethiopian shippers
8	Establish maximum tariff rates for services supplied by licensed shipping agents	APZF & Port Community	Priority 2 12 months	Regulation of shipping agency tariffs	- Draw upon available comparative tables of tariffs practiced by the principal shipping agencies - Preparation carried out by a technical commission associating representatives of the profession and Djiboutian and Ethiopian shippers
9	Update minimum equipment requirements for handling operators	APZF & Port Community	Priority 3 12 months	Adapt requirements to the current port context	Preparation carried out by a technical commission associating representatives of the profession and PAID services
10	Update minimum personnel requirements for stevedores	APZF & Port Community	Priority 3 12 months	Adapt requirements to the current port context	Preparation carried out by a technical commission associating representatives of the profession and PAID services
11	Update the decree and operating conditions relative to stevedores	Port Regulator	Priority 3 12 months	Legal text in accordance with regulation aims	Improve the profession’s licensing conditions and adapt its minimum requirements to the current port context
12	Update the decree relative to licensed shipping agents	Port Regulator	Priority 3 12 months	Legal text in accordance with regulation aims	Improve the profession’s licensing conditions and adapt its minimum requirements to the current port context

REPORT 1 - DIAGNOSIS

1. PORT FACILITIES AND OPERATORS

1.1. AN OUTSTANDING PORT AND LOGISTICS HUB

Within a partnership framework with the Emirate of Dubai, the government of Djibouti has developed, during the last decade, **an outstanding port and logistics hub** with few precedents in other African countries.

Since 1985, the old port of Djibouti already had container terminal equipped with gantry cranes and a dozen berths for bulk and conventional cargo. During the years 2000, it progressively expanded to include:

- A new oil terminal at Doraleh (2006);
- A new container terminal at Doraleh (end of 2008);
- A bulk cargo terminal in the old port (end of 2006);
- The Djibouti Free Zone (DFZ) in 2004;
- The Djibouti Dry Port (DDP) and the logistics zone known as PK 12 zone.

Other than the **quality of its infrastructures**, the port of Djibouti is located in a **strategic geographic position** on the straits of Bab-el-Mandeb, southern entry point to the Red Sea for a significant share of international maritime transit flows along the African coast.

Djibouti's second strategic advantage lies in its being the **main sea-access route for Ethiopia** and its market of 80 million inhabitants. Despite more extensive coastlines and terrestrial borders with Ethiopia, Eritrea and Somalia are not in a position to seriously compete with the port of Djibouti due to the current geopolitical situation in both countries.

1.2. DORALEH OIL TERMINAL

The new oil terminal at Doraleh opened in 2006 and includes both land and sea facilities (cf. photo below).

The sea terminal is constituted by a breakwater quay (-18 m draft) with 2 berths, one accommodating crude oil tankers of 80,000 DWT, the other for vessels of 30,000 DWT.

The land terminal is an oil storage terminal with a 371,000 m3 storage capacity equivalent to an annual throughput of 3 million tons. Hydrocarbon traffic for the port of Djibouti totalled 2.55 million tons in 2009. Storage capacity is scheduled to be expanded to 480,000 m3 in 2013.

The sea terminal cost 30 million US dollars within the framework of a 30-year concession granted to Dubai International Djibouti (DID), a 100% owned subsidiary of Dubai Port World (DPW).

The land terminal cost HDTL (Horizon Djibouti Terminal Limited) 99 million US dollars, a company held by Horizon Terminal Ltd (40%), the State of Djibouti (10%), Independent Petroleum Group (20%), Boreh International (25%) and Essence Management Ltd (5%).

1.3. DORALEH CONTAINER TERMINAL

The new Doraleh container terminal opened in December 2008 and was officially inaugurated in February 2009 (cf. photo below). Its construction cost 397 million US dollars within the framework of a 30-year concession granted to the company Doraleh Container Terminal (DCT) held by the PAID (66.6%) and DPW Djibouti (33.4%).

DCT infrastructures and equipment make it the most modern container terminal in East Africa and classes Djibouti in the top 5 African terminals with Egypt, South Africa and Morocco.

With its 18 meter draft and 1,050 meter quay equipped with 6 super post-panamax gantry cranes, DCT can accommodate the largest last-generation container ships. Yard handling equipment includes 16 RTG with a 6 level stacking capacity (5+1) and all the necessary equipment for a modern, high-performance terminal (8 reach-stackers, 3 empty container elevators, around 50 tractor-trailers…). It obtained the ISO 28000 international certification awarded to companies offering the highest security, safety and service quality guarantees.

The container terminal's current capacity is estimated at 1.2 million TEU per year for a maximum throughput of 519,500 TEU in 2009. It should be expanded to 3 million TEU, after its 2nd development phase and the extension of its 1,050 meter quay to 2,000 m.

1.4. DJIBOUTI CONTAINER TERMINAL

The following photo gives an overall view of the old port of Djibouti and its 15 berths totalling 2,900 metres in length. Management of the International Port of Djibouti (PAID) was entrusted to Dubai Port World (DPW, ex-DPI) within the framework of a 20-year management contract signed in 2000.

The old Djibouti container terminal is operational since 1985. It has a surface area of 22 hectares and 400 meters of quay divided into 2 berths, one of 220 m with a 12.50 m draft and the other 180 m long with a 9.50 m draft. From 1985, it was equipped with 2 Reggiane gantry cranes completed in 2000 by 2 ZPMC quay gantry cranes and 6 land-based ZPMC gantry cranes (RTG).

Djibouti terminal throughput had already reached 149,000 TEU in 1997 of which over 107,800 TEU in transshipment (72%).

At that time, Djibouti was the main regional transshipment terminal before the opening of the ones of Salalah (Oman / Maersk) and Aden (Yemen / Port of Singapore) in).

The port of Djibouti was next faced with serious competition from the ports of Salalah and Aden on the **highly volatile transshipment traffic**, dropping to 30,200 TEU in 2000, rising again to **105,400 TEU in 2003** before collapsing to **1,200 TEU in 2005**. However, import/export traffic in the port of Djibouti has never ceased to expand since 1997, notably Ethiopian transit traffic.

Before the new Doraleh terminal was fully operational, container throughput in Djibouti totalled 356,500 TEU in 2008 of which 60,300 TEU in transshipment (17%). With its equipment facilities, unparalleled in most African ports (6 quay gantry cranes and 6 RTG), the old container terminal achieved respectable operating ratios with 890 TEU per meter of quay and 1.6 TEU per m².

However, the opening of the Doraleh container terminal at the end of 2008 was accompanied by a decision seemingly driven exclusively by profit-maximisation of return on the new investment.

Rather than taking advantage of two well-equipped container terminals in the same port (rare situation in Africa) and the possibilities of economic regulation by allowing competition between the two terminals, the PAID and its DPW management team decided to remove the majority of the old terminal's yard handling equipment (6 RTG) and transfer it with all the existing container throughput to the new Doraleh terminal (application of DCT exclusivity clause on all Djibouti container traffic).

This decision to stop operations at the old terminal enabled DCT to begin its first year of service with 519,500 TEU in 2009, the all-time maximum attained in Djibouti and 46% higher than in 2008.

This significant growth rate was nevertheless the result of an exceptional year for transshipment traffic (176,000 TEU), probably favoured by the announcement effect of a new ultra-modern terminal.

The share of transshipment in total Djibouti throughput has increased from 17% in 2008 to 34% in 2009. The growth in the volume of transshipment traffic in TEU reached +192% whereas the volume of import/exports grew by +12%, for an annual average of +15% since 1996.

However, the transfer of CMA-CGM traffic to the ports of Salalah and Khor Fakkan, notably due to more competitive stevedoring tariffs, resulted in a drop in Djibouti transshipment traffic to less than 70.000 TEU in 2010 (-60%) whereas the import/export traffic recorded a variation of +1% to 331,400 TEU.

In terms of infrastructure and equipment, the two terminals are certainly different and DCT clearly has the competitive advantage.

The two terminals do not, however, interest the same ship owners. Keeping the old terminal in service would offer certain ship owners the freedom of choice, notably those using multi-purpose vessels and/or cellular container-ships that do not require berth depth of over 12.50 m.

The obligation to operate all container vessels at DCT and its consequences on port transit costs for certain vessels (two port calls for multi-purpose vessels) provoked negative reactions in the market. It can be noted that in 2009 ESL (Ethiopian Shipping Lines) obtained the right to re-operate its vessels at the old Djibouti container terminal.

ESL is the only government-controlled sea transport company in Ethiopia. Out of a sample of 914 port calls in Djibouti in the 2nd half of 2010 (against a total of 1,872 port calls in 2009), 49 were ESL vessels, that is 5.4% of Djibouti shipping traffic. The 49 ESL port calls were made by 9 vessels of which 84% by 5 vessels. ESL is the sea carrier of Ethiopian state-owned companies and others Ethiopian public shippers. As its fleet size is too small to transport all the container freight entrusted to it, it purchases additional container slots from other shipping lines, bringing them into competition. According to a representative of an international shipping line operating in Djibouti, around 75% of Ethiopian container traffic is transported by ESL either on its own ships or on container slots purchased from other shipping lines. Furthermore, other shipping lines directly ensure around 25% of Ethiopian container traffic. The consultant did not have access to PAID statistics to precisely evaluate the share of Ethiopian container traffic carried by ESL's own vessels.

Exemption authorizations concerning mandatory operating at DCT were extended to Conro vessels (mixed container and Ro-Ro vessels) belonging to the Italian shipping company Messina. This permitted re-launching operations at the old container terminal, is offering it a possible second life, economically beneficial to Djibouti without being a major threat to Doraleh terminal profitability.

The quay gantry cranes at the old terminal (2 relatively new cranes acquired in 2000 and 2 older ones dating back to 1985) were put back into service by PAID workers whereas shore handling operations were effectuated by stackers as the 6 RTG acquired in 2000 had been transferred to DCT.

1.5. DJIBOUTI BULK TERMINAL

The new Djibouti bulk terminal was completed in December 2006 and opened in January 2007. Construction costs amounted to US$50 million within the framework of a 30-year concession agreement granted to SDTV (Société Djiboutienne du Terminal Vraquier), subsidiary of the Saudi group MIDROC.

The bulk terminal consists of two flat bottom silos, one with a storage capacity of 30,000 tons located behind quay 15 and the 2nd 40,000 ton capacity for storing fertilizer located behind quay 14 (cf. photo of the port below). The 2 silos are linked by a system of conveyer belts to the vessels on the one side, and 12 bagging machines and loading trucks on the other side.

The terminal's quay equipment includes 2 pneumatic grain un-loaders with a nominal capacity of 300 tons/hour, and a stern crane to unload fertilizer ships (nominal capacity of 600 tons/hour).

The berths 14 and 15 are 400 m long with a 12 m draft. When both berths are occupied, the bulk terminal also uses the 210 meters of adjoining berth 13 using the ship's deck cranes to unload the vessels. Stevedoring operations on this additional berth are outsourced by SDTV to two stevedoring companies (COMAD and MTS) using old mobile bagging machines on quay.

In 2011 however, SDTV acquired two new high-performance mobile bagging machines each equipped with 3 truck loading conveyers with a nominal capacity of 3,000 tons per day.

SDTV generally guarantees 7,000 tons per day productivity rate for cereal vessels and 5,000 tons per day for fertilizer vessels. Terminal throughput totalled 2 million tons in 2009 and 1.7 million tons in 2010, of which 2/3 cereals and 1/3 fertilizers. With the productivity levels guaranteed by SDTV, the average rate of berth occupancy for a total throughput of 2 million tons is 46% for berths 14 and 15.

The irregularity of vessel arrivals can nevertheless result in a higher occupancy rate at certain times of the year which then necessitates using the 3rd complementary berth.

In order to face the perspectives of development in bulk cargo traffic to Ethiopia, SDTV would like to obtain from the PAID the right to invest in a project to expand the bulk cargo terminal with the construction of a new quay at the site of berths 12-11-10, previously used for hydrocarbons and currently used for other goods since the Doraleh oil terminal was put into service.

1.6. MULTIPURPOSE QUAYS IN THE OLD PORT

The quays of the old port of Djibouti used in 2011 for general cargo traffic (break-bulk, livestock, cement, clinker…) comprise:

- The conventional berths 6-7-8 located on the inner West side of the harbour basin;
- The former oil berths 10-11-12 located on the exterior North-Western side of the harbour basin and reallocated to general cargo traffic since the new Doraleh oil terminal was put into service.

Contrary to the specialized terminals developed during the years 2000, which are modern and in good condition, the multi-purpose quays in the old port of Djibouti are in a bad state of repair indicating insufficient maintenance for a number of years.

2. PORT ACTIVITIES

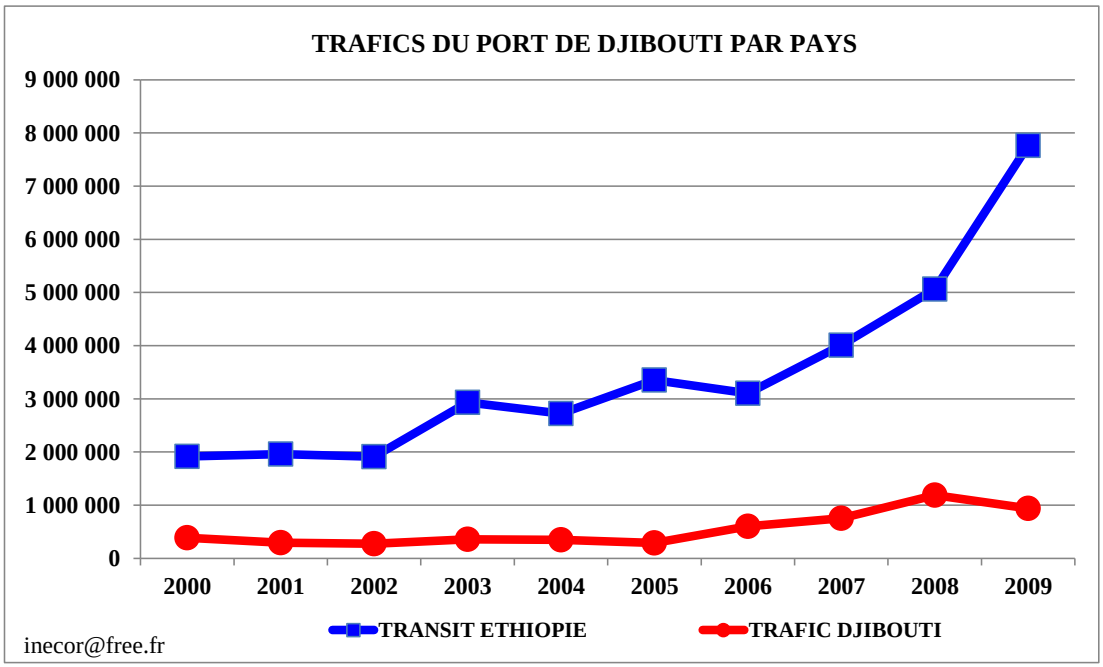
2.1. ACTIVITIES PER COUNTRY

From 2000 to 2009, the share of Ethiopian transit traffic in Djibouti port, excluding hydrocarbons, was between 81% and 92% with an average of over 86%. The port of Djibouti is thus essentially devoted to Ethiopian traffic totalling 7.77 million tons in 2009 (excluding hydrocarbons) against around 939,000 tons of Djiboutian traffic and 7,400 tons of Somali transit traffic. Cargo traffic in the port of Djibouti is made up of over 85% imports.

The map presented below indicates the 5 ports potentially capable of competing with the port of Djibouti in terms of land transit traffic to or from Ethiopia (Berbera in Somalia, Port Soudan in the Soudan, Assab and Massawa in Eritrea and Mombasa in Kenya) and the 2 ports competing with Djibouti on sea transshipments only (Aden in Yemen and Salalah in Oman).

The consultant was unable to obtain the official statistics indicating how Ethiopian sea trade is distributed between ports. A study on the development of rail transport conducted in September 2010 indicates that **93% of Ethiopian traffic transits via the port of Djibouti, 5% via Berbera and 2% via Port Soudan**. It forecasts the diversification of Ethiopia's transit routes with Djibouti however remaining the dominant route. The projected evolution of traffic distribution between ports is estimated at 75% transiting via Djibouti in 2015, 15% via Berbera and 10% via Port Soudan. The study does not take into account the possible additional use of the Ports of Assab and Massawa in the event of an improvement in the political relations between Eritrea and Ethiopia.

The following graph presents the evolution of Ethiopian and Djiboutian throughput excluding hydrocarbons. During the period 2000-2009, the average growth in **Ethiopian transit traffic** was **+17% per year** whereas **Djiboutian traffic** increased by an average **+10% per year**. The growth rate in Djibouti port activities is thus driven by Ethiopian sea trade of which projected growth rates for the coming ten years are globally estimated between +12% and +16% per year (all ports included).



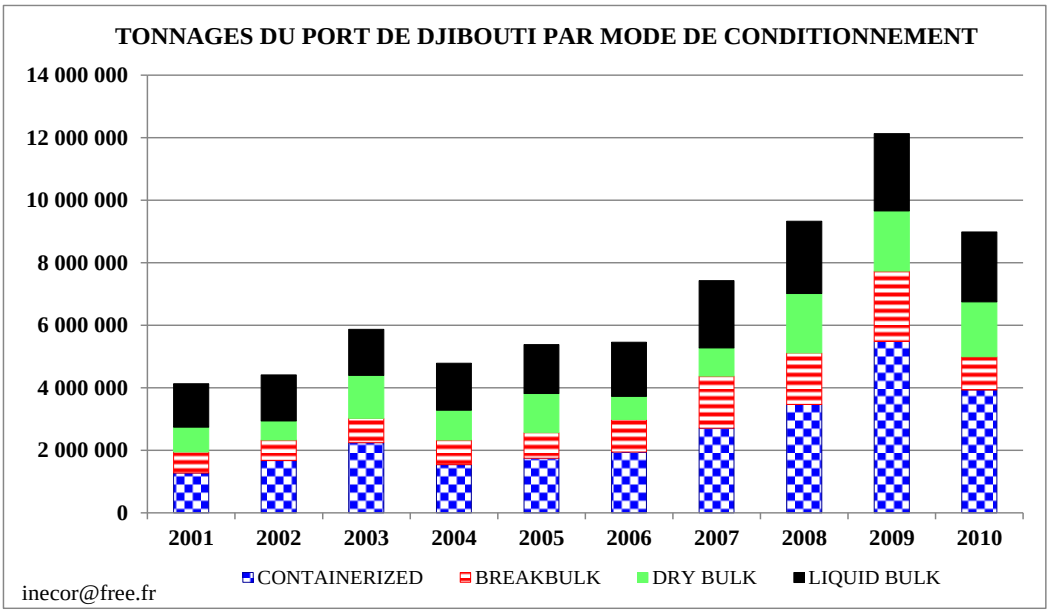
2.2. TRAFFIC BY MODE OF FREIGHT PACKAGING

The port of Djibouti achieved **its highest throughput level in 2009** with a total of **12.15 million tons**. This record tonnage included 45% container traffic, notably due to an exceptional volume of transhipment traffic. After having increased by +30% in 2009, total throughput dropped by **-26% in 2010** with the loss of a significant share of transshipment traffic (-60%) and a drop in other kinds of traffic.

Dry bulk tonnage more than doubled in 2008 with a 110% increase in a year. It remained relatively stable with +1% in 2009 before a 9% drop in 2010. Break-bulk traffic amounted to around 1.66 million tons in 2008 and 2007. It increased by 36% in 2009 before dropping by -53% in 2010 to around 1 million tons as in 2006.

Despite the drop in 2010 and the fluctuations of dry bulk traffic, the growth trend for all Djibouti traffic is generally positive. Average annual growth is estimated at +9% for total throughput from 2001 to 2010, +13% for containerized tonnage, +9% for dry bulk, +5% for liquid bulk and +5% for general cargo.

The graph below presents the evolution in Djibouti port throughput by mode of packaging over the period 2001-2010. It indicates tonnage for liquid bulk, dry bulk, general cargo traffic (break-bulk, vehicles and livestock) and containerized traffic (containerized tonnage not supplied by the PAID and estimated by the consultant).



Throughout the whole period covering 2001-2010, the average distribution of Djibouti traffic can be broken down into **37% of containerized traffic, 28% of liquid bulk, 18% of dry bulk and 17% of general cargo** (break-bulk, vehicles and livestock). The share of throughput per packaging mode varies each year with a general upward trend in containerized traffic, a downward trend in liquid bulk traffic, relatively stable break-bulk traffic and irregular dry bulk traffic.

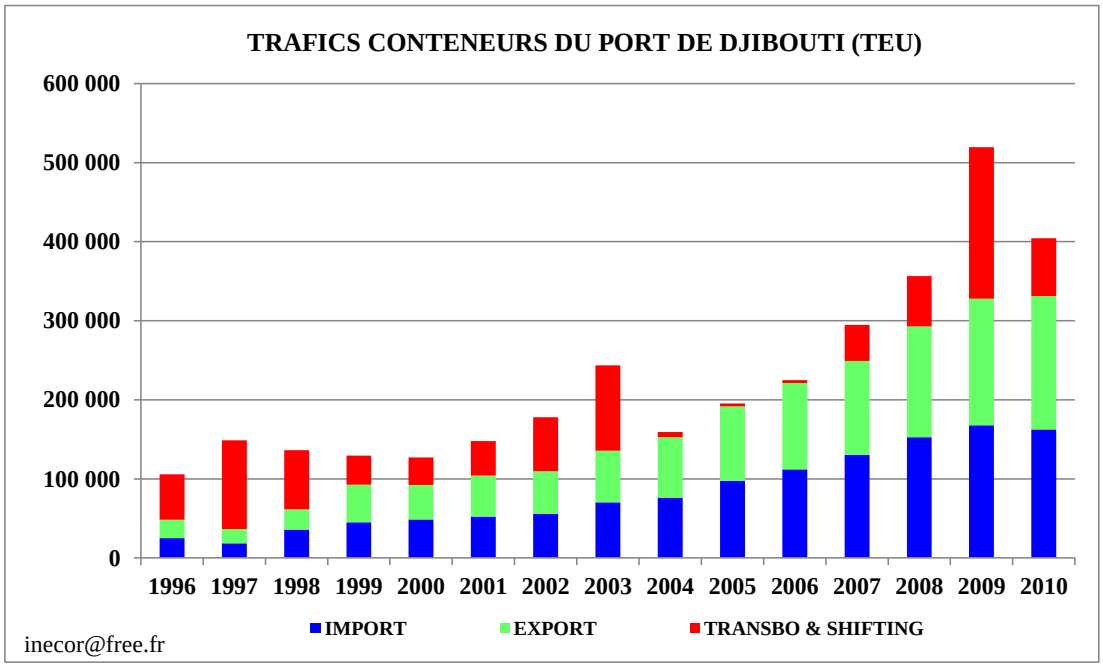
Except in 2007, the share of general cargo is systematically below 20% with an average of 17% over the ten year period between 2001 and 2010. Since 2006, **general cargo traffic** has varied considerably from 1 to 2.2 million tons per year constituting **less than a fifth of Djibouti port throughput** which is subject to competition between different private handling operators.

2.3. CONTAINERIZED TRAFFIC

Growth trends for the total number of containers (TEU) handled at the port of Djibouti is generally positive despite a 22% drop in 2010, -35% in 2004 and -9% in 1998. Over the period 1996-2010, average annual growth was +10% for the total number of containers with +15% for import/export throughput and +2% for the volatile transshipment traffic.

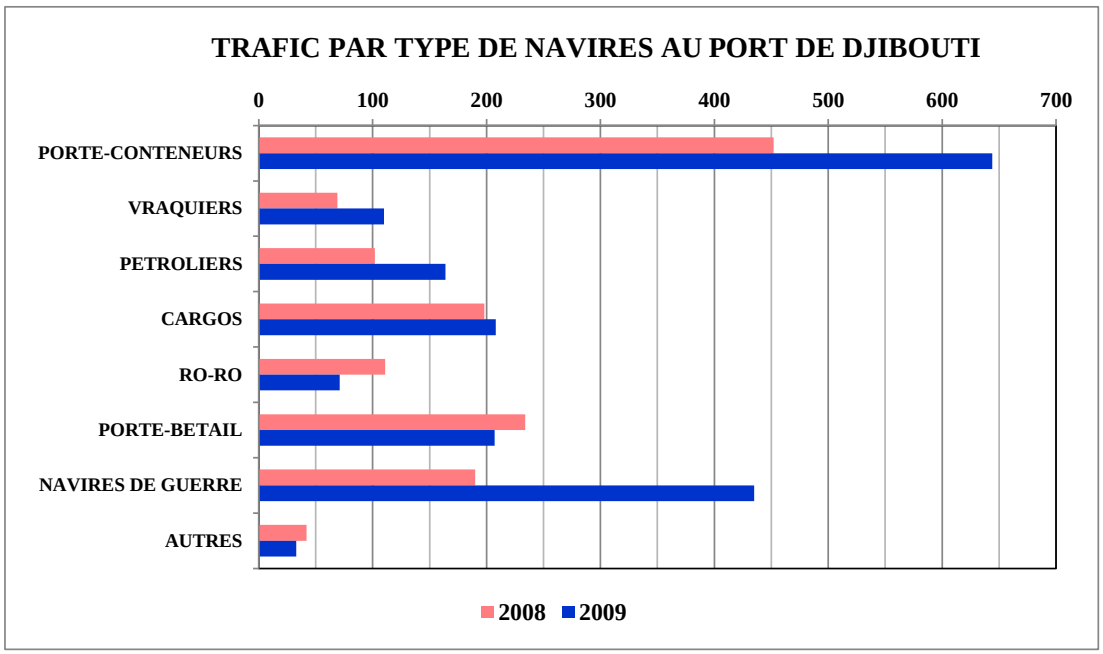
The years recording a significant drop in total throughput systematically follow an exceptional year for transshipment activities (176,000 TEU in 2009, 105,400 TEU in 2003 and 107,800 TEU in 1997) which is lost the following year. This irregular, volatile traffic already reached 107,800 TEU in 1997, before the PAID management contract was granted to DPW and the construction of the new Doraleh terminal. Notably due to competition from the terminals of Salalah and Aden, transshipment traffic virtually disappeared in 2004, 2005 and 2006 before the record of 2009 when DCT became operational.

The graph below presents the evolution of containerized traffic handled by the port of Djibouti over the period 1996-2010. It indicates the number of TEU containers for import, export, transshipment and shifting. It illustrates **the considerable variations in volatile transshipment traffic whereas global traffic, excluding transshipments, has never dropped since 1997**.



2.4. TRAFFIC BY KIND OF VESSEL

The following graph shows Djibouti traffic by kind of vessel. It indicates the number of port calls in 2009 and 2008 for container ships, bulk cargo ships, oil tankers, conventional cargo ships, etc.



The number of ships calling at the port of Djibouti increased from 1,398 in 2008 to 1,872 in 2009 (+34%). This high growth rate essentially concerns war vessels (+129% and 435 port calls in 2009), container vessels (+42% and 644 port calls with an average of 8,510 tons per call), oil tankers (+61% and 164 port calls with an average 15,000 tons per call) and bulk cargo ships (59% and 110 port calls with an average 17,500 tons per call).

Conventional cargo ships totalled 208 calls in 2009 with an average of 9,530 tons per ship. Despite a 12% drop in 2009, the number of livestock carriers remains high with 207 calls and an average of 810 tons per ship. Ro-Ro and car-carrier calls dropped to 71 (-36%) in 2009 with an average of 9,530 tons per ship.

3. PORT LEGAL FRAMEWORK

3.1. OBJECTIVE OF THE PRESENT STUDY

The terms of reference (ToR) of the present study specify that its objective is "to strengthen the **competitiveness of the ports of Djibouti (old port of Djibouti and new port of Doraleh)** and ensure their medium-term and long-term development by designing a modern and **efficient regulation system for private port operators**, and specifically addressing issues related to the quality of service and pricing, in addition to institutional related issues".

3.1.1 Competitiveness and competition

The port of Djibouti's competitiveness can be measured by its capacity to compete with other ports in terms of **infrastructure and service quality, performance and port costs**.

The **competition** confronting the port of Djibouti essentially concerns **non-captive traffic**: **Ethiopian transit and transshipment traffic**. Ports competing with the port of Djibouti for this types of traffic are geographically identified below in §.3.1.

Aden and Salalah are **real competitors** with port facilities comparable to those in Djibouti in terms of quality. Competition from these ports is **limited to volatile transshipment traffic** which can be moved very rapidly to another port according to the choice of the ship owner. This traffic is highly sensitive to cost and generally benefits from lower tariffs than those applied to import/export traffic. Profit margins on transshipment operations are therefore lower and constitute an appreciable but not indispensable bonus for terminal operators. The Salalah terminal operator (APMT) belongs to the same group as the largest international shipping company Maersk. Transshipment charges are naturally part of an international shipping group's global strategy seeking maximum returns from their shipping operations, notably through the reduction of port call costs. The Aden and Djibouti terminals on the other hand are both operated by DPW that has no ties with a shipping group. Its marketing policy on transshipment traffic thus differs from that of APMT in that its clients are independent shipping lines. This situation creates unequal conditions of competition between Djibouti and Salalah, whereas conditions of competition between Djibouti and Aden essentially depend on the regional strategy of their common operator DPW and its financial objectives for each port.

Due to the extent of Ethiopia's terrestrial borders with its neighbouring countries (Somalia, Eritrea, Soudan and Kenya), the ports of **Berbera, Assab, Massawa, Port Soudan and Mombasa**, are Djibouti's natural competitors for Ethiopian transit traffic. This **potential competition** however, remains marginal due to a currently unfavourable geopolitical context and/or the inferior infrastructure quality of these ports. The conditions of competition for transit traffic could nevertheless evolve as it is in Ethiopia's interest to diversify its sea-access routes so as not to depend on a single port that could abuse of its dominant position by charging uncompetitive tariffs.

Contrary to the real competition on container transshipment traffic, potential competition on transit traffic would have a more considerable impact on all Djibouti port operators in terms of tonnage handled and revenue loss, as it would affect all kinds of traffic (conventional and containerized, liquid and dry bulk) and because transit charges are considerably more lucrative than transhipment charges.

3.1.2 The regulator and the operators

The regulation of private port operators aims to guarantee that performance levels, tariffs and service quality maintain the port of Djibouti's competitiveness and the loyalty of its customers (ship owners and shippers).

In its capacity as **Port Authority**, the task of regulating port operations would come under the statutory powers of the PAID, but could also be devolved to another competent government authority such as the **Ministry of Equipment and Transport** charged with issuing port operating licenses.

The **activities that need to be regulated** in order to strengthen the port of Djibouti's competitiveness are the **commercial services** provided by private port operators forming the **port-transit logistics chain** for ships and cargo and whose tariffs have a direct impact on the **competitiveness of port costs**.

The **cargo-handling operators concerned by regulation** to reinforce the port of Djibouti's competitiveness are:

- **Around fifteen stevedoring companies** handling general cargo: break-bulk, vehicles, livestock and dry bulk cargo, excluding SDTV cargo (clinker, cement and coal), amounting to 13% of the total traffic in 2010 and 19% in 2009;
- **DPW as container terminal operator** at DCT handling 44% of the total tonnage in 2010 and 45% in 2009;
- **SDTV, the main dry bulk operator** (cereals and fertilizer) handling 19% of the total traffic in 2010 and 17% in 2009;
- **DID and HDTL** handling **petroleum products** at the Doraleh oil terminal representing 25% of the total tonnage in 2010 and 20% in 2009.

The **other port operators concerned by regulation** to reinforce competitiveness in the port of Djibouti are:

- **Around fifteen shipping agents** consigning all types of vessels calling at the port of Djibouti: 1,404 commercial vessels in 2009 and 468 other types of vessels (war ships and diverse);
- The **50 to 100 freight forwarding agents** in charge of port transit procedures and services for all types of cargos (the consultant was not supplied with the official list of authorized freight forwarders);
- The **PAID** for its commercial services provided to all types of vessels (tugboat services, mooring, pilotage…).

In this respect the PAID itself could be subject to regulation as the direct operator of the old container terminal.

The impact of each kind of port operator on the port of Djibouti's competitiveness can be measured by the percentage of traffic it handles and the weight of its handling charges in global port transit costs. These data notably permit evaluating the extent of the regulation to be implemented by kind of operator.

In the majority of ports around the world, stevedoring and shore handling operations represent the main component in global port transit costs. They also have the greatest impact on port performance levels (lay-time, berth productivity…).

A study of port transit costs together with an analysis of port calls would be necessary to evaluate the effective weight of cargo handling costs in the costs and performance of the port of Djibouti. These studies would permit evaluating the impact of each handling company on the port of Djibouti's cost-effectiveness.

On the basis of tonnage per mode of packaging, one can already observe that stevedoring and handling operations in the port of Djibouti can be distributed between around fifteen stevedoring companies, competing for general cargo traffic representing less than 20% of the total traffic, and three private concessionaries handling the remaining 80% of specialized traffic (DCT for container traffic, DID-HDTL for petroleum products and SDTV for cereals and fertilizers).

The port's regional competitiveness is thus dependent at over 80% on the performance, tariffs and service quality provided by three private terminal operators.

The objective of the present study should be specified in the choice of regulation to be envisaged according to whether the market segment to be regulated is open to competition or whether it benefits from a contractual monopoly.

3.2. STATUTES AND PREROGATIVES OF THE PAID

3.2.1 Law of 1980 instituting the PAID and defining its statutes

The Autonomous Port of Djibouti (PAID) is a state-owned enterprise with a legal personality and financial autonomy. It is governed by Law n°148/AN/80 of November 5th 1980 instituting the PAID and defining its statutes.

Placed under the authority of the Presidency of the Republic, the PAID's mission is to ensure the management, exploitation and development of the port of Djibouti. It is vested under the statutes with the power to enforce law and order within the port, and more especially to ensure the safety of port facilities and maritime traffic. In terms of property rights, the PAID has the same rights and obligations as the State who freely granted it the administration of and rights to use the state-owned seafront within the limits of the port district as defined by decree.

PAID services notably include the Harbour Master's Office that has the power to act as Port Police and Port Authority.

The Law of 1980 had made provision for law enforcement and security services within the port district to be ensured by the maritime police (Prévôté maritime) under the responsibility of the Port Director.

Port equipment can either be installed and operated by the PAID, be privately operated under public equipment concessions or be authorized private equipment under public service obligations.

According to the Law of 1980, the PAID administration is ensured by a Council of Administration assisted by a Director, with the Minister in charge of port affairs acting as Chairman of the Council. As decreed by the Law of 1980, the council is made up of around twelve government representatives (from different ministries and institutions) and an equivalent number of private operator representatives (shipping companies, freight forwarders, stevedores, Chamber of Commerce…).

The PAID administration council notably has the power to:

- **Deliberate on the approval and licensing of private companies** authorized to operate within the port district;
- **Fix the maximum tariffs** and the conditions of use of port equipment managed by the PAID or sub-contracted to third parties;
- Create or **participate in the creation of companies** whose business sector falls within the domain of port or maritime activities.

On the basis of the powers and prerogatives conferred by the Law of 1980, the PAID is the **Djibouti Port Authority** and should also have the power to act as **Port Regulator**. However, no existing legal text has formally designated the Port Regulator or specifically defined it missions.

3.2.2 Law of 1980 and the DPW management contract

The Law of 1980 instituting the PAID and defining its statutes has been subject to a single amendment in 1993 with Law n°30/AN/93/3rd L modifying its article 19 relative to the conditions under which the State can control the PAID financial management.

The conditions under which the **Law of 1980** is to be applied have also evolved since 2000, notably due to the legal texts relative to the **Ports and Free Zones Authority (APZFD)** and **the management contract granting DPW (ex-DPI) the right to manage the PAID,** a contract signed in June 2000 and cancelled in June 2011.

In order to take into account these evolutions, it seems **necessary to clarify the PAID status and its ability to act as a neutral and effective regulating authority**.

3.2.3 The Law of 1980 and the Ports and Free Zones Authority

In June 2002, Decree n°2002-0098/PRE instituted the "Djibouti Free Zones Authority" as a legal entity with financial autonomy and delegated management functions to Jebel Ali Free Zone Authority (JAFZA) owned by the Dubai Ports group.

In May 2003, Decree n°2003-0093/PRE defined the tasks assigned to the "Djibouti Free Zones Authority" Council of Administration and nominated its five members for a three year mandate, placing them under the direct authority of the Presidency of the Republic, with total autonomy in relation to all the concerned ministries.

In October 2003, Decree n°2003-0207/PRE transformed the "Djibouti Free Zones Authority" entity into the "**Djibouti Ports and Free Zones Authority**" (APZFD) maintaining its administrative prerogatives of the free trade zone regime.

In September 2004, Decree n°2004-0178/PRE stipulated that the APZFD Council of Administration has notably **the assignment to manage the ports** and free zones and that the Council's government representative would be **responsible for monitoring port activities** and ensure the maintenance and development of port infrastructures.

The different legal texts regarding the management of the free zone regime created a new administrative framework for the Port of Djibouti without specifying resulting changes to the conditions of application of the Port Law of 1980, notably an initial PAID Council of Administration composed of over 20 members of which over half represent private operators and the APZFD Council of Administration composed of 5 members under the authority of the Presidency of the Republic.

The formal designation of a regulatory body for Djibouti port operations would necessitate clarifying the legal texts in order to determine which sections of the Law instituting the PAID and defining its statutes remains valid, and to specify the distribution of sovereign functions between the PAID and the Port and Free Zones Authority.

3.3. LAW GOVERNING SEA TRANSPORT AUXILIARIES

In July 2000, the Government of Djibouti promulgated Law n°83/AN/00/4th L defining the regulations governing sea transport auxiliaries.

This Law defines a sea transport auxiliary as any physical or moral person providing services of a commercial nature on behalf of, or for the benefit of a vessel or goods loaded or unloaded from a vessel. It stipulates that the exercise of said professions be subject to authorization under the conditions specified by decree.

3.3.1 The shipping agent

The Law defines a shipping agent as any physical or moral person in charge of consignment of vessels, or any other operation entrusted by the ship owner or ship charterer, notably negotiation and recovery of sea freight.

The shipping agent acts on behalf of the ship owner or freighter and is responsible for all operations not undertaken by the ship's captain. The agent is notably responsible for the payment of port and pilotage dues and must comply with minimum professional qualification standards and fulfill the financial capacity requirements as defined by decree.

3.3.2 The freight forwarder

The Law defines a freight forwarding agent as any physical or moral person that undertakes on his own account or on behalf a third party:

- Legal and material operations relative to the reception, storage, delivery or re-expedition of commodities other than loading or unloading operations;
- Operations relative to consignment commodities as mandated by their owner;
- Declaring dutiable commodities at customs on behalf of their consignee.

When acting as consignee or customs declarant, the freight forwarder responsibility is that of a mandatory acting on behalf of the one who mandate him. In other cases, the freight forwarder responsibility is that of a service provider. Freight forwarders must fulfill minimum conditions in terms of professional qualifications and financial capacity requirements as defined by decree.

3.3.3 Stevedoring and shore handling

The Law defines a stevedore or handling operator as any physical or moral person carrying out ship loading and unloading operations, including related operations such as the storage or removal of goods to or from a warehouse or open storage yard.

The stevedore or handling operator acts on behalf of the ship owner and/or the goods consigner or consignee. The stevedore or handling operator is only held liable to the person or company employing its services and on behalf of which it operates. The stevedore or handling operator is legally held liable:

- In unloading operations, between the beginning of handling on board and the moment the goods are handed over to the consignee:
- In loading operations, between the moment the goods are received from the consigner and the end of handling on board.

The stevedore or handling operator is legally bound to the Port Authority by a public equipment concession, an authorization of private-owned equipment with public service obligation, or an equipment lease agreement if the equipment used belongs to the port.

3.3.4 Pilotage

Pilotage services are defined by Law n°83/AN/00/4th L defining the regulations governing sea transport auxiliaries.

Pilotage of vessels on entering and leaving the port of Djibouti is a public service provided by the PAID under the conditions defined by the Law relative to the Code of maritime affairs. Implementing rules of pilotage are fixed by the Port General Regulation and the Port Operating Regulation.

Management of the Djibouti pilotage service is ensured by the Harbour Master under the authority of the Port Director. Other than in cases of exemption or derogation from the Harbour Master, pilotage of vessels is obligatory on entering and leaving the port and for any movement of vessels within the limits of the port of Djibouti's maritime zone.

3.3.5 Towing service

The Law relative to sea transport auxiliaries defines towing services as material assistance in manoeuvring vessels by specialized tug boats within the port's maritime zone.

The implementation rules for towing services are fixed by the Port General Regulation and the Port Operating Regulation.

The PAID provides paid towing and mooring services (docking or undocking) to vessels calling at Djibouti. Without prior authorization from the Port Authority, Djibouti port users are prohibited from using towing or mooring services other than those designated by the Port Authority.

The Harbour Master or his representative can impose the use of towing/mooring services in the interest of public order and safety of navigation. Towing and mooring service charges are paid for by the vessel or the entity benefiting from them.

4. STEVEDORES AND HANDLING OPERATORS

4.1. DECREE RELATIVE TO STEVEDORING AND SHORE HANDLING

In July 2001, the Government of Djibouti promulgated Decree n°2001-0128/PR/MET defining the licensing regulations and operating conditions relative to stevedores and handling operators.

Prior to setting-up its business, the operator must apply for a **stevedoring license issued by the Ministry of Equipment and Transport** on approval by the sea transport auxiliaries licensing commission.

A stevedoring license can be applied for by any physical person of Djiboutian nationality or any moral person of Djiboutian nationality on condition that all shareholders are of Djiboutian nationality. This **nationality clause** (article 4) needs **to be either amended or clarified** as certain non-Djiboutian stevedores, notably the Ethiopian operator MTS (Maritime & Transit Services), appears to benefit from derogation. This is also the case for the terminal operators SDTV, DCT, DID or HDTL whose main activities are stevedoring and shore handling and whose shareholders are not all of Djiboutian nationality.

The **professional qualification requirements** for stevedoring license applicants (article 5) is at least 3 years professional experience in a position of responsibility in a stevedoring or handling company, or professional references with justification.

The Decree prohibits a single entity from holding multiple licenses and thus excludes the possibility of simultaneously combining stevedoring with another activity such as freight forwarding or shipping agent. From July 3rd 2001, all operators exercising more than one of these three activities are placed under an obligation to choose only one.

This **non-accumulation clause** (article 11) needs **to be amended or clarified** given that, as in the majority of world ports, many Djibouti port operators exercise 2 or 3 of the activities targeted. The accumulation of activities is generally practiced under differently named companies all managed by the same people from the same office. It also occurs within the framework of a single company, as is the case for the Ethiopian operator MTS.

The Decree stipulates that the stevedoring license holder is subject to the rules of free competition and is prohibited to seek a monopoly position on penalty of license withdrawal. This **free competition clause** (article 8) needs **to be amended or clarified** in that over 80% of the annual cargo tonnage handled at the port of Djibouti is distributed between 3 operators benefiting from a monopoly position on their type of cargo (containers, petroleum products, cereals and fertilizers).

An appendix to the Decree specifies the **terms and conditions applicable to the provision of multipurpose stevedoring services**. Contrary to the Law, it is specified that these terms and conditions do not apply to specialized terminal operators.

The terms and conditions regulating stevedoring and shore handling operations is divided into 7 chapters dealing with liability, equipment, cargo-handling operations, warehousing, tariffs, various obligations and termination of activities.

It is completed by 3 appendixes relative to minimum standard requirements regarding equipment, productivity levels and personnel for the supervision of dockworkers.

4.2. HANDLING EQUIPMENT

The **appendix relative to the minimum regulatory requirements for cargo handling equipment** is divided into 3 cargo-handling operations: general cargo, containers and multipurpose. For each type of equipment, it indicates the minimum number required per operator and the number per hatch or per crane.

The **minimum handling equipment requirements** are fixed at: 5 slave trailers with a capacity of 8 to 10 tons, 3 tugmasters and 3 cranes with 3 ton capacity capable of stacking to a minimum height of 3 m.

The **additional handling equipment requirements** are **optional**. It concerns the 4 tugmasters and slave trailers with a higher capacity (notably for containers), 2 forklift trucks with spreader and a lifting capacity of 30 tons and 2 forklift trucks with a 6 ton lifting capacity.

The **non-mechanical handling equipment requirements** consist of 10 safety nets, 100 m² tarpaulin, 50 lifting slings, 10 unloading nets and 200 palettes.

Whilst making provision for "minimum equipment requirements", article 7 of the decree stipulates that the **licensed stevedore must have equipment adapted to volume of its activity** and permanently maintained in good working order.

The **list of minimum regulatory equipment requirements** to obtain a stevedoring license **does not appear very demanding** as it is essentially limited to 5 slave trailers, 3 tugmasters and 3 small cranes with a 3 ton lifting capacity. The **effective availability of the minimum regulatory equipment and its maintenance** in good working order is **not controlled by the PAID** or the other authorities concerned.

One can nevertheless question the utility and adequacy of the list of minimum equipment requirements regarding to the evolution in the structure of traffic handled at the port of Djibouti and the volume of activity handled by each stevedoring company.

The PAID provided the consultant with a list of 14 stevedores and handling operators with no indication of the type and volume of cargo handled by each of them. There is no detailed operations report or port call file that would make it possible to identify handling operators in operation and evaluate their annual volumes of activity and performance levels per type of cargo or vessel.

This type of information is publicly available in other ports, as demonstrated by the following table concerning stevedores and handling operators in the port of Douala (Cameroun). The availability of this type of data would notably provide the PAID with information on:

- The annual evolution of market share between the different handling companies in operation;
- The nature and volume of activity handled by each handling company in order to evaluate whether the company is effectively equipped with the appropriate equipment;
- The operational performance of each handling company by type of vessel or cargo.

	Containers		Vrac		Conventionnel		total général	
	Tonnage	%	Tonnage	%	Tonnage	%	Tonnage	%
GEODIS		0,0		0,0	79 373	6,6	79 373	1,5
SAGA	1 556	0,1	257 723	9,7	72 999	6,1	332 278	6,1
SDV CAMEROUN		0,0	177 661	6,7	195 272	16,3	372 933	6,9
SOCOPAO		0,0		0,0		0,0	0	0,0
DIT	1 519 529	97,7		0,0	18 425	1,5	1 537 954	28,4
CIMENCAM		0,0	817 262	30,6		0,0	817 262	15,1
GETMA	357	0,0	23 000	0,9	76 149	6,4	99 506	1,8
S.G.M.C		0,0	149 723	5,6		0,0	149 723	2,8
ASSA		0,0		0,0	25 016	2,1	25 016	0,5
2M	324	0,0		0,0	280 345	23,4	280 669	5,2
SOCOMAR	32 466	2,1		0,0	114 919	9,6	147 385	2,7
SAPEM		0,0		0,0	113 664	9,5	113 664	2,1
SOPOTRANS		0,0	7 500	0,3		0,0	7 500	0,1
CITTMA		0,0		0,0	113 527	9,5	113 527	2,1
SCDP		0,0	913 166	34,2		0,0	913 166	16,8
A.P.M		0,0	37 350	1,4	7 038	0,6	44 388	0,8
CREST		0,0		0,0	79 077	6,6	79 077	1,5
PANALPINA		0,0	1 499	0,1		0,0	1 499	0,0
ADER		0,0	38 712	1,5		0,0	38 712	0,7
ALUCAM		0,0	211 481	7,9		0,0	211 481	3,9
S.B.C.B.C		0,0	8 812	0,3		0,0	8 812	0,2
S.C.R.M		0,0	5 000	0,2		0,0	5 000	0,1
S.M.A		0,0	20 766	0,8		0,0	20 766	0,4
A.M.I		0,0		0,0	1 548	0,1	1 548	0,0
BSC		0,0		0,0	369	0,0	369	0,0
CEMACC		0,0		0,0	1 476	0,1	1 476	0,0
SATRAM	1 515	0,1		0,0		0,0	1 515	0,0
SONAC		0,0		0,0	48	0,0	48	0,0
KOYO COTMA					926	0,1	926	0,0
PANMARINE					59	0,0	59	0,0
TRANSMEX		0,0		0,0	18 145	1,5	18 145	0,3
Total	1 555 747	100,0	2 669 655	100,0	1 197 975	100,0	5 423 377	100,0%

According to the persons contacted by the consultant, **the stevedores' union only has 8 members out of about 15 existing companies** and the 4 main handling companies in Djibouti are Comad, MTI, SDTM and the Ethiopian operator MTS.

The **fifteen or so licensed handling companies** competed for a market of **1.17 million tons in 2010 and 2.38 million tons in 2009**, outside the specialized cargo terminals.

This market is essentially made up of **metallurgical products**, **cement/clinker** (in bags or bulk) and **sugar in bags**. These 3 types of product constituted 65% of the total tonnage handled in 2010 and 78% in 2009. The 2 other types of cargo traffic are **vehicles and livestock** representing 14% of the total tonnage handled in 2010 and 11% in 2009.

The structure of the cargo-handling market open to competition, and the very different nature of the 5 main types of cargo traffic composing it, confirm the need for consultations between the professionals concerning the utility and adequacy of the list of minimum regulatory equipment required to obtain a stevedoring license.

Cargo-handling conditions and equipment requirements differ considerably according to the type of cargo handled: metallurgical products, cargo in bags (sugar or cement), bulk clinker, vehicles or livestock. They do not need the same type of handling equipment.

It should furthermore be noted that the predominant handling conditions for general cargo at the port of Djibouti are direct delivery of cargo under ship's tackle and the direct transfer of cargo to the dry port (situated at 3 km from the quays). This tends to develop the use of trucks to the detriment of the tugmasters and trailers specified in the list of minimum equipment requirements.

4.3. STAFFING REQUIREMENTS

The **appendix relative to minimum staffing requirements** for a licensed handling company indicates the required number of quay foremen (1 to 2), head foreman (1), shipside gang foreman (1), landside gang foreman (1 to 2) and head tally-clerks (1 to 2). Staffing requirements are limited to the supervisory personnel employed by the handling companies to supervise dock workers. The requirements indicate **a minimum number of 5 to 7 employees per vessel and per shift**, according to the number of hatches operated simultaneously and whether cargo are delivered under tackle or transferred to a warehouse. The **minimum staffing requirements** for stevedoring companies annexed to their operating conditions is **not particularly demanding** and appears to be a relative formality given that a stevedoring company could not objectively carry out its activity without this minimum number of supervisory staff.

It appears to the WB consultant that the actual presence of **minimum handling operator staff and their qualifications** are **not monitored by the PAID** or the other authorities concerned.

The appendix relative to the minimum staffing requirements for a licensed stevedoring company does not concern dockworkers for which the **composition of gangs (11 to 22 persons per gang and per shift according to type of vessel and cargo)** and performance-related payment methods (tariffs per ton per gang) are subject to specific agreements between the handling companies and the BMOD (Dockworker Labour Office).

The sensitive issue regarding the organization of dockworker labour is not evoked by the handling companies. They apply the operating conditions clause stipulating that the stevedoring company must use dockworkers supplied by the BMOD under the conditions defined by the regulations in force (article 7).

They however note that the actual physical presence of the number of dockworkers theoretically supplied per gang is not respected, that dockworkers are not punctual enough and that often the composition of gangs does not correspond to the official nominative list supplied by the BMOD.

The functioning of the BMOD is officially governed by the administrative order n°119/SPCG of December 30th 1967 instituting a management committee invested with all the administrative and management powers to run the Dockworker Labour Office.

The **BMOD management committee** is presided over by the PAID Managing Director and its members are representatives of handling companies, freight forwarders and dockworkers. The committee nominates the head of the BMOD responsible for the daily management of dockworkers at administrative and financial level. The committee is officially **supposed to meet at least once every three months**, as convened by the chairman or at any moment on the chairman's initiative or a third of its members.

The number of dockworkers registered at the BMOD was estimated at 4,500 in 2001. According to the head of the BMOD, it dropped to **3,800 dockworkers in 2011** of which 845 foremen, 135 ship's crane operators and 2,820 dockworkers.

The modern DCT terminals and SDTV have brought about changes in the organisation of dockworkers' labour and adapted it to their needs. DCT has created its own subsidiary DLS (Djibouti Labour Services), to manage the employment of dockworkers for the Doraleh terminal, taking on 250 workers registered with the BMOD assigned to container handling operations.

Contrary to DCT, SDTV still employs BMOD personnel and has a seat on its management committee. SDTV has nevertheless obtained that the composition of dockworker gangs be adapted to the new automated working conditions at its bulk terminal.

As for handling companies of general cargo, they are still subject to the old BMOD rules governing the organisation of dockworker labour, notably over-manned gangs variable by type of cargo traffic. They pay dockworker gangs on the basis of a per-ton bulk rate per gang, and the transport expenses and supply of labour invoiced by the BMOD.

4.4. STEVEDORING PERFORMANCES

The operating terms and conditions for stevedoring operators stipulate that the hourly productivity rate per ship's hatch will be fixed by the port Director (article 5, last paragraph) and that compliance with these minimum productivity levels will be checked by port management at the end of operations for each vessel on the basis of average loading or unloading times recorded in the ship's book (article 6).

An appendix to the operating terms and conditions fixes the **"minimum productivity levels for cargo-handling operations"**, referring to the **hourly productivity rates per hatch or crane**. They are classified by type of vessel and mode of packaging: liquid bulk, dry bulk, bags, pallets, barrel, pre-slung cargo, big bags, wood, vehicles, metallurgical products, cement in bags and livestock.

The appendix does not specify how the required hourly productivity rates are calculated and notably whether they refer to gross hourly rates (corresponding to berthing time), net hourly rates (corresponding to time effectively worked), or average rates per day or per port call…The **imprecise definition of productivity rates** means that they are **practically unverifiable**.

Other than this appendix to the operating terms and conditions, a table of daily productivity rates was proposed in 2007 by the PAID Managing Director appointed by DPW. It was never officialised as the stevedoring companies concerned failed to reach an agreement. The **control of cargo handling productivity** by the Port Authority, as stipulated in the operating terms and conditions, is **not carried out by the PAID** and would be extremely **difficult to implement**. It would necessitate a regular data collection and analysis procedure based on the ship books and stevedoring time-sheets.

It is difficult to know how the minimum hourly productivity rates specified in the operating terms and conditions were established and whether they actually correspond to the reality as observed in the port of Djibouti or in other ports.

Gross daily productivity rates per ship berthing day would be **more appropriate and easier to control**, notably because lay-times established in the shipping contracts are measured in days rather than hours and that ship owners are primarily interested in global throughput per ship berthing day.

Without a specific procedure for regular collection of data from ship books and stevedoring time-sheets, an efficient analysis of port call file available in all port databases

(ship berthing and departure date and time, nature and tonnage of the cargo unloaded or loaded…) would permit establishing a gross average daily productivity rate for each port call.

It would then permit refining, if necessary, the performance indicators for the regulation of cargo handling activities, by establishing net productivity rates (by taking into account start and end of operation times) and variations in performance according to the stowing specificities per vessel for each type of cargo.

4.5. STEVEDORING AND SHORE HANDLING TARIFFS

The operating terms and conditions, joined to the decree of 2001, hold that **maximum tariffs for loading or unloading cargo** at the port of Djibouti should be governed by professional commitment **negotiated annually with Port Management and approved by the Ministry of Equipment and Transport** on the basis of proposals submitted by the competent professional organization (article 13).

This price regulation clause relative to stevedoring and shore handling tariffs is not applied.

The text of reference on the matter is a ministerial order signed by the Head of Government on 27th January 1981 and still applied in 2011. This order n°81-0126/PR/PORT fixed maximum tariffs for stevedoring and shore handling services in the Port of Djibouti.

It concerns "the provision of services listed in article 1 of the operating terms and conditions" which is limited to "handling of multipurpose cargo" and "not applicable to cargo handling operations in specialized terminals". It includes:

- General tariffs for handling import, export and transhipment cargo;
- Tariffs for handling with ex-quay delivery (direct delivery from ship to trucks);
- Special tariffs for handling wood, animal skins, livestock, vehicles etc.

The unloading operations in ports (and inversely for loading) are traditionally broken down into:

- **Stevedoring** operations from ship hatch to under ship's tackle (or crane hook), before discharging on land or truck;
- **Shore handling** operations from under ship's tackle to delivery on trucks, in the case of direct ex-quay delivery;
- **Shore handling** operations from under ship's tackle to warehouse or storage areas, in the other cases.

The billing conditions for port handling operations and their distribution between ship and cargo vary according to the terms of the sea transport contract (liner terms for regular lines).

In the case of **"under tackle" freight** (frequent for cargo transported by regular shipping lines),

- **Stevedoring charges** are **billed to the sea carrier** on the bases of negotiated commercial agreements;

- **Shore handling charges** are generally **billed to the consignee** on the basis of public tariffs.

In the case of **"free out" freight** (frequent for cargo transported by non-regular shipping lines), **all cargo handling services** (stevedoring and shore handling) are **billed to the consignee**.

In the case of **"quay" freight**, **all cargo handling services** are **billed to the sea carrier**.

4.5.1 Handling tariffs for general cargo

The **maximum tariffs fixed by the governmental order of 1981** are expressed in Djibouti Francs per freight ton (unit of weight used for charging freight in shipping, equivalent to the weight or volume of the goods), per unit, cubic meter or ton-weight.

The **ex-quay delivery tariff** covers stevedoring and direct delivery from ship to trucks. It is fixed at **749 FD per freight ton** for all goods and 810 FD per freight ton for iron and steel.

The **general import tariffs** are split between 614 FD for stevedoring and 553 FD for shore handling to warehouse or yard storage area making a total of **1,167 FD per freight ton**.

The governmental order of 1981 does not explicitly indicate whether the aforesaid tariffs specifically refer to shore handling operations only or to all stevedoring and shore handling operations.

The handling operators at the port of Djibouti interpret them as shore handling charges billed to the consignee as freight delivered "under ship's tackle".

In addition to the 749 or 1,167 FD charged for shore handling (4.25 $ or 6.60 $), the handling operators have indicated that **stevedoring charges** paid by sea carriers are billed at **2 to 3 $US per freight ton** on the basis of negotiated tariffs, in case of **freight "under tackle"**, whereas **total ex-quay handling charges (stevedoring + shore handling)** are billed **4 to 6 $US per freight ton** to the consignee in case of **"free out" freight**.

Until 2007, the DPW port management published general cargo-handling tariffs and all other port tariffs with US dollar conversions for charges fixed in FD. The August 2007 edition of PAID tariffs indicated:

- **4.25 $ per freight ton for ex-quay delivery** including stevedoring and direct delivery on trucks or trailers;
- **3.45 $ per freight ton for stevedoring** or unloading;
- **3.15 $ per freight ton for shore handling and stacking** in warehouse or open storage area.

The tariffs published by the PAID until 2007 appear to indicate **a difference in the interpretation of the governmental order of 1981 by DPW**. The 3.45 $US or 614 FD charged for stevedoring services, traditionally refers to on-board handling and are distinguished from land-based handling generally referred to as shore handling.

Even if the Djibouti cargo handling operators have been applying their own interpretation of the governmental order of 1981 for years, the DPW interpretation appears logical and would correspond to the following breakdown of activities:

- 3.45 $US or 614 FD for stevedoring services from the ship's hatch to under tackle;

- 0.80 $US or 135 FD for services from under tackle to delivery on trucks or trailers, giving a total of 4.25 $ or 749 FD for ex-quay delivery;
- 3.15 $ or 553 FD for services from under tackle to the warehouse or open storage area, including services from under tackle to delivery on trucks or trailers, and giving a total of 6.60 $ or 1,167 FD from the ship's hatch to the warehouse or open storage area.

On the basis of the above breakdown, one can suppose that current practices defended by handling companies are the result of a change in the interpretation of the governmental order of 1981.

This could possibly explain why they were able to put up with official maximum handling tariffs that have remained the same from 1981 to 2011, whereas handling tariffs for containers and dry bulk have been subject to several increases.

To illustrate the point, the following table presents a comparison of general cargo handling tariffs in the ports of Djibouti and Mombasa.

It shows that, even by adding 1981 tariffs to negotiated tariffs for stevedoring, **the charges of general cargo handling services at the port of Djibouti are lower than those applied in the port of Mombasa**, especially for shore handling.

TARIFS DE MANUTENTION DU GENERAL CARGO ($/T)

		DJIBOUTI	MOMBASA
STEVEDORING	Ex - Quai	$4,25 + $2 à $3	$7,00
STEVEDORING	Import Domestic	$3,45 + $2 à $3	$7,00
SHORE HANDLING	Import Domestic	$3,15	$7,50
STEVEDORING	Import Transit	$3,45 + $2 à $3	$7,00
SHORE HANDLING	Import Transit	$3,15	$6,00
TRANSFER TO		Dry Port	Port Area
TRANSFER TARIF		$2,86	$2,00

Source : Port Authorities - inecor@free.fr

4.5.2 Vehicle handling tariffs

The governmental order of 1981 breaks down maximum vehicle handling tariffs as follows:

- **418 FD per freight ton for unloading charges** with the following maximum metric cubage: 10 m3 for vehicles weighing less than or equal to 1,500 kg, 25 m3 for vehicles weighing from 1,501 to 3,000 kg and 40 m3 for vehicles weighing from 3,001 to 5,000 kg;
- **1,012 FD towing charge per vehicle** for vehicles weighing less than or equal to 1,500 kg (from quay to yard);
- **1,991 FD towing charge per vehicle** for vehicles weighing from 1,501 to 3,000;
- **3,206 FD towing charge per vehicle** for vehicles weighing from 3,001 to 5.000.

For vehicles weighing over 5,000 kg, the order of 1981 considered them to be heavy cargo. In practice, the handling operators apply a global charge of 1,167 FD per freight ton.

These vehicle handling tariffs, unchanged since 1981 are effectively applied by the Ethiopian operator MTS and also appear to be applied by other handling operators.

4.5.3 Tariffs for dry port transfer and security services

At the time of publication of the order of 1981, cargo handling operations were traditionally effectuated from ship to warehouse situated close to the quay, or to an open yard within the port.

Over the last few years, the PAID has decided to reorganize port operations with the creation of a dry port located at 3 km from the sea port. Except in cases of direct ex-quay delivery, handling operators are obliged to transfer the majority of unloaded cargo and vehicles to the dry port.

If this reorganization had simply increased the ship to shore transfer distance within the port area, one could eventually justify its lack of incidence on 1981 tariffs. But the fact the dry port is located at 3 km outside the port, may justify the handling operator's position in considering that the transfer of cargo to the dry port involves additional transport costs not included in the 1981 tariffs.

The differently interpreted consequences resulting from the obligatory transfer of cargo to the dry port, has given rise to numerous exchanges between the PAID and the handling operators. It resulted in the application of new transfer and security tariffs not provided for in the order of 1981. The majority of handling operators apply the following **dry port transfer charges**:

- 500 FD per freight ton for general cargo;
- 3,000 FD per vehicle weighing less than 5 tons;
- 10,000 FD per vehicle weighing over 5 tons;
- 75,000 FD per vehicle for caterpillar-track type vehicles.

The Ethiopian operator MTS applies a 3,000 FD tariff for all types of vehicle transferred to the dry port but does not charge for the transfer of other types of cargo.

Security problems and the theft in the dry port have become a problem, theoretically under the responsibility of the PAID, whereas handling operators are legally liable for loss or damage to cargo from the moment they are unloaded to the moment they are delivered to their consignee. The problem of theft has given rise to numerous consultations between the PAID management and the handling operators, concerning the new dry port security charges.

After a 3 day franchise for cargo destined for Djibouti and 8 days for cargo transiting to Ethiopia, the majority of handling operators apply the following **tariffs for dry port security services**:

- 5 FD per freight ton for cargo stored on open storage areas;
- 2.5 FD per freight ton for cargo stored in a warehouse;
- 250 FD per day for small vehicles;
- 500 FD per day for trucks and buses;
- 1,000 FD per day for heavy plant material.

The Ethiopian operator MTS charges 250 FD per day for all types of vehicle stored on the dry port and does not charge for security services on other types of cargo.

MTS is the **Ethiopian public operator** providing stevedoring, handling, freight forwarding and shipping agent services at the port of Djibouti. It is in competition with the other Djibouti port operators on each of the three types of services. It essentially operates on ships belonging to the state-owned Ethiopian Shipping Lines (ESL), which is free to choose its shipping agent and cargo handling operator in the same way as any other shipping line, according to its own interests.

On a sample of 914 port calls at Djibouti in the 2nd half of 2010 (against a total of 1,872 port calls in 2009), MTS acted as shipping agent for 57 port calls or **6.2% of the vessel traffic in Djibouti**. It also provided stevedoring services for virtually all the 57 port calls of which 49 were effectuated by ESL own vessels.

For all the new tariffs incurred by the obligation to transfer cargo to the dry port, **MTS** appears to have **a more reasonable pricing policy than the other handling operators** who reproach it for refusing to apply higher tariffs because of its status as Ethiopian public operator. They consider that its public status permits it to escape from the dictates of profitability governing private companies.

It is difficult to know MTS or any other Djibouti port operator's level of profitability. One cannot however reproach an Ethiopian public enterprise for being more sensitive to the interests of Ethiopian shippers who naturally want to pay the lowest possible charges.

MTS reflects and expresses the point of view of Ethiopian shippers who already consider the port of Djibouti to be sufficiently expensive. In this respect, MTS is the principle means of regulation available to the Ethiopian government in its attempt to influence the evolution of tariffs practiced in the port of Djibouti. Even for Djibouti, MTS positioning and tariffs are useful indicators of what can be considered reasonable and acceptable by the Ethiopian shippers.

Irrespective of the method used to calculate the new rates, the new tariffs for the transfer of cargo to the dry port located at 3 km outside the sea port, can be justified as a service not provided for by the order of 1981. One can however question the new dry port security tariffs since handling operators remain legally responsible for cargo whether stored at the sea port or the dry port, even if insurance conditions are modified since transfers imply the use of public roads outside the sea port.

Article 12 of the operating terms and conditions stipulate that the handling operator must ensure security services for all the storage areas used and that the owner of cargo is only liable to pay security charges after a period of 2 months.

This article essentially refers to private occupancy conditions for port storage areas. The last paragraph relative to the provision of security services does not specify whether it concerns privately used storage areas only. This can give rise to differences in legal interpretation in that the dry port storage areas appear to be used by handling operators under public conditions. This should not however be a reason for not questioning the justification of dry port security charges.

4.5.4 Container handling tariffs

Container handling tariffs at the port of Djibouti are published by the PAID with the other port tariffs (port dues, pilotage, towing…). The last available edition was published on December 1st 2008.

The following table presents a comparison of main public container handling tariffs between the ports of Djibouti and Mombasa.

It shows very important differences between **container handling costs at the port of Djibouti and the port of Mombasa**, except for shore handling empty 20' containers. These tariffs are applied in the ports of Djibouti and Mombasa since 2008 and stevedoring at Djibouti had been increased by +15% between 2007 and 2008.

TARIFS DE MANUTENTION DES CONTENEURS

		DJIBOUTI	Ecart %	MOMBASA Transit	Ecart %	MOMBASA Domestic
STEVEDORING	20' Full - Import	$133,00	48%	$90,00	0%	$90,00
SHORE HANDLING	20' Full - Import	$272,00	278%	$72,00	-20%	$90,00
STEVEDORING	40' Full - Import	$166,00	23%	$135,00	0%	$135,00
SHORE HANDLING	40' Full - Import	$544,00	395%	$110,00	-19%	$135,00
STEVEDORING	20' Empty - Import / Export	$94,00	74%	$54,00	0%	$54,00
SHORE HANDLING	20' Empty - Import / Export	$17,00	-15%	$20,00	0%	$20,00
STEVEDORING	40' Empty - Import / Export	$121,00	49%	$81,00	0%	$81,00
SHORE HANDLING	40' Empty - Import / Export	$34,00	13%	$30,00	0%	$30,00
STEVEDORING	20' Full - Transhipment	$83 à $141		$80,00		$80,00
STEVEDORING	40' Full - Transhipment	$116 à $201		$120,00		$120,00
STEVEDORING	20' Empty - Transhipment	$67 à $112		$48,00		$48,00
STEVEDORING	40' Empty - Transhipment	$80 à $137		$72,00		$72,00

Source : Port Authorities - inecor@free.fr

The port of Mombasa grants a 20% reduction on shore handling tariffs for foreign transit traffic thus competing against neighbouring ports.

Transhipment tariffs at Djibouti are variable and on a sliding scale according to the annual number of containers transhipped per sea carrier.

Up to 6,000 TEU per year, the standard tariff is $141 per 20' full, $201 per 40' full, $112 per 20' empty and $137 per 40' empty. If the container traffic transhipped by a sea carrier reaches 80.000 to 200.000 TEU per year, he can benefit from the reduced rates of $83 per 20' full, $116 per 40' full, $67 per 20' empty and $80 per 40' empty.

The tariffs publicly posted by the port of Mombasa are independent of the annual number of containers transhipped. They are lower than the best rates available to a sea carrier transiting through Djibouti whose its transhipment traffic attains or surpass 80,000 TEU per year.

Compared to the minimum tariffs applied in Djibouti, the difference in favour of the port of Mombasa is -4% per 20' full, -28% per 20' empty, -10% per 40' empty and +3% per 40' full. **Compared to the standard rates applied in the port of Djibouti, Mombasa is 40% to 57% cheaper for the different types of container transhipped**.

Container traffic constitutes about 45% of the total tonnage handled at the port of Djibouti in 2009 and 2010. It has greater weight in the regional competitiveness of the port of Djibouti than general cargo. A port's competitiveness includes criteria such as the quality of its infrastructures and performance levels that are certainly higher in the ultra-modern Doraleh terminal. Bur the cost criterion also has a significant impact on port competitiveness and **container handling tariffs are clearly less competitive in Djibouti than Mombasa**.

Competition between ports is nevertheless distorted by Djibouti's quasi monopolistic position on Ethiopian transit traffic as the country has no real alternative port access available. This is not the case for transhipment traffic (+202% to 191.500 TEU in 2009 and -62% to 73.100 TEU in 2010) on which ship owners can capitalize on competitive advantages as did CMA-CGM in removing its transhipment traffic from Djibouti because of its non-competitive stevedoring tariffs.

4.5.5 Dry bulk handling tariffs

The **SDTV dry bulk terminal** is modern and efficient guaranteeing ships a minimum handling productivity of **7,000 tons/day for cereals and 5,000 tons/day for fertilizers**. Stevedoring tariff was $17/ ton in 2010 and increased to **$18/ton in 2011**.

Before the new SDTV terminal was put into operation, handling tariff for cereals at the port of Djibouti was **$7/ton** for unloading and on-quay bagging for a guaranteed volume of **2,000 to 2,500 tons/day**.

Handling tariffs for dry bulk at the port of Mombasa amounts to $4/ton for unloading and $1/ton for on-quay bagging giving a total of **$5/ton**.

As the budget for the present study did not include a visit to the port of Mombasa, it is difficult to know the precise tonnage guaranteed per day for a $5/ton tariff.

According to available statistics, the port of Mombasa operated 4,641,000 tons of dry bulk cargo in 2009 and 183 bulk cargo vessels with average port call duration of 5.5 days. On the basis of this data, average productivity can be estimated at around **4,600 tons/day for dry bulk at the port of Mombasa**.

The bulk terminal at Djibouti is thus certainly more productive than the Mombasa terminal, but the dry bulk handling tariffs at Djibouti are much higher ($18 against $5) and one can question whether such a price gap is justified per productivity gap.

5. FREIGHT FORWARDERS

5.1. DECREE RELATIVE TO THE FREIGHT FORWARDING PROFESSION

In July 2001, the Government of Djibouti promulgated decree n°2001-0127/PR/MET defining licensing regulations and operating conditions for freight forwarders.

The decree defines the freight forwarder as **a sea transport auxiliary licensed to carry out legal and material services relating to the forwarding**, delivery, expedition or re-expedition of cargo previously unloaded from a vessel or destined to be loaded onto a vessel.

The material services provided by the Djibouti freight forwarder are notably the removal of cargo under tackle (ex-quay), the removal of cargo from warehouses and the loading of cargo onto trucks or wagons (for import cargo and inversely for export).

Prior to setting up its activity, the freight forwarder must obtain **a license from the Ministry of Equipment and Transport** after approval by the sea transport auxiliaries licensing commission.

A freight forwarding license can be applied for by any physical person of Djiboutian nationality or any moral person of Djiboutian nationality with Djiboutian and/or foreign shareholders.

A freight forwarding license can also be applied for by any physical or moral person of foreign nationality, on condition that reciprocal rights be granted to Djiboutian nationals wishing to exercise the profession in the foreign country concerned.

Contrary to the stevedoring profession, the **nationality clause** grants foreign nationals the right to exercise the freight forwarding profession in the port of Djibouti.

The condition relative to **professional qualification requirements** for freight forwarding license applicants (article 5) is “to have professional references”.

The decree prohibits a single person or entity from holding multiple licenses and thus excludes handling operators and shipping agents from simultaneously exercising as freight forwarding agents. This **non-accumulation clause** (article 8) however, does not apply to sea transport auxiliaries having obtained their license to operate prior to 2001, date on which the Decree regulating the freight forwarding profession came into force.

The clause permitting sea transport auxiliaries to combine business activities (article 8) if they obtained their operating license prior to 2001 is inconsistent with the much stricter interdiction applied to handling operators and shipping agents. It provides a possible legal deviation to the clause prohibiting single entities from holding multiple licenses since all freight forwarding agents licensed before 2001 can simultaneously exercise as handlings operators and shipping agents.

The Decree made provision for **maximum freight forwarding tariffs** (article 13), **approved by the Ministry of Equipment and Transport** on proposals submitted by a competent professional organization. Freight forwarder’s failure to comply with the authorized maximum tariffs entails the risk of license withdrawal.

The maximum authorized tariff clause is not applied. The consultant has no knowledge of the existence of legal texts fixing the maximum tariff rate for freight forwarding services.

The Decree includes an appendix outlining **operating terms and conditions for the freight forwarding profession**. The terms and conditions include 8 articles principally defining **requirements for the provision of material services**, notably the minimum standard requirements relative to cargo handling equipment and warehousing facilities. There is no appendix to the operating terms and conditions.

5.2. DEFINITION OF FREIGHT FORWARDING & MATERIAL REQUIREMENTS

Internationally, a freight forwarding agent is defined as a cargo transport organizer responsible for ensuring good coordination between different modes of transport, notably sea and land transport. Service provision can be limited to coordinating agent between two modes of transport and/or to customs broker services with a responsibility of mandatory on behalf of its client. Freight forwarders can also have a broader activity organizing the totality or part of the transport chain.

The Law of July 9th 2000 on the status of sea transport auxiliaries defines the freight forwarding agent at the port of Djibouti as any physical or moral person carrying out on his own behalf or that of a third party:

- Legal and material services relative to the reception, storage, delivery or re-expedition of cargo excluding ship loading or unloading operations;
- Services relative to the consignment of cargo as mandated by the cargo owner to effectuate port formalities and the payment of port dues and eventually sea freight charges, on his behalf;
- The declaration of dutiable cargo at customs on behalf of the consignee.

The Law stipulates that the freight forwarding agent's liability is generally that of a service provider, but is that of a mandatory when acting as cargo consignee or customs declarant. Although not specified by the Law, the mandatory is theoretically held to have an obligation of means whereas the service provider has an obligation of results.

The legal definition of a freight forwarding agent in Djibouti is specific and incorporates the legal services traditionally associated with the profession and material services related to shore handling on storage areas or in warehouses.

The **minimum equipment requirements** stipulated in the operating conditions are:

- 3 tractor trucks and 3 trailers having a capacity of 20 to 38 tons;
- 1 forklift truck with a capacity of 2 to 4 tons;
- 1 forklift truck with a capacity of 5 to 10 tons.

The operating terms and conditions also make provision for each licensed freight forwarder to provide **storage warehouses** either inside or outside the port perimeter.

The Decree defines the material services to be provided on imported cargo as reception under tackle (ex-quay), removal and transfer of cargo from warehouses, loading of cargo onto trucks or wagons, and inversely for export cargo. All the material services mentioned by the decree constitute cargo lifting or transportation services.

The **equipment requirements stipulated in the freight forwarders' operating terms and conditions** correspond to storage operations (warehouses), loading of cargo onto trucks or cargo lifting operations (forklift trucks), and delivery or forwarding of cargo (tractor trucks and trailers).

These equipment requirements are not indispensable to customs declarants and a majority of licensed freight forwarders do not comply with them.

5.3. A PROFESSION IN NEED OF RESTRUCTURING

The PAID provided the consultant with a list of 21 freight forwarders that are members of the Djibouti Freight Forwarders Association, and 27 non-members of the said association. The **ATD, (Djibouti Freight Forwarders Association)** also provided the consultant with a list of its **28 members**.

There are in addition, **20 to 70 licensed freight forwarders without ATD membership**. This lack of precision as to the official number of operating freight forwarders is all the more surprising given that each freight forwarder is theoretically registered and identified by a State department through licensing and trading dues.

According to the freight forwarders interviewed, the profession can be divided into several categories:

- The 28 ATD members of which 75% operate as freight forwarding agents only (not combined with stevedoring or shipping agent operations);
- License holders operating without ATD membership which are generally unable to provide the material requirements stipulated in the operating conditions and often resort to leasing equipment according to needs;
- License holders that "lease" their licenses to other operators, notably Ethiopian freight forwarders;
- License holders referred to as "informal" operators without office premises and mainly providing customs brokerage services;
- License holders that are not or no longer in activity.

According to all the representatives interviewed, the main problem affecting the freight forwarding profession in Djibouti is the **excessive number of operators** resulting from the **lack of control of licensing terms and conditions** leading to a **lack of professionalism** and **"unfair" competition**.

According to the interests of the representative concerned, opinions however diverge as to the means of solving the problem.

As in many countries having liberalized freight forwarding activities, the excessive number of operators essentially concerns those acting as customs declarants or customs brokers.

Certain freight forwarders in Djibouti consider that the solution to their problem would be **to strictly apply of existing regulations** and notably the clause relative to **license withdrawal on non-compliance with the regulatory terms and conditions**.

They thus hope to "clean-up" the market by eliminating all the small operators they accuse of practicing "unfair" competition through knock-down prices and the leasing of regulatory equipment they do not own themselves.

The freight forwarding profession in Djibouti can in fact be broken down into two types of operator. A choice can therefore be made between **legalizing the situation by clarifying existing regulations or by legalizing two different professions**:

- On the one hand, the **customs commissioner or customs declarant** exempt from specific equipment requirements and without the right to provide material services necessitating cargo-handling or transport equipment;
- On the other hand, **the transport commissioner or freight forwarder** maintaining the regulatory equipment requirements and the right to exercise all the legal and material services made provision for by the regulations.

Other than **competition from small customs declarants**, the operators exercising only freight forwarding profession are also subject to **competition from stevedores and freight forwarders** with greater material and financial means and who naturally aim to control all handling operations from the ship to the storage areas and the delivery onto trucks.

These stevedoring and freight forwarding operators would objectively benefit from the suppression of the regulatory minimum equipment clause as it would limit freight forwarders' scope of material activities. This solution would hopefully enable them to recuperate the entire cargo lifting and delivery market that the law currently attributes to equipped freight forwarders.

The clause prohibiting the simultaneous exercise of freight forwarding and stevedoring activities exists in regulations for each profession, but the right to derogate from these provisions as defined in the Decree relative to freight forwarders, objectively favours the stevedoring and freight forwarding companies that had generally acquired their licenses well before 2001.

5.4. FREIGHT FORWARDING TARIFFS

The Decree of 2001 made provision for a maximum tariff to be fixed for freight forwarding services, approved by the Ministry of Equipment and Transport on proposal from the professional organizations. This **approved maximum tariff clause is not applied** and to the consultant's knowledge, no existing legal text fixes maximum tariffs for freight forwarding services.

The existing competition between the different categories of freight forwarding service providers means that tariffs vary considerably and the estimation of freight forwarding costs can only be indicative. As is often the case in the majority of ports, there are no public tariffs available for freight forwarding services that would permit comparing tariffs in the port of Djibouti with another port in the region.

A freight forwarder invoice to an Ethiopian or Djiboutian client is generally complex and lacks transparency. It includes:

- Services paid on account of the client who is generally re-invoiced for an identical amount (duties, port dues, cargo handling, transport, taxes);
- An eventual commission paid to the freight forwarder on disbursements made on account of the client;
- The freight forwarder own services that in Djibouti can include customs transit procedures and material services (cargo lifting, stripping, transport…).

The **range of extremely variable tariffs** indicated by interviewed freight forwarders are as follows:

- Port transit procedure for a container with a direct B/L for Ethiopia: $100 per 20' and $150 per 40' (single fixed charge set by the Freight Forwarders Association and Ethiopian shippers);
- Port transit procedure for a container on normal B/L without stripping: $70 to $150 per 20' and $100 to $250 per 40';
- Port transit procedure for a container on normal B/L with stripping: $100 to $200 per 20' and $150 to $300 per 40' ;
- Transfer from the Doraleh terminal to the port of Djibouti (Y15) and container stripping: $90 to $115 per 20' and $180 to $225 per 40' ;
- Container stripping and cargo loading on truck at Y15: $90 to $160 per 20' and $150 to $280 per 40';
- Customs clearance and cargo loading on truck: $3 to $8 per ton;
- Port transit procedures for vehicles: $50 to $100 per vehicle;
- Documentation costs: $40 to $80 per B/L ;
- Disbursement commission: 0 to 7% of sums paid on behalf of the client.

The **direct B/L procedure** (Bill of Lading issued by the sea carrier) for cargo in transit to the 2 dry ports in Ethiopia (mainly to the one located near Addis-Ababa) was instituted at the end of 2009. Its aim was to improve transit conditions for Ethiopian cargo by reducing waiting time in Djiboutian storage areas. Without a direct B/L, imported cargo must be customs cleared in Ethiopia before leaving the port of Djibouti (3 to 4 weeks wait on average). With a direct B/L, only the visa of Ethiopian customs on B/L is necessary and imported cargo can leave the port of Djibouti more rapidly.

The direct B/L procedure is primarily applied by Ethiopian public shippers transporting freight via the state-owned shipping line ESL. In 2010, the Djibouti Freight Forwarding Association (ATD) obtained exclusive rights to effectuate transit procedures for Ethiopian cargo under direct B/L on the basis of a fixed tariff of $100 per 20’ and $150 per 40’.

To date there are no available statistics permitting to evaluate the share of Ethiopian traffic transiting under a direct B/L.

6. SHIPPING AGENTS

6.1. DECREE RELATIVE TO THE SHIPPING AGENT PROFESSION

In July 2001, the Government of Djibouti promulgated Decree n°2001-0126/PR/MET regulating the shipping agent profession.

Prior to setting-up its business, the shipping agent must obtain **a license issued by the Ministry of Equipment and Transport** on approval by the maritime transport auxiliaries licensing commission.

The shipping agency license can be applied for by any physical person of Djiboutian nationality or any other moral person of Djiboutian nationality owned by shareholders of Djiboutian and/or foreign nationality.

The shipping agent's license can also be applied for by any physical or moral person of foreign nationality on condition that Djiboutian nationals are granted reciprocal rights to exercise the profession in the foreign country concerned. Contrary to the stevedoring profession, the **nationality clause** grants foreigners the right to obtain a shipping agents license in Djibouti.

The **professional qualification requirements** for shipping agent license applicants (article 5) is professional experience acquired through at least 5 years in a position of responsibility in a sea transport company, and a certificate of professional competence issued by the Djibouti International Chamber of Commerce.

The Decree prohibits a single person or entity from holding multiple licenses thus excluding the possibility of simultaneously exercising as shipping agent and freight forwarder or handling operator. From the Decree signature date (3rd July 2001), all operators exercising more than one of these three professions are placed under an obligation to choose one.

The **non-accumulation clause** (article 10) needs **to be amended or clarified** as many operators in Djibouti exercise 2 or 3 of the port activities targeted, as is the case in the majority of ports around the world,.

The pursuit of 2 or 3 activities is generally practiced through the use of differently named companies all managed by the same people from the same office. It also occurs within the framework of a single company, as is the case for the Ethiopian operator MTS.

Contrary to the Decree regulating handling profession and freight forwarders, the Decree relative to shipping agents does not include operating terms and conditions outlining the standard requirements for the profession.

6.2. SHIPPING AGENCY TARIFFS

According to the PAID, Djibouti counts **around fifteen shipping agents** of which half a dozen subsidiaries of international shipping lines (CMA-CGM, MSC, Maersk and the Asian shipping lines APL and PIL).

The other agents are independent and have commercial agreements to represent one or more shipping companies. In Djibouti, the profession is represented by the trade union of shipping agents.

Around twenty shipping agents operated the 914 port calls at Djibouti in the 2nd half of 2010 (against a total of 1,872 port calls in 2009). These port calls were essentially operated by the following **main shipping agents**:

- 22% by Inchcape Shipping Service representing the world leader Maersk and the main car-carriers ;
- 17% by Savon Ries representing the Chinese shipping company Cosco and the Italian shipping company Messina;
- 12% by PIL, subsidiary of the Asian shipping line of the same name;
- 6% by the local shipping agent Khotari;
- 6% by MTS the Ethiopian operator mainly representing the Ethiopian shipping line ESL;
- 4% by CMA-CGM, subsidiary of the French shipping line of the same name;
- 3% by MSC, subsidiary of the Italian-Swiss shipping line of the same name.

Shipping agents are paid by the shipping lines they represent on the basis of confidential tariffs negotiated beforehand. Their cargo consignee is also charged administrative fees for the exchange of documents and the delivery order.

The charges invoiced by shipping agents are relatively low if we compare them to stevedoring or freight forwarding charges. **Shipping agent charges** are nevertheless **multiple, variable and sometimes unjustified**.

The table below indicates the minimum and maximum tariffs invoiced (in FD) according to the different shipping agencies, as well as harmonized tariffs officially announced by the trade union in February 2010 (in FD and $US). Invoices are generally issued per BL (Bill of Lading) and a BL can include from one to several containers or parcels.

DJIBOUTI SHIPPING AGENT CHARGES	Mini	Maxi	Syndicat FD	Syndicat $
Delivery Order Fees / BL	3 500	3 500	3 500	$20
Electronic Delivery Order / BL	1 000	2 500	2 000	$11
Administration Fees / BL	0	3 560	1 700	$10
Communication Fees / BL	0	5 340	3 000	$17
Arrival Notice / BL	0	3 000		
ISPS Charges / Container	1 050	1 100	1 100	$6
Cleaning Charges / Container	3 000	3 100	3 000	$17
TOTAL	**8 550**	**22 100**	**14 300**	**$82**

Source : Shipping Agencies - inecor@free.fr

The **variations in tariffs** are **more or less important according to the items** concerned. The most significant variations concern shipping agencies' administrative services (Administration Fees, Communication Fees and Arrival Notice) for which the tariffs per BL are difficult to justify.

The tariffs announced by the maritime union for general cargo are the same apart from the Communication Fees (5,000 FD per BL against 3,000) and ISPS Charges (50 FD per freight ton against 1,100 FD per container).

Shipping agents also charge on behalf of shipping companies for **security deposits paid on containers** and **demurrage (penalties) for exceeding the franchise** agreement date for return of containers (generally 10 days, excepting Ethiopian Shipping Lines that grants a 30 day franchise).

This is traditional practice in ports. The tariffs are fixed by each shipping company with **significant variations** practiced by international companies according to their assessment of the market and without obligation to justify:

- Security deposit for an imported container in Djibouti: $500 to $1.500 per 20' and $1.000 to $3.000 per 40' ;
- Security deposit for an imported container in Ethiopia: $2.000 to $3.500 per 20' and $4.000 to $7.000 per 40' ;
- Demurrage per day for an imported container in Djibouti: $5 to $15 per 20' and $10 to $30 per 40'.

REPORT 2 - RECOMMENDATIONS

INTRODUCTION

The terms of reference (ToR) of the present study specify that its objective is "to strengthen the competitiveness of the ports of Djibouti (old port of Djibouti and new port of Doraleh) and ensure their medium-term and long-term development by designing a modern and efficient regulation system for private port operators, and specifically addressing issues related to the quality of service and pricing, in addition to institutional related issues".

The activities that need to be regulated in order to strengthen the port of Djibouti's competitiveness are the commercial services provided by private port operators forming the port-transit logistics chain for ships and cargo and whose tariffs have a direct impact on the competitiveness of port costs.

The cargo-handling operators concerned by regulation to reinforce the port of Djibouti's competitiveness are:

Port fees and dues collected by the Port Authority for non-commercial services also contribute to the port's level of competitiveness, but are beyond the scope of this study.

The cargo-handling operators concerned by regulation to reinforce the port of Djibouti's competitiveness are:

- Around fifteen stevedoring companies handling general cargo: break-bulk, vehicles, livestock and dry bulk cargo, excluding SDTV cargo (clinker, cement and coal), amounting to 13% of the total traffic in 2010 and 19% in 2009;
- DPW as container terminal operator at DCT handling 44% of the total tonnage in 2010 and 45% in 2009;
- SDTV, the main dry bulk operator (cereals and fertilizer) handling 19% of the total traffic in 2010 and 17% in 2009;
- DID and HDTL handling petroleum products at the Doraleh oil terminal representing 25% of the total tonnage in 2010 and 20% in 2009.

The other port operators concerned by regulation to reinforce competitiveness in the port of Djibouti are:

- Around fifteen shipping agents consigning all types of vessels calling at the port of Djibouti: 1,404 commercial vessels in 2009 and 468 other types of vessels (war ships and diverse);
- The 50 to 100 freight forwarding agents in charge of port transit procedures and services for all types of cargos (the consultant was not supplied with the official list of authorized freight forwarders);
- The PAID for its commercial services provided to all types of vessels (tugboat services, mooring, pilotage…).

1. PORT LEGAL FRAMEWORK

1.1. CURRENT SITUATION

The legal and regulatory framework governing the port sector in Djibouti is covered by two separate sets of laws: those relative to the Port Authority and its prerogatives, and those relative to port operators' licensing regulations and operating terms and conditions.

The first group of laws and decrees notably includes:

- Law 148/AN/80 of November 5th 1980 instituting the International Autonomous Port of Djibouti (PAID) and defining its statutes;
- Decree 99-0168/PR/MET of September 16th 1999 conferring the management and exploitation of the auxiliary ports of Tadjourah and Obock to the PAID;
- Decree 2003-0207/PRE of October 9th 2003 transforming the Free Zone Authority of Djibouti into the Ports and Free Zones Authority of Djibouti (APZFD);
- Decree 2004-0178/PRE of September 12th 2004 defining the powers of the Government Representative and the Council of Administration for the Ports and Free Zones Authority of Djibouti;
- Law 53/AN/04 of May 17th 2004 establishing the legal Code applicable inside the free zones of the Republic of Djibouti;
- Decree 2007-0156/PRE defining the operating regulations applicable to the International Autonomous Port of Djibouti;
- Decree 2007-0157/PRE defining the general regulatory framework applicable to the International Autonomous Port of Djibouti.

The second group of laws and decrees includes:

- Law 83/AN/00/4th L of July 9th 2000 defining the statutes of sea transport auxiliaries;
- Decree 2001-0125/PR/MET of July 3rd 2001 on regulation of professional ship bunkering services;
- Decree 2001-0126/PR/MET of July 3rd 2001 defining licensing regulations relative to the shipping agent profession;
- Decree 2001-0127/PR/MET of July 3rd 2001 defining licensing regulations and approving operating terms and conditions relative to the freight forwarding profession;
- Decree 2001-0128/PR/MET of July 3rd 2001 defining licensing regulations and approving operating terms and conditions relative to the stevedoring and shore handling profession;
- Governmental Order 81-0126/PR/PORT of January 27th 1981 fixing maximum tariffs for stevedoring and shore handling operations in the port of Djibouti.

The first set of laws have progressively changed the Port Authority's organizational framework since 1980, without however clearly specifying the practical implications of new laws on relations between the PAID, the APZFD and other state institutions, notably the Ministry of Equipment and Transport.

The second set of laws, enacted in 2000-2001, defines the operating terms and conditions governing the different port and maritime professions licensed to operate by the Ministry of Equipment and Transport. It includes an administrative order published in 1981 constituting the sole existing tariff for stevedoring operations, with consequent effects on port costs and performances as the same tariffs were still practiced in 2011.

1.2. RECOMMENDED ACTION

Carry out a **general review of the legal texts in force** in order to clarify, harmonize and ensure their conformity with developments in shipping and port context.

1.3. CONDITIONS FOR IMPLEMENTATION

Beyond the fact that the contents of these laws should be clarified and updated in accordance with developments in the port and shipping sector, numerous provisions in force are not applied, whether by the public authorities concerned or the private operators. This general tendency not to comply with existing laws calls for serious reflection on the means and conditions of implementation to ensure that improvements to existing laws become an effective tool in the regulation of port activities.

Certain clarifications or improvements are the subject of specific proposals presented in the following sections of the present report. Beyond identifying and itemising the clauses needing amendment, the general review of existing laws and decrees should above all aim to restore their legal harmonization and homogenization and to clearly define the powers conferred to each of the institutions concerned, notably the PAID, the Ports and Free Zones Authority and the Ministry of Equipment and Transport.

1.4. POINTS OF VIEW OF THE MAIN ACTORS CONCERNED

The PAID Monitoring Committee for the present study is aware of the need for a general review and update of the laws and decrees governing the Djibouti port sector.

Action in this direction has already been undertaken but the process needs to be revived between the different institutions concerned: the PAID, the Ports and Free Zones Authority, the Ministry of Equipment and Transport and the Presidency of the Republic.

2. DESIGNATING THE PORT REGULATOR & DEFINING ITS MISSIONS

2.1. CURRENT SITUATION

There is no existing law formally designating the Djibouti Port Regulator or defining its missions.

The regulation of port operations is, a priori, one of the powers conferred to the PAID in its capacity as Port Authority, but could eventually be undertaken by other competent government departments such as the Ministry of Equipment and Transport that issues the operating licenses to private port operators.

On the basis of the prerogatives conferred by the Law 148/AN/80 of November 5th 1980, the PAID constitutes the Port Authority of Djibouti and its Council of Administration notably has the power to deliberate on the licensing of private companies authorized to operate within the port, fix maximum tariffs and define the conditions of use of port equipment managed by the PAID itself or designated third parties.

The Decree 2004-0178/PRE of September 12th 2004, furthermore stipulates that the Council of Administration for the Ports and Free Zones Authority of Djibouti (APZFD) is notably in charge of the management and administration of the ports and free zones and that its government representative is in charge of monitoring port activities.

After the contract conceding PAID management to DPW was signed on June 1st 2000, the decrees relative to the administration of the free zones regime established a new administrative framework for the port of Djibouti without specifying changes in the conditions of application of the Port Act of 1980, notably regarding the powers conferred to the APZFD Administrative Council composed of five members under the sole authority of the Presidency of the Republic, whereas the initial PAID Administrative Council was composed of 20 members including representatives from the different government institutions and representatives of private port operators.

2.2. RECOMMENDED ACTION

Officially designate the institution in charge of the role of regulating port activities, define its missions, prerogatives and means of action.

2.3. CONDITIONS FOR IMPLEMENTATION

The effective regulation of port activities requires officially designating a regulatory authority with clearly defined powers and perceived as legitimate by port operators.

The regulator could be the PAID, the Ports and Free Zones Authority (APZFD), the Ministry of Equipment and Transport (MET) or any other regulatory body designated by the Presidency of the Republic.

The PAID is in daily direct contact with all the shipping and port professions. In this respect it appears as the best suited to control the operating terms and conditions applicable to each port profession, on condition that its public authority status is reinforced by cancelling the contract conferring its management to a private operator.

The PAID is however directly or indirectly implied in the provision of commercial services (towing and pilotage, majority shareholder in the new container terminal DCT and operator of the old container terminal). Its designation as port regulator would therefore necessitate specific conditions to regulate these activities in order to avoid potential "conflicts of interest".

The PAID is placed under the authority of the Ports and Free Zones Authority of Djibouti whose Council of Administration directly depends on the Presidency of the Republic. The licensing of shipping and port operators, however, is a prerogative of the Ministry of Equipment and Transport. This intertwining of roles tends to weaken responsibilities that need to be clarified by the official designation of the port regulator, whilst at the same time respecting the powers conferred to each organism concerned.

Both the APZFD and the MET could have a role to play in the regulation of port activities. Although their daily presence in the field of operations to be regulated would be less important than that of the PAID, these institutions occupy a superior hierarchical position. It would however necessitate clarifying the METs relationship with the PAID and the change in relations between the APZFD and JAFZA (Jebel Ali Free Zone Authority).

The principal aim of regulating port activities is to improve competitiveness in terms of performance, costs and quality of services provided by the port operators in Djibouti. To this end, the designation of the port regulator should be accompanied by a clear definition of its scope of action, notably specifying:

- Whether it includes all operations carried out in the port of Djibouti, including major traffics (containers, petroleum products, cereal and fertilizers) constituting over 80% of the annual tonnage handled in the port;
- Whether it is limited to regulating professionals operating general cargo and break-bulk traffics with their decreasing volumes constituting less than 20% of the annual tonnage and subject to fierce competition;
- Whether it also includes port operations of a commercial nature directly or indirectly provided by the PAID, notably towing services and container handling operations.

The regulator's effectiveness also presupposes a clear definition of its powers and its necessary means of intervention to ensure sound market regulation by the strict application of the law including the risk of license withdrawal should operators fail to comply. This would imply that the regulator should have the power both to issue and withdraw licenses, powers that are currently divided between the different institutions (Ministry of Equipment and Transport, port director, licensing commission for sea transport auxiliaries).

2.4. POINTS OF VIEW OF THE MAIN ACTORS CONCERNED

The PAID Monitoring Committee for the present study is aware that the priority need is to clarify the roles of each institution in terms of port regulation. It considers that the Port Regulator should be an institution hierarchically superior to the PAID.

It could be either the Ports and Free Zones Authority or the Ministry of Equipment and Transport delegating certain control missions on site to the PAID. The choice between these two institutions would come under the prerogative power of the Presidency of the Republic.

Contrary to PAID executives who consider APZF to be the most effective choice, the legal advisor to the Ministry of Equipment and Transport considers that the Ministry already has the power to act as port regulator on the basis of existing laws. Its reinstatement as port regulator has commenced and will be pursued, notably taking into account the end of the DPW management contract for the port and airport of Djibouti.

The Ministry recently launched an operation to control freight forwarders' and stevedores' licenses and has charged the PAID with the technical control of regulatory equipment requirements.

Concerning the regulator's scope of action, each concerned party considers that all port activities should be regulated with specific procedures adapted to each type of activity, notably specialized terminal operations with concession contracts.

International experience shows that in order to guarantee the effectiveness of the regulation aimed at, the choice of regulator must be guided by its capacity to be a legitimate public institution in the eyes of the operators concerned, have sufficient authority and the means to exercise its prerogatives to the benefit of the port community as a whole. An effective port regulator should notably:

- Ensure compliance with the regulations by the different operators concerned and decide on necessary measures and sanctions in the event of non-compliance;
- Ensure that existing regulations are appropriate to market developments in the port of Djibouti and proceed with the necessary amendments and improvements;
- Ensure that the tariffs practiced by the different port operators maintain the port competitiveness and that the maximum tariffs publicly displayed by each profession are complied with;
- Ensure that the competitiveness of technical performance levels and the quality of services provided by the different private and public port operators are regularly monitored;
- Arbitrate and resolve conflicts of interest and disputes between operators on the one hand, and operators and their clients on the other hand;
- Protect port users against the risk of abuse by major operators benefitting from a dominant position;
- Ensure that fair competition conditions between operators within a same profession are respected.

3. INSTITUTING A PORT COMMUNITY

3.1. CURRENT SITUATION

According to the Law of 1980 instituting the PAID and defining its statutes, its administration is theoretically ensured by a Council of Administration assisted by a Director, presided over by the Minister in charge of port affairs and composed of a dozen of State representatives (different ministries and institutions) and an equivalent number of representatives from the private sector with an interest in the port operations (shipping lines, stevedores and handling operators, freight forwarders, dock workers, Chamber of Commerce…).

This participative framework instituted by the Law of 1980 no longer appears to work following the contract conceding PAID management to DPW (2000 to 2011) and the creation of the Ports and Free Zones Authority for Djibouti (APZFD) in 2003. The APZFD Council of Administration is notably in charge of administrating the ports. It is composed of 5 members under the direct authority of the Presidency of the Republic and has total autonomy with regards to all the Ministries concerned.

Decree119/SPCG of December 30th 1967 had furthermore instituted a management committee invested with all the powers of administration and management of the Dock Labour Bureau (BMOD).

The BMOD management committee is presided over by the PAID General Manager who nominates a manager responsible for the daily management of dockworkers at administrative and financial level. Its members are stevedoring and freight forwarding representatives and dockworkers. The committee is officially scheduled to meet at least once every three months, convened by the chairman or at any other moment on the chairman's initiative or a third of its members. Since the management contract delegating PAID management to DPW came into effect however, the BMOD's formal management committee meetings have become few and far between to the point of being practically non-existent.

Beyond the former participative framework that no longer seems effective, there is no organized Port Community in Djibouti. Each of the three main professions (stevedores and handling operators, freight forwarders and shipping agents) is represented by a trade union or professional association whose representativeness is debatable given the variable and limited number of its members. They each maintain a cordial relationship with the Port Authority but no regular consultative framework has ever been instituted.

3.2. RECOMMENDED ACTION

Create the Port Community of Djibouti by means of an official framework instituting regular consultations between all actors concerned by the port's competitiveness and the development and regulation of port activities.

3.3. CONDITIONS FOR IMPLEMENTATION

The institution of an official port community structure has become standard practice in the majority of ports to promote dialogue and concerted efforts among all the actors concerned by the efficiency and competitiveness of the transit-port supply chain for cargo and vessels.

The creation and development of a port community is a decision to be taken by the competent authorities and depends on the cooperation of the main port and shipping operators, both public and private.

The institution of a port community would notably answer the need for transparent information, associating all parties concerned in consultations in the search for solutions and efficient decisions regarding the problems and conflicts potentially affecting the common interests of all the actors operating in the port of Djibouti. This consultative framework permitting regular dialogue should favour and accelerate implementation of the forms and means of regulating port activities in Djibouti.

The port community's powers, its means of action and working relationships with the main authorities concerned by the Djibouti port and shipping sector should be clearly defined. It should notably have a consultative role in the principal decisions taken by the public institution designated as the official port regulator. Other than the public authorities concerned (PAID, APZF, MET, Customs…), the Port Community's members should include main port operators and shippers.

The shippers are the legal owners of the cargo constituting the basis of port activities. They are the ones subject to or benefitting from port competitiveness in terms of tariffs, performance and service quality. Their participation in the port community is essential and would necessitate the presence of legitimate representatives of Djiboutian shippers and a major role given to the representatives of Ethiopian shippers who generate over 85% of the cargo handled at the port of Djibouti. The predominance of Ethiopian transit traffic and its decisive impact on the development of the port justifies the specific role granted to Ethiopian shippers within the framework of consultations and the regulation of port activities in Djibouti.

The conditions of representation for the different operators must be defined so as to guarantee their effective and active roles in the port community. The designation of representatives could be ensured by existing professional organizations and favour their development. As everywhere else however, existing professional associations or trade unions have a more or less limited membership and are not 100% representative of the professions concerned. In this type of situation, the legitimacy of representatives designated by existing professional organizations could be contested.

Reducing the risk of contested legitimacy could justify adopting an alternative process by which representatives of each profession would be specifically elected. All members of the profession would be able to participate in the election no longer limited to members of existing professional organizations.

3.4. POINTS OF VIEW OF THE MAIN ACTORS CONCERNED

All the parties concerned are favourable to the rapid creation of the proposed Port Community.

The Port Community's composition and the means of designating representatives of the Djiboutian and Ethiopian operators and shippers will be the subject of discussions between the parties concerned.

The PAID Monitoring Committee for the present study is not opposed to the idea of organizing an election of representatives by all licensed professionals, particularly if the professional association or trade union for a given profession is not sufficiently representative, as is the case for freight forwarders.

The professional trade unions and associations maintain that it remains their responsibility to designate professional representatives for the Port Community.

Whilst favourable to the creation of a Port Community, certain professionals nevertheless regret that its consultative role will not be as strong as the decisional role they benefitted from prior to 2000 as members of the PAID Administrative Council instituted by the Law of 1980.

4. HANDLING OPERATORS' LICENSING REGULATIONS

4.1. CURRENT SITUATION

The Decree 2001-0128/PR/MET defining licensing regulations and approving the operating terms and conditions for the stevedoring en shore handling profession was promulgated on July 3rd 2001.

Prior to setting-up business, the stevedore or handling operator must apply for a license issued by the Ministry of Transport and Equipment, subject to approval from the sea transport auxiliaries licensing commission.

The stevedoring and shore handling license can be applied for by any physical person of Djiboutian nationality or any moral person of Djiboutian nationality on condition that all shareholders are of Djiboutian nationality.

The Decree prohibits a single person or entity from holding multiple licenses thus excluding stevedores and handling operators from the simultaneous pursuit of freight forwarding or shipping agency operations. From July 3rd 2001, all operators exercising more than one of these three activities are placed under an obligation to choose one.

The Decree stipulates that the stevedoring and shore handling license holder must operate in accordance with the rules of free competition and is prohibited from seeking a monopoly position. Failure to comply with regulations entails the risk of licence withdrawal.

These clauses are not applicable to all stevedoring and shore handling companies operating in the port of Djibouti. This is notably the case for the Ethiopian operator MTS (Maritime & Transit Services) that combines several of the above operations, and the terminal operators SDTV, DCT, DID or HDTL that benefit from a monopoly on cargo handling operations for over 80% of Djibouti port traffic and whose shareholders are not all of Djiboutian nationality.

4.2. RECOMMENDED ACTION

The Decree defining regulations for the stevedoring and shore handling profession is in need of amendment to **clarify licensing conditions** and ensure they are in accordance with the reality of the current port services market.

4.3. CONDITIONS FOR IMPLEMENTATION

The Decree defining regulations for the stevedoring and shore handling profession is not in accordance with the reality of the port services market in Djibouti and it seems unlikely that the aforementioned clauses can be applied to operators such as MTS, SDTV or DCT.

One could envisage that compliance with the Decree regulating the stevedoring and shore handling profession would lead MTS to formally separate its cargo handling, freight forwarding and shipping agency operations. This has been the case for other operators who created a different company for each activity. The separation is, however, artificial in that the three companies created do not have real autonomy and generally have a single director and all companies have offices in the same building.

In addition, MTS is lawfully entitled to apply the contradictory derogation offered by the Decree relative to the freight forwarding profession permitting all operators with a license

issued prior to 2001 to simultaneously exercise handling, freight forwarding and shipping agency operations.

It should be noted that at international level, the trend is to integrate the three main professions constituting the transport logistics chain from door to door. All the major transport groups attempt to control each step of the logistics chain by multiplying the number of their subsidiaries in sea transport, shipping agencies, stevedoring companies, land transport…

As a result, the clause prohibiting the simultaneous exercise of several activities could eventually be reinforced by stricter controls and the harmonisation of laws regulating the three port professions in Djibouti. It could also be abandoned given its formal character in contradiction with the current reality of the port services market.

The clause in the Decree of 2001 imposing Djiboutian nationality to all stevedoring license applicants and shareholders is neither applied to the Ethiopian state-owned operator MTS, nor the foreign shareholders of companies handling container traffic, dry bulk and liquid bulk (DCT, SDTV, DID or HDTL). This clause could eventually be adapted should there be a real need to "protect" Djiboutian stevedoring and handling operators. However, unless the port services sector is to be subject to specific regulations, the strict application of the nationality clause contradicts the aim of attracting and developing foreign investments in Djibouti.

The clause in the Decree of 2001 prohibiting attempts to create monopoly positions on penalty of license withdrawal is only applied to stevedoring companies handling general cargo whose declining volumes globally amount to less than 20% of the total annual tonnage handled in Djibouti. It is not applied to the major handling companies (DCT, SDTV or DID) operating over 80% of the annual port traffic and benefitting from a private monopoly made official by a specialized terminal concession contract. The respect of free-competition rules and the prohibition of monopoly positions in the port of Djibouti are in need of clarification.

4.4. POINTS OF VIEW OF THE MAIN ACTORS CONCERNED

The PAID Monitoring Committee for the present study and the stevedoring and shore handling trade union are both aware of the need to update the laws regulating the profession in accordance with the reality of the market.

5. STEVEDORING AND SHORE HANDLING PERFORMANCES

5.1. CURRENT SITUATION

The 2001 operating terms and conditions for stevedoring and shore handling companies stipulate that hourly productivity rates per gang are to be fixed by the Port Director (article 5) and that the respect of these minimum hourly rates must be checked by Port Management at the end of operations for each vessel according to the average loading or unloading times registered in the ship book (article 6).

The appendix to the operating terms and conditions makes provision for "minimum physical standards of productivity for stevedoring operations" expressed in hourly productivity rates per gang or per crane and classified by type of vessel and freight packaging mode: liquid bulk, solid bulk, bags, pallets, barrels, pre-slung cargo, big bags, wood, vehicles, metallurgical products, cement in bags and livestock.

The lack of performance indicators for the port of Djibouti makes it difficult to establish how the minimum hourly productivity rates stipulated in the operating terms and conditions were established and whether they correspond to real cargo-handling capacities.

Contrary to the conditions provided for in the operating terms and conditions, the PAID does not control minimum productivity standards for stevedoring operations.

5.2. RECOMMENDED ACTION

Establish compliance with port performance requirements as the main regulatory tool for stevedoring operations by updating the appendix to the operating terms and conditions for stevedoring operations and setting up appropriate control mechanisms.

5.3. CONDITIONS FOR IMPLEMENTATION

The minimum productivity rates specified in the appendix to the operating terms and conditions for stevedoring operations are difficult to verify and are never controlled. Dating back to at least 2001, these rates no longer correspond to current port operations at Djibouti and an attempt to update them was already undertaken in 2007.

A table of new daily productivity rates had been proposed by the PAID General Manager designated by DPW but the failure to reach an agreement with the stevedoring and handling operators has left it in project status.

The control of operational performance is the best way to verify whether a professional is effectively carrying out his job, is respecting productivity requirements and implementing all possible means to achieve them.

Contrary to hourly rates, gross throughput per ship berthing day would be a more appropriate measure and easier to verify, notably because a ship's contractual lay-time terms are expressed in days and that ship owners are more interested in global productivity rates per ship berthing day.

It would also be easier to compare with the daily throughput per shift figures furnished by stevedoring companies to the PAID in a non-standardized form.

Over and above an eventual procedure for the regular collection of ship books and cargo handling time-sheets, the PAID services are equipped with information system and have all the necessary information available (date and time of berthing and vessel departure time, nature and tonnage of the cargo loaded or unloaded…) to systematically establish average gross cargo handling productivity rates per berthing day for all vessels calling at the port.

The PAID is furthermore capable of knowing which handling operator has operated each vessel. It can therefore establish a port call file indicating daily gross throughput per vessel, per stevedoring company and by type of cargo or packaging.

On the basis of such port call file, the PAID could:

- Evaluate performance levels currently achieved in the port of Djibouti for each kind of vessel, cargo type and packaging mode (minimum, maximum or average rates);
- Update the performance objectives required to obtain or maintain operating licenses after consultation with stevedoring and shore handling representatives;
- Periodically carry out average performance checks for each stevedoring company and if necessary discuss with them the means of achieving the required performance objectives;
- Set-up an additional procedure with the handling profession representatives that would provide more precise reasons for non-compliance with the average performance standards using appropriate control mechanisms (cargo handling time-sheets, ship books…); This would permit identifying external causes for non-compliance for which the stevedoring company may not be directly responsible;
- If necessary, complete the gross daily productivity figures with finer performance indicators, easier to control and taking into account standby and stoppage time in cargo handling operations, for example, and their causes.

International experience has shown that the choice of simple performance indicators and their regular monitoring and publication are the most efficient means of estimating and analysing the conditions for the continuous improvement of a port's competitiveness.

5.4. POINTS OF VIEW OF THE MAIN ACTORS CONCERNED

The PAID Monitoring Committee for the present study and the stevedoring and shore handling trade union are aware of the need to update the minimum cargo handling productivity requirements.

The idea of turning it into a tool for regulating stevedoring operations in the form of obligation of results would however require more dialogue between the parties concerned.

6. STEVEDORING AND SHORE HANDLING TARIFFS

6.1. CURRENT SITUATION

The 2001 stevedoring and shore handling terms and conditions made provision for maximum tariffs for unloading and loading vessels to be governed by professional commitments negotiated annually between the profession and Port Management, and approved by the Ministry of Equipment and Transport on proposals by the competent professional organization (article 13). This price regulation clause for port cargo handling services is not currently applied.

The legal reference pertaining to stevedoring and shore handling tariffs is an administrative order signed on January 27th 1981 by the Head of Government and was still in force in 2011. This Order 81-0126/PR/PORT fixes maximum tariffs for stevedoring and shore handling operations in the port of Djibouti. It concerns "the execution of services enumerated in article 1 of the operating terms and conditions" issued in 1981 that was not made available to the consultant.

Contrary to the corresponding Decree, the 2001 operating terms and conditions specify that it refers to "multipurpose cargo handling operations" and does not apply to "the operating of specialized terminals". This point is mentioned in article 1 of the operating terms and conditions and the price regulation clause in article 13.

The Order of 1981 does not explicitly indicate whether the tariffs concern shore handling operations only or whether it also includes stevedoring operations. The Djibouti port handling operators consider it to refer to shore-handling operations billed to the consignee in addition to stevedoring operations billed to the ship as freight 'under tackle'. The tariffs published by the PAID until 2007 seem to indicate a different interpretation of the Order of 1981 as including all shore handling and stevedoring operations.

The main tariffs fixed in the Order of 1981 are the general tariff for ex-quay delivery on truck (749 FD per freight ton) and the general unloading rate (614 FD) to which is added the tariff for handling to warehouse or open yard storage area (553 FD, giving a total of 1,167 FD). These tariffs dating back to 1981 are lower than the 2011 rates practiced in the port of Mombasa for general cargo traffic.

But the container handling tariffs practiced by DCT in Djibouti are much higher than in port of Mombasa. The same applies to dry bulk handling tariffs practiced by SDTV.

General cargo handling tariffs at the port of Djibouti have remained unchanged since 1981, whereas container and dry bulk handling tariffs have been subject to several increases.

On publication of the Order of 1981, stevedoring operations were traditionally carried out from ship to warehouse situated close to the quay or an open yard storage area within the port. Over the last few years, the PAID has decided to reorganize port operations by creating a dry port situated at 3 km from the sea port. Except in cases of direct ex-quay delivery, the handling operators are obliged to transfer the majority of cargo and vehicles unloaded from the ships to the dry port.

After numerous discussions between the PAID and the handling operators, the obligation to transfer cargo to the dry port resulted in the application of new transfer and security tariffs not made provision for in the Order of 1981.

Irrespective of the method used to calculate the new rates, the application of new tariffs for transferring cargo to the dry port at 3 km outside the sea port, can be justified as a new service not provided for in the Order of 1981.

One can however question the new dry port security tariffs since the cargo handling operators remain legally responsible for the cargo whether stored at the sea port or the dry port, even if insurance conditions are modified since the transfer of cargo implies using public roads outside the sea port.

6.2. RECOMMENDED ACTION

Establish a maximum reference tariff based on a cargo-handling cost-study for the main types of cargo handled at the port of Djibouti. The steering committee for this study could be composed of the public authorities concerned, representatives of the handling operators and shippers.

6.3. CONDITIONS FOR IMPLEMENTATION

The terms of reference of the present study evoke the need for new pricing mechanisms based on market conditions and costs derived from analytical accounting.

Stevedores operating general cargo traffic in the port of Djibouti are generally small or medium sized companies without an analytical accounting system. The majority of them combine several related port operations (cargo handling, freight forwarding and shipping agencies) for which the material means, personnel and overhead expenses are not necessarily all exclusively allocated to cargo handling operations. It thus appears difficult to envisage establishing cargo handling tariffs on the basis of a non-existent analytical accounting system in the companies concerned.

The large stevedoring companies, notably the specialized terminal operators (DCT, SDTV…) probably have analytical accounting systems. However, unless applicable financial clauses to this effect are included in their concession contracts, they can consider their analytical accounting data are financial data to be used for internal and not external purposes.

Taking into account the conditions of competitiveness on the regional port services market would require a periodic benchmarking of cargo handling tariffs practiced in competitor ports. This instructive procedure of regional benchmarking would nevertheless be insufficient to establish a set of new tariffs for the port of Djibouti given the existence of unequal cost factors in the different countries (currency, wages, energy, fuel…).

The establishment of new reference tariffs for stevedoring and shore handling services in the port of Djibouti would thus necessitate:

- Either an ambitious, rigorous and difficult procedure involving a specific analysis of the different component costs of stevedoring and shore handling operations in order to justify realistic reference tariffs acceptable to all the parties concerned (handling operators, public authorities, Djiboutian and Ethiopian shippers, shipping agents…);
- Or a more modest empirical procedure involving negotiated adjustments to existing tariffs taking into account the requirement of regional competitiveness and acceptable to all the parties concerned (handling operators, public authorities, Djiboutian and Ethiopian shippers, shipping agents…).

The first procedure would aim at a certain "truth of prices" or prices reflecting costs. It would need the services of a consultant able to effectuate an analytical reconstitution of real cargo handling costs with the honest and indispensable collaboration of the handling operators concerned. It would attempt to reconstitute the main cost factors (dockworkers, salaried stevedoring personnel, equipment and diverse material, energy, overhead costs…) involved in the pricing of each cargo handling service. The new acceptable reference tariffs resulting from this presupposes the prior validation of the reconstitution of real costs by all the parties concerned. The implementation of this procedure would not be easy and could totally disrupt the existing pricing structure and tariffs. Its effectiveness would greatly depend on the availability of the data required on real cots and the honest collaboration of the handling operators and their ability to come to an agreement between themselves and the other parties concerned.

The second procedure would be guided by existing market conditions. It would be easier to implement as the working basis for the procedure already exists. It is constituted by the tariffs charged by handling operators and paid by Djiboutian and Ethiopian shippers, and to a lesser extent shipping lines. This working basis could be the object of a reverse evaluation process, associating all the parties concerned and permitting them to discuss, express and justify their respective wishes regarding the evolution of existing tariffs. A first comparison of port service tariffs between the ports of Djibouti and Mombasa was carried out within the framework of the present study. If necessary, it could be completed in greater depth by a broader regional benchmark including potential competitors to the port of Djibouti (Mombasa, Port Soudan, Berbera in Somalia, Assab and Massawa in Eritrea) and, eventually, competitor ports on volatile transhipment traffic (Aden in Yemen and Salalah in Oman). At the end of the evaluation process, all the parties concerned would have to negotiate justified and acceptable adjustments to existing tariffs, taking into account market conditions and the common interests of the Djibouti shipping and port community. This consensual procedure would probably be more effective and easier to implement. It would have the advantage of avoiding the risk of disrupting the existing pricing structure and levels.

6.4. POINTS OF VIEW OF THE MAIN ACTORS CONCERNED

The update of maximum stevedoring and shore handling tariffs is considered imperative by both the PAID and the handling operator's trade union. Opinions on the means of achieving this are nevertheless mitigated.

The Djiboutian handling operators consider the update to be objectively justified by the fact that the tariffs in force date back to 1981 and that all other port service tariffs have already been increased several times on the basis of increases in production costs (wages, equipment , energy…). Certain consider a cost study is not necessary to justify the need for increasing tariffs and that it would only delay the decision-making. They believe that persuading the Ethiopian authorities to accept the principle of a tariff increase is the responsibility of the Djiboutian authorities. It would then involve negotiating a minimum percentage increase of tariffs acceptable to Ethiopian shippers.

The Ethiopian handling company MTS considers that the 1981 tariffs are sufficiently profitable for the profession and that an increase would affect Ethiopian foreign trade costs. It considers that all proposals to increase tariffs should be justified by an analysis of cargo handling costs.

Between the two options proposed in §.6.3 above, the PAID Monitoring Committee for the present study prefers the analytical study of cargo handling costs that would take into account evolutions in port activities, handling operational conditions and their levels of productivity.

It cannot envisage negotiating percentage adjustments on existing tariffs without a quantified justification of costs. It is aware that a study of this nature would require the services of a consultant and that it would take time before any decision to increase tariffs could be made. It nevertheless intends to submit a request to the World Bank to carry out this analytical study on cargo handling costs.

In parallel, the Monitoring Committee also desires that a consultant carry out a regional comparative study on the competitiveness of port transit costs in Djibouti. This study would not be limited to general cargo handling costs. It would also concern other types of cargo and would incorporate all port transit costs paid by shipping lines and shippers. It would deal in priority with potential competitor ports for Ethiopian transit traffic and South Sudan traffic perspectives, that is to say Mombasa, Port-Soudan, Berbera and Assab.

7. STEVEDORING AND SHORE HANDLING EQUIPMENT

7.1. CURRENT SITUATION

The 2001 operating terms and conditions for stevedoring and shore handling companies include an appendix stipulating minimum equipment requirements. The list of minimum equipment required to obtain a stevedoring license is fairly general and not particularly demanding. It is limited to 5 trailers, 3 tractors, 3 small cranes with a 3 ton capacity and diverse material (cargo nets and tarpaulins). The appendix also mentions, as options, two 30 ton capacity forklift elevators with container spreader and two 6 ton capacity forklift trucks. Beyond the minimum equipment requirements, article 7 specifies that the licensed stevedores must have equipment adapted to their volume of activity and permanently maintained in good working order.

Compliance with regulatory equipment requirements, its maintenance in good working order and its adaptation to each stevedoring company's volume of activity is not controlled by the PAID or any other authority concerned.

The handling port market, outside specialized terminals, totalled 1 to 2.5 million tons per year of which 80 to 90% is made up of metallurgical products, cement or clinker (in bags or bulk), sugar in bags, vehicles and livestock. The handling conditions for these different types of cargo are different in terms of cargo-handling equipment and equipment needs that are neither regular nor consistent due to frequent fluctuations in the volumes of activity.

The current conditions for handling general cargo in the port of Djibouti are furthermore marked by the predominance of direct delivery under tackle and the transfer of cargo to the dry port (situated at 3 km from the quays). This tends to favour the use of trucks rather than the tractors and trailers scheduled in the minimum equipment requirements in earlier port regulations.

The general cargo-handling market structure, and the different characteristics of the main types of traffic and the unavailability of reliable statistics indicating who handles what, confirms the need for dialogue between the public authorities and private port operators to estimate the utility and suitability of the minimum equipment required to obtain a stevedoring license.

7.2. RECOMMENDED ACTION

Carry out **a general review of the list of minimum equipment requirements for stevedoring license applicants** and determine whether it is currently justified or needs updating, by a commission associating the public authorities concerned and designated representatives of the stevedoring and shore handling profession.

7.3. CONDITIONS FOR IMPLEMENTATION

Stevedores primarily handling vehicles do not have the same equipment requirements as those handling bags or bulk cargo. An evaluation of current stevedoring market conditions for general cargo-handling and its distribution between the different handling operators would be a prior requirement to any modifications in the minimum equipment requirements for stevedoring license applicants.

The PAID services have all the necessary information available to carry out this evaluation and from which several options could be envisaged:

1. Maintain the principle of a general list of minimum equipment requirements whatever the type of cargo operated, and update equipment requirements on the basis of developments in the market structure of Djibouti port services;
2. Establish a list of specific equipment requirements by main cargo type (e.g. vehicles, bags, dry bulk, metallurgical products, livestock, etc….). Each of the specific requirement lists would give the licensed operator the right to handle certain types of cargo or not;
3. Maintain the principle of an updated general list of requirements and set up an Economic Interest Group type structure to pool stevedoring resources that would acquire, manage and lease, more equipment;
4. Abolish the list of minimum equipment required to obtain a stevedoring license and consider that a strict application of required performance levels based on the obligation of results (rather than the obligation of means) would be a more effective means of regulation by obliging each handling operator to acquire the necessary means to achieve them.

The choice of option 4 aiming to replace the obligation of means by the obligation of results is related to the recommendation (cf. §.5 below) suggesting that compliance with mandatory performance levels should be the main regulating tool for cargo-handling operations after updating productivity requirements and providing the means for their effective control.

7.4. POINTS OF VIEW OF THE MAIN ACTORS CONCERNED

The PAID Monitoring Committee for the present study and the stevedoring and shore handling Trade Union are aware of the need to update the list of minimum equipment requirements and adapt it to the developments in port traffic and cargo-handling conditions.

They consider that the current Djibouti port services market is not mature enough for the setting up of an Economic Interest Group pooling stevedoring resources. They consider that the list of minimum equipment requirements should be maintained and complied with by each licensed stevedore.

The list of minimum equipment requirements update, as a whole or by type of cargo, should be subject to a consultative process between all the parties concerned.

As a result of this consultative process, maintaining a list of minimum equipment requirements to regulate access to the profession would neither be in contradiction with the projected aim of regulating the stevedoring and shore handling profession on the basis of obligation of results and performance levels.

8. STEVEDORING AND SHORE HANDLING PERSONNEL

8.1. CURRENT SITUATION

The 2001 stevedoring regulations and operating terms and conditions include an appendix relative to supervisory personnel requirements.

The personnel requirements defined in the appendix are general and not very demanding. They are limited to the number of supervisory personnel to be employed by each stevedore to supervise dockworkers. The minimum personnel requirements provided for in the appendix include quay foremen (1 to 2), gang foremen (1), head foreman (1), landside gang foreman (1 à 2) and head tally clerks (1 à 2). It implies a total number of 5 to 7 employees per vessel and per shift, according to the number of hatches operated simultaneously and cargo-handling methods (including warehousing inside the port or direct under tackle delivery).

Compliance with the minimum personnel requirements and their qualifications are not controlled by the PAID or any other authority concerned.

The appendix relative to minimum personnel requirements does not concern the composition of dockworker gangs (11 to 22 persons per gang, per hatch and per shift, variable number of workers according to type of vessel and cargo) and piece-work rates of gang remuneration (per ton per gang) that are regulated by specific negotiated agreements between the stevedoring companies and the BMOD (Dock Labour Bureau).

The handling operators do not contest the dockworkers employment system (3,800 registered with the BMOD in 2011 of which 845 gang foremen, 135 ship's crane operators and 2,820 dockworkers).

They however note that the actual physical presence of the number of dockworkers theoretically supplied per gang is not respected, that dockworkers are not punctual enough and that often the composition of gangs does not correspond to the official nominative list supplied by the BMOD. They also note the lack of regular meetings of the BMOD management committee presided over by the PAID Managing Director and composed of handling operators, freight forwarding, shipping agents and dockworkers representatives.

The specialized terminal operators (DCT and SDTV) have succeeded in improving dockworkers' employment conditions and have adapted them to their needs (DCT personnel hired independently of the BMOD and gangs employed by SDTV adapted to needs). On the other hand, general cargo operators handling less than 20% of port traffic are the only employees still subject to the old employment rules, over-manned gangs and transport expenses invoiced by the BMOD.

8.2. RECOMMENDED ACTION

Carry out **a general review of employment conditions and stevedoring personnel requirements**, by a commission associating the public authorities concerned and stevedores and dockworkers representatives.

8.3. CONDITIONS FOR IMPLEMENTATION

The appendix to the stevedoring regulations relative to dockworkers' supervisory personnel can be updated on the basis of market structure trends in the Djibouti port services. It is not, however one of the profession's major problems. It would have greater priority if the minimum personnel requirements specified a minimum requirement for salaried dockworkers.

Port traffic excluding specialized terminal traffic (less than 20% of the annual total) is extremely variable (2.38 million tons in 2009 and 1.17 million tons in 2010). These market evolutions have an impact on the volume of activity handled by the 3,800 dockworkers registered at the BMOD and the fifteen or so existing stevedoring and shore handling companies, and also on wage levels and cargo-handling costs.

The traditional organization of dock labour is an extremely sensitive issue that should be managed with a great deal of caution given its socio-economic implications. It falls outside the scope of the present study on the regulation of private port operators in Djibouti and it is for the authorities concerned to judge on any future action to be taken.

The issue however requires that the consultative and management frameworks provided for in the regulations (notably the BMOD management committee) become effective and meet regularly to permit each party concerned to contribute in finding the best means of adapting the professions' human resources (gang composition, training, wage levels…) to the quantitative and qualitative evolution of port traffic and the needs to improve handling costs and performance levels.

8.4. POINTS OF VIEW OF THE MAIN ACTORS CONCERNED

The PAID Monitoring Committee for the present study and the stevedoring and shore handling Trade Union are not opposed to updating the minimum requirements for dockworkers' supervisory personnel.

They are also aware of the need to improve the running of the BMOD and the need for the PAID management and handling operators to reactivate its management committee.

9. FREIGHT FORWARDERS' LICENSING REGULATIONS

9.1. CURRENT SITUATION

The Decree 2001-0127/PR/MET defining freight forwarder licensing regulations and approving the operating terms and conditions was issued on July 3rd 2001.

Prior to setting-up operations, the freight forwarder must apply for a license issued by the Ministry of Equipment and Transport, subject to approval by the sea transport auxiliaries licensing commission.

The Decree defines the freight forwarder as a sea transport auxiliary authorized to carry out legal procedures and material operations related to the haulage, delivery, shipping or forwarding of goods unloaded from a vessel or due to be loaded onto a vessel.

The freight forwarding license can be applied for by any physical person of Djiboutian nationality, or any moral person of Djiboutian nationality owned by Djiboutian and/or foreign shareholders.

The freight forwarding license can also be applied for by any physical or moral person of foreign nationality on condition that reciprocal rights to exercise the profession are granted to Djiboutian operators wishing to exercise the profession in the foreign country concerned. The nationality clause regulating freight forwarders is less restrictive than the clause applied to handling operators.

The Decree prohibits a single person or entity from holding multiple licenses thereby excluding the simultaneous pursuit of freight forwarding and handling or shipping agency operations (article 8). This interdiction is not applicable to sea transport auxiliaries with a license issued prior to 2001 when the aforementioned Decree came into force.

The possibility for prior freight forwarding license holders to combine several activities is in contradiction with the stricter interdictions imposed by the Decrees regulating stevedores and shipping agents. In this case the interdiction can be legally circumvented as freight forwarders licensed prior to 2001 can simultaneously exercise the profession of stevedore and/or shipping agent.

Concerning the legal services provided by freight forwarders, the Law defining sea transport auxiliary regulations is more precise and more in compliance with international practices than the Decree regulating freight forwarders. Provision is made for the freight forwarder to be mandated by the cargo owner to pay freight charges when due, effectuate customs declarations and all port formalities and pay the necessary fees and charges on their behalf.

Concerning material services, the Decree is more precise and specific to the Djibouti port context. On imports, the freight forwarder is authorized to take delivery of cargo under tackle in the case of ex-quay delivery, and to take delivery of cargo from warehouses in other cases, including repackaging and loading onto trucks or wagons if necessary.

The material services supplied require warehousing facilities and equipment, the characteristics of which are defined in the minimum equipment requirements (3 tractor trucks with trailers, 1 forklift truck with a capacity of 2 to 4 tons and 1 forklift truck with a capacity of 5 to 10 tons).

This definition of freight forwarding specific to Djibouti incorporates the legal services traditionally attributed to the profession and material services generally associated with lifting and haulage services. It results in the existence of two (or even three) categories of freight forwarders operating in the port of Djibouti:

- The **customs declarant or customs broker**, essentially providing legal services who do not comply with the minimum equipment requirements as they do not provide lifting or haulage services;
- The **freight forwarder or transport commissioner** who, in addition to providing the legal services associated with customs clearance, complies with the minimum equipment requirements for the provision of freight lifting, warehousing and haulage services;
- The **freight forwarder and stevedore** simultaneously exercising the two professions and thus equipped with a greater range of material than the minimum required by the freight forwarding regulations.

All the representatives interviewed consider that the main problem concerning freight forwarding at the port of Djibouti is the excessive and indeterminate number of operators (50 to 100 licensed freight forwarders according to data source) in a "two or three-tier" profession and the lack of control over licenses and activities leading to "unfair" competition conditions.

9.2. RECOMMENDED ACTION

Undertake **a complete review of the laws regulating the freight forwarding profession** by a commission associating the public authorities concerned and designated representatives of the different freight forwarding categories.

9.3. CONDITIONS FOR IMPLEMENTATION

As in the majority of countries in which freight transit operations have been liberalized, the overabundance of freight forwarders essentially concerns those exercising as customs brokers whose services can be easily supplied on an "informal" basis and do not require the availability of specific equipment.

Customs brokers are necessary and exist in all ports. Their eventual lack of professionalism, their excessive number and their more or less "informal" practices constitute a real risk. They cannot be regulated other than by strict controls by the competent authorities, notably in terms of licensing conditions, qualification requirements and professional training.

Given that customs brokerage is a profession that does not require specific equipment, it would benefit from being regulated with distinct licensing requirements specific to this profession.

This would permit a clear distinction to be made between customs brokerage as such and freight forwarding as currently defined in Djibouti, which includes haulage and freight lifting services requiring a minimum of equipment.

Differentiating "freight forwarders" into two distinct categories (customs broker on one hand and forwarding agent on the other) would make it easier to regulate competition and

operating conditions if the competent authorities develop stricter means of controlling operators' compliance with the regulations.

As for the "freight forwarder and stevedore" category, it does not appear to lack professional competence. However, the simultaneous provision of stevedoring services and the higher level of cargo-handling equipment make it a formidable competitor for a simple freight forwarder.

A possible solution to the last problem would be the harmonization and strict application of the laws prohibiting the accumulation of licenses by the competent authorities. This would require extensive consultations between the public authorities concerned and representatives of the three professions (freight forwarders, stevedores and shipping agents) to ensure complete coverage of port and shipping market conditions.

9.4. POINTS OF VIEW OF THE MAIN ACTORS CONCERNED

The PAID Monitoring Committee for the present study and representatives of the Freight Forwarding Association are aware of the need to update the laws governing the profession in accordance with developments in the port services market.

The legal advisor for the Ministry of Equipment and Transport is not opposed to the proposal of distinguishing the customs brokerage profession, a distinction already provided for by the General Income Tax Code.

The Freight Forwarders Association expressed a more mitigated point of view and would prefer the strict application of existing regulations which would improve the soundness of the profession through license withdrawal for freight forwarders not complying with minimum equipment requirements.

It is aware of the evolutions in the profession operating conditions, notably with the development of the direct B/L for Ethiopian containers and its tendency to become more widespread for other types of cargo. The freight forwarders role for container traffic is already limited to the documentary services due to the fact that cargo are loaded onto trucks by the terminal operator and that transport services for the delivery of cargo are controlled by the sea carrier issuing the direct B/L. The same applies to dry or liquid bulk traffic directly loaded onto trucks by the specialized terminals.

These developments are considered unfavourable to freight forwarders having respected the mandatory investments in minimum equipment requirements. According to the Association's representatives, this could only be compensated for by granting Djiboutian freight forwarders operating in Ethiopia effective reciprocal rights, notably terms and conditions applicable to the sharing of road haulage volumes, the modes and cash payment deadlines for forwarding and transport services, the banking regulations and the mandatory deposits and guarantees required.

10. FREIGHT FORWARDING TARIFFS

10.1. CURRENT SITUATION

The Decree of 2001 made provision for a maximum rate for freight forwarding tariffs (article 13), approved by the Ministry of Equipment and Transport after consultation with the professional organizations. Failure to comply with regulations would entail the risk of license withdrawal.

This maximum tariff clause is not applied and no legal text to date has fixed freight forwarding tariffs for the port of Djibouti.

10.2. RECOMMENDED ACTION

Establish maximum reference tariffs based on a cost study of the different port forwarding services. The study should be piloted by a commission associating the public authorities' concerned and designated representatives from shippers and each of the freight forwarder categories.

10.3. CONDITIONS FOR IMPLEMENTATION

The conditions of competition between the different categories of freight forwarders at Djibouti and the lack of official reference tariffs, lead to extreme variability of practiced tariffs. Freight forwarder tariffs invoiced to an Ethiopian or Djiboutian client is generally complex and lacks transparency. The invoice generally includes:

- Services paid on account of the client who is generally re-invoiced for an identical amount (duties, port dues, cargo handling, transport, taxes);
- An eventual commission paid to the freight forwarder on disbursements made on account of the client;
- The freight forwarder own services that in Djibouti can include customs clearance services and material services (cargo lifting, stripping, transport…).

The elaboration of a table of reference tariffs should be preceded by defining a list of acceptable standard items that could constitute the regulatory freight forwarder's invoice in Djibouti. It would then involve fixing a maximum reference tariff for each of the items selected based on:

- Either an ambitious, rigorous and difficult procedure involving a specific analysis of different component costs for each of the selected items permitting the proposal of realistic reference tariffs acceptable to all the parties concerned (freight forwarders, public authorities, Djiboutian and Ethiopian shippers…);
- Or a more modest and empirical procedure involving negotiated adjustments on existing tariffs taking into account requirements for regional competitiveness and their acceptability by all the parties concerned (freight forwarders, public authorities, Djiboutian and Ethiopian shippers…).

The first method would aim at a certain "truth of the prices" or prices reflecting costs. It would need the services of a consultant able to effectuate an analytical reconstitution of real forwarding costs with the honest and indispensable collaboration of the freight

forwarders concerned. This cost analysis would be even more difficult to implement for freight forwarding than stevedoring due to their immaterial nature and the lack of transparency regarding the real cost structure and billing conditions for freight forwarding services.

The second procedure would be more guided by existing market conditions. It would be easier to implement as the tariffs billed by freight forwarders and paid by Djiboutian and Ethiopian shippers would constitute a valid working basis. It could be subjected to an adverse evaluation process by associating all the different parties concerned and inviting them to discuss, express and justify their respective wishes regarding adjustments to existing tariff. At the end of this evaluation process, the interested parties could negotiate justified and acceptable adjustments, taking into account market conditions and the common interests of the Djibouti shipping and port community.

The aim of this method would be to establish a table of reference tariffs accepted by the freight forwarders association in accordance with the provisions made by the Decree relative to freight forwarders since 2001. The fact that the new tariffs would be the result of negotiations with the other interested parties coupled with their broad public distribution would facilitate the institution of controls and sanctions for excessive and unjustified price increases.

10.4. POINTS OF VIEW OF THE MAIN ACTORS CONCERNED

The PAID Monitoring Committee for the present study and the legal advisor to the Ministry of Equipment and Transport are in favour of implementing the maximum tariff clause for freight forwarding services as provided for by the Decree relative to freight forwarders.

The Freight Forwarding Association representatives' opinions are divided on the need to apply the maximum tariff clause. The majority would prefer instituting minimum tariffs to avoid "dumping" by non-equipped customs declarants. Others fear that minimum tariffs would risk becoming the reference price imposed by clients and give them greater bargaining power regarding the tariffs applied.

All the parties concerned consider that the only possible way of instituting reference tariffs for freight forwarding services would be to negotiate adjustments to existing charges.

11. SHIPPING AGENTS' LICENSING REGULATIONS

11.1. CURRENT SITUATION

The Decree 2001-0126/PR/MET defining shipping agent licensing regulations was instituted on July 3rd 2001. Contrary to the licensing regulations for stevedores and freight forwarders, this Decree does not include operating terms and conditions specific to the exercise of the profession.

Prior to setting-up operations, the shipping agent must apply for a license issued by the Ministry of Equipment and Transport following approval by the sea transport auxiliaries licensing commission.

The shipping agent license can be applied for by any physical person of Djiboutian nationality or by any moral person of Djiboutian nationality owned by Djiboutian and/or foreign shareholders.

The shipping agent license can also be applied for by any physical or moral person of foreign nationality on condition that reciprocal rights are granted to Djiboutian operators wishing to exercise the profession in the foreign country concerned. As is the case for freight forwarders, the nationality clause regulating shipping agents is less restrictive than that applied to stevedores.

The Decree prohibits a single person or entity from holding multiple licenses thereby excluding the simultaneous pursuit of the shipping agent and stevedoring or freight forwarding operations. From July 3rd 2001, date on which the Decree was signed, all operators exercising more than one of these three professions are placed under an obligation to choose one. The plurality of activities is nevertheless practiced by local companies operating different services under different names and managed by the same persons working in the same offices.

However, shipping agents are often single activity operators belonging to international shipping groups. Of the fifteen or so main shipping agencies operating in the port of Djibouti, several are specialized subsidiaries of European, Asian or Ethiopian shipping lines (CMA-CGM, MSC, Maersk, APL, PIL, and Ethiopian Shipping Lines).

11.2. RECOMMENDED ACTION

The Decree regulating the profession could be amended with the aim of **précising shipping agents' licensing requirements and ensure their compliance with existing market trends**.

11.3. CONDITIONS FOR IMPLEMENTATION

A shipping agency's specificity is that it is chosen by one or several ship owners operating in the port of Djibouti and many other countries, to act as their local representative. The experience of these major shipping lines and their capacity for negotiating and imposing international professional standards, constitute a natural means of regulating the shipping agent profession in each country.

The need to reform or amend the Decree regulating the shipping agent profession is less important than required amendments to the freight forwarder or stevedore licensing regulations.

It should be limited to preserving the interests of local shipping agents confronted with competition from large international shipping groups, whilst complying with the professional standards and practices generally admitted in the majority of ports comparable to Djibouti.

11.4. POINTS OF VIEW OF THE MAIN ACTORS CONCERNED

The PAID Monitoring Committee for the present study and the shipping agents' Trade Union are aware of the need to update the Decree regulating the profession in accordance with market conditions.

12. SHIPPING AGENCY TARIFFS

12.1. CURRENT SITUATION

Shipping agents are remunerated by the shipping lines they represent on the basis of negotiated rates that remain confidential. They also invoice certain services such as the transferring of documents on remittance of the delivery order to the cargo consignee.

The amounts invoiced by shipping agents to the consignees are relatively low if one compares them with stevedoring or freight forwarding charges, but shipping agents' tariffs are nevertheless multiple, variable and occasionally difficult to justify.

The table below indicates the minimum and maximum tariffs billed by Djibouti shipping agents for containers (in FD), and harmonized tariffs officially published by the trade union in February 2010 (in FD and $ US).

DJIBOUTI SHIPPING AGENT CHARGES	Mini	Maxi	Syndicat FD	Syndicat $
Delivery Order Fees / BL	3 500	3 500	3 500	$20
Electronic Delivery Order / BL	1 000	2 500	2 000	$11
Administration Fees / BL	0	3 560	1 700	$10
Communication Fees / BL	0	5 340	3 000	$17
Arrival Notice / BL	0	3 000		
ISPS Charges / Container	1 050	1 100	1 100	$6
Cleaning Charges / Container	3 000	3 100	3 000	$17
TOTAL	**8 550**	**22 100**	**14 300**	**$82**

Source : Shipping Agencies - inecor@free.fr

The variations in tariffs are more or less high according to the item billed. The highest concern administrative services (Administration Fees, Communication Fees and Arrival Notice) for which the tariffs per B/L are difficult to justify.

The tariffs for general cargo published by the shipping union are the same, apart from the Communication Fees (5,000 FD per B/L against 3,000) and ISPS Charges (50 FD per freight ton against 1,100 FD per container).

The shipping agents furthermore charge for security deposits on containers and demurrage fees when containers are not pulled to the terminal before expiry of the last free day (generally 10 days, apart from Ethiopian Shipping Lines that grant a 30 day franchise).

This is general practice in all ports. These tariffs are fixed by each shipping line with considerable variations practiced by international groups according to their own market estimations and without obligation to justify them at local level.

12.2. RECOMMENDED ACTION

Update and justify the reference tariffs declared by the shipping agents trade union, by a commission associating the public authorities concerned and representatives of shippers and shipping agents.

12.3. CONDITIONS FOR IMPLEMENTATION

Implementing the recommended action should not be difficult. Its practical application would nevertheless require that the authorities concerned ensure a broad public distribution

of the agreed reference tariffs and set up effective means of control and sanctions for excessive and unjustified price increases.

12.4. POINTS OF VIEW OF THE MAIN ACTORS CONCERNED

The PAID Monitoring Committee for the present study would like to see established a table of reference tariffs for shipping agents by the update and justification of documents already exchanged with the trade union.

REPORT 3 – ACTION PLAN

INTRODUCTION

The 3rd and last section of the study report on the regulation of private operators in the ports of Djibouti proposes an action plan based on discussions with the main parties concerned.

The action plan presents the 12 recommendations outlined in report 2 in the order of priority retained for their implementation. It outlines the conditions and provisional completion times for their implementation.

The following table provides a summary of the action plan.

REGULATION ACTION PLAN FOR PORT ACTIVITES IN DJIBOUTI

N°	ACTION	PILOT INSTITUTION	PRIORITY DEADLINE	OBJECTIVE	ORIENTATIONS & OPTIONS
1	Designate the Port Regulator	Presidency of the Republic	Priority 1 6 months	Clarify roles in order to improve the competitiveness of Djibouti ports	- Legal text designating the Port Regulator, its scope of intervention and prerogative powers - Option: Ministry of Equipment and Transport - Option 2: Ports and Free Zones Authority
2	Institute a Port Community	Port of Djibouti	Priority 1 6 months	Have a framework for regular consultations between all the parties concerned with improving the competitiveness of Djibouti ports	- Framework for consultations between all parties and advisory role to the Regulator and the public authorities - Composition to be defined, notably 1 to 2 representatives per profession and representatives of Djiboutian and Ethiopian shippers - Choice of representatives by professional organizations or their election by each of the professions represented
3	Update and harmonize the port and shipping legal framework	Presidency of the Republic	Priority 1 12 months	Have a framework adapted to the aims of regulation	- Clarify roles and the relationships between the different public institutions concerned - Improve the licensing regulation for port operators

N°	ACTION	PILOT INSTITUTION	PRIORITY DEADLINE	OBJECTIVE	ORIENTATIONS & OPTIONS
4	Update the maximum tariff rates for licensed handling operators	Ports and Free Zones Authority	Priority 2 12 months	Have competitive tariffs adapted to developments in port handling requirements	- Analytical study of different handling costs for main port cargos - Comparative study of regional competitiveness based on all port transit costs - Need for external technical assistance
5	Update the minimum productivity objectives for licensed handling operators	Ports and Free Zones Authority	Priority 2 12 months	Establish performance indicators to serve as a regulation tool	- Make the obligation of results in terms of performance a regulatory tool for stevedoring operations - Integrate the necessary technical assistance in the analytical study of handling costs
6	Update the decree and operating conditions relative to licensed freight forwarders	Port Regulator	Priority 2 12 months	Have legal texts adapted to regulation objectives for activities concerned	- Option 1: Separate official licensing requirements for customs brokers exclusively in charge of documentation services from those governing the freight forwarders and logistic providers in charge of both documentation services and material services - Option 2: Maintain the Djiboutian definition of freight forwarder but improve the means of controlling compliance with the regulatory requirements for the profession

N°	ACTION	PILOT INSTITUTION	PRIORITY DEADLINE	OBJECTIVE	ORIENTATIONS & OPTIONS
7	Establish reference tariffs for services supplied by licensed freight forwarders	APZF & Port Community	Priority 2 12months	Regulation of freight forwarding tariffs	- Establish a standardized list of billing items and reference tariffs for freight forwarding services - Preparation carried out by a technical commission associating representatives of the profession and Djiboutian and Ethiopian shippers
8	Establish maximum tariff rates for services supplied by licensed shipping agents	APZF & Port Community	Priority 2 12 months	Regulation of shipping agency tariffs	- Draw upon available comparative tables of tariffs practiced by the principal shipping agencies - Preparation carried out by a technical commission associating representatives of the profession and Djiboutian and Ethiopian shippers
9	Update minimum equipment requirements for handling operators	APZF & Port Community	Priority 3 12 months	Adapt requirements to the current port context	Preparation carried out by a technical commission associating representatives of the profession and PAID services
10	Update minimum personnel requirements for stevedores	APZF & Port Community	Priority 3 12 months	Adapt requirements to the current port context	Preparation carried out by a technical commission associating representatives of the profession and PAID services
11	Update the decree and operating conditions relative to stevedores	Port Regulator	Priority 3 12 months	Legal text in accordance with regulation aims	Improve the profession’s licensing conditions and adapt its minimum requirements to the current port context
12	Update the decree relative to licensed shipping agents	Port Regulator	Priority 3 12 months	Legal text in accordance with regulation aims	Improve the profession’s licensing conditions and adapt its minimum requirements to the current port context

1. DESIGNATING THE PORT REGULATOR & DEFINING ITS MISSIONS

1.1. ACTION TO BE IMPLEMENTED

Designate the institution to be in charge of regulating port activities and define its scope of intervention, its prerogatives and means of action.

1.2. CONDITIONS OF IMPLEMENTATION

The principal aim of regulating port activities is to ensure competitiveness of productivity performances, costs and quality of all services provided by the port operators in Djibouti. Regulation would extend to all activities operated in the ports of Djibouti.

Adapted regulatory procedures should be envisaged so as to take into account the specificity of each type of port activity and the operational conditions and the legal status of the operators concerned. These regulatory procedures should notably take into account the legal terms and conditions specific to each concession contract for specialized terminals and examine the possible need to adapt the said contract in accordance with regulatory objectives (tariffs, performance, service quality, etc.).

The official designation of the Port Regulator would permit clarifying the roles allocated to the different institutions concerned with improving the ports of Djibouti's competitiveness.

The Ports Regulator could be the Ports and Free Zones Authority or the Ministry of Equipment and Transport.

The Ports and Free Zones Authority of Djibouti (APZFD) is under the direct authority of the Presidency of the Republic and is notably in charge of port's administration and monitoring port activities.

The ports of Djibouti are otherwise attached to the Ministry of Equipment and Transport that issues licenses to the different types of port operator (handling operators, freight forwarders, shipping agents…).

The choice between the two institutions comes under the supreme authority of the Presidency of the Republic. The designation of Ports Regulator will need to be the object of a specific legal text or amendment to an existing text.

The choice of institution to regulate port activities would need to take into consideration its acceptance as a legitimate public authority by all the parties concerned and have sufficient authority and the means to implement its powers in the aim of improving competitiveness for the port community as a whole.

The Port Regulator's prerogatives and means of action must be clearly defined, notably regarding the issuing of licenses, sanctions to be applied for non-compliance, including the suspension or withdrawal of licenses, and the means of controlling the terms and conditions applicable to each port activity.

1.3. INSTITUTION IN CHARGE OF IMPLEMENTATION

The institution habilitated to designate the Ports Regulator would be the **Presidency of the Republic** constituting the higher authority of the two institutions concerned.

1.4. PRIORITY AND COMPLETION TIME

The designation of the Port Regulator is a **priority 1** action as it is one of the conditions necessary to the implementation and development of all other scheduled regulatory actions.

The provisional completion time for its implementation should not exceed **6 months** so as not to delay the regulatory action plan.

2. INSTITUTING A PORT COMMUNITY

2.1. ACTION TO BE IMPLEMENTED

The creation of the Djibouti Port Community as the official framework for regular consultations between all the parties concerned with improving the ports' competitiveness and the development of its activities.

2.2. CONDITIONS OF IMPLEMENTATION

Given that all the public and private parties concerned agree with the need to establish a consultative framework to improve the competitiveness of Djibouti port operations, the APZF (Port and Free Zone Authority) or the PAID, as Port Authority, could take the initiative to convene and set up a provisional committee to prepare the constitution of a Port Community, without necessarily waiting for the official designation of the Port Regulator.

The provisional committee's first meeting could include APZF, the Ministry of Equipment and Transport, the PAID, the Djibouti Customs, the Ethiopian Representative for Economic Affairs in Djibouti, the Djibouti Chamber of Commerce and the presidents of the most representative professional associations. This provisional committee could be extended to other parties according to the advice of participants.

Its task would notably be to define the Port Community's composition, the procedures to be applied to designate its members, its mode of operation, its prerogatives, its means of action and its relationship with the public authorities concerned, notably the Port Regulator.

The provisional committee's mission would end with the official constitution of the Port Community.

The role of the Port Community would be to favour regular meetings and consultations and ensure the concerted efforts of all parties concerned by the efficiency, competitiveness and development of port activities in Djibouti. It should play a consultative role in the key decisions taken by the public institution designated as Port Regulator.

The designation of Port Community members representing the different professions will need to be the subject of particular attention so as to avoid any contestation regarding their representativeness. Elected representatives could be designated by the association representing each profession if available. If not, they could be elected by all the members of the profession concerned and not limited to union members, with an election organized by the PAID or the APZF.

The shippers are the owners of cargo which constitute the basis of all port activities. The active presence of legitimate representatives of the Djiboutian and Ethiopian shippers within the Port Community is thus indispensable in order to express the point of view of those subject to or benefitting from the levels of port competitiveness in terms of tariffs, performance and service quality.

2.3. INSTITUTION IN CHARGE OF IMPLEMENTATION

Independently from the designation of the Port Regulator and without waiting for the final decision, **the PAID** would be entitled to launch and pilot the project to create a Port Community.

2.4. PRIORITY AND COMPLETION TIME

Instituting a Port Community is a **priority 1** action as it will facilitate the implementation and development of scheduled regulatory actions.

The provisional completion date for its implementation should not exceed **6 months**.

3. PORT LEGAL FRAMEWORK

3.1. ACTION TO BE IMPLEMENTED

Update and harmonize the legal texts constituting the port of Djibouti's legal framework.

3.2. CONDITIONS OF IMPLEMENTATION

The aim of this action is to clarify, harmonize and update the port's existing legal framework in accordance with developments in the Djibouti port and shipping context.

The first step to be undertaken is reforming legislation governing the organization, prerogatives and relations of public institutions in charge of overseeing port activities in Djibouti. Since the Law of 1980 instituting the PAID and defining its statutes, up to the legal texts governing the APZF and the Law of 2011 setting out the responsibilities of the Ministry of Equipment and Transport, the current legal framework needs to be updated and harmonized to notably permit nominating the Port Regulator and defining its relations with the other institutions concerned.

A second component involves amending the law and decrees regulating the practice of different port operators and the statutory requirements to obtain a license issued by the Ministry of Equipment and Transport. The second phase would follow the implementation of the recommended actions for each profession concerned as outlined in the present action plan.

The implementation of the legal framework update will require setting up a lawyers' committee representing the different institutions concerned and presided over by a higher authority habilitated to propose modifications to existing Laws and Decrees.

3.3. INSTITUTION IN CHARGE OF IMPLEMENTATION

The institution habilitated to oversee the revision of Laws and Decrees governing the port's legal framework is the **Presidency of the Republic** constituting the highest authority for all the institutions concerned.

3.4. PRIORITY AND COMPLETION TIME

The update of laws and decrees governing the port's legal framework is a **priority 1** action on which depend the implementation of the regulatory objectives targeted.

The provisional completion time for its implementation should not exceed **12 months**.

4. STEVEDORING AND SHORE HANDLING TARIFFS

4.1. ACTION TO BE IMPLEMENTED

Update the maximum tariff rates practiced by licensed stevedores on the basis of a study of port cargo handling costs for the main types of cargo operated in Djibouti.

4.2. CONDITIONS OF IMPLEMENTATION

The option chosen by the PAID for updating stevedoring and shore handling tariffs is based on an analysis of cargo handling costs taking into account the evolution of port activities, cargo handling conditions and levels of productivity.

The **analytic study of cargo handling costs** will require the intervention of a consultant who will notably have to:

- Identify the main cargo traffic of which stevedoring and shore handling tariffs need updating; the list of cargo traffic concerned would update the list itemized in the Order of 1981 fixing maximum tariffs, by taking into account the development of port activities in Djibouti;
- Evaluate productivity levels per vessel and ship berthing day for cargo-handling operations of cargo traffic concerned; these levels of productivity will be evaluated on the basis of data and documents available at the PAID and the main stevedoring companies;
- Carry out an analysis of the physical structure of cargo-handling operations for each cargo traffic concerned, from the ship's hatch to direct delivery onto truck, and to warehouse or open storage area for imports (and inversely for exports); this analysis will have to determine how cargo-handling operations are carried out and identify the human and material resources mobilized (dockworker gangs supplied by the BMOD, stevedoring personnel, mechanical cargo handling-equipment and tools…);
- Have the results of the preceding analyses validated by the PAID and the main handling operators concerned;
- Evaluate, for all cargo traffic concerned, the cost of each of the resources used in each phase of the cargo-handling operations; this evaluation of component costs must be effectuated in collaboration with the main handling operators concerned;
- Establish the global analytic structure of cargo-handling costs for each cargo traffic concerned;
- Have the global analytic structure of cargo-handling costs for each cargo traffic concerned validated by the PAID and the main handling operators concerned;
- Establish a table of indicative tariffs to serve as a base for negotiations between handling operators, the PAID and the commission instituted for this purpose by the Port Community and including representatives of Djiboutian and Ethiopian shippers.

The aim of this study is not for the appointed consultant to fix the new maximum tariffs for stevedoring and shore handling operations in Djibouti. It would be to provide the parties concerned (handling operators, public authorities, Djiboutian and Ethiopian shippers…) with the necessary analytical data which would serve as a base for negotiations establishing new, realistic and acceptable tariffs for all parties concerned.

The budget to be provided for implementing an analytic study of cargo-handling costs would be **100 man-days, of which 40 days and 3 trips to Djibouti**.

4.3. INSTITUTION IN CHARGE OF IMPLEMENTATION

Whatever the designated Port Regulator, **the Ports and Free Zones Authority** is habilitated to make the necessary arrangements to launch the cargo-handling cost analysis study and pilot negotiations to establish the new maximum tariffs for stevedoring and shore handling operations.

The APZF will need to rely on the collaboration and advice of a consultative commission instituted for this purpose by the **Port Community** and bringing together all the parties concerned (handling operators, public authorities, Djiboutian and Ethiopian shippers, shipping agents, freight forwarders…).

The official decision to update the maximum tariffs practiced by licensed stevedores and subsequent controls to ensure they are complied with would come under the prerogative of the **designated Port Regulator.**

4.4. PRIORITY AND COMPLETION TIME

The update of maximum tariffs rates practiced by licensed stevedores is a **priority 2 action**. Its recommended provisional completion time is **12 months** from the date the consultant is appointed to carry out the analytic study of cargo handling costs.

4.5. COMPLEMENTARY STUDY OF REGIONAL PORT COMPETITIVENESS

In addition to the analytic study of cargo-handling costs for general cargo traffic handled in the port of Djibouti, outside specialized terminals, representatives of the PAID and the Ministry of Equipment and Transport have expressed the need for a comparative study of regional port competitiveness. This study would not be limited to general cargo handling costs. It would concern all types of cargo traffic and incorporate all port transit costs paid by ships and cargo. It would concern, in priority, ports potentially competing with Djibouti for Ethiopian transit traffic and prospective traffic from South Soudan: Mombasa, Port-Soudan, Berbera and Assab.

The **comparative study of regional port competitiveness** will need to be undertaken by an appointed consultant who will notably have to:

- Establish a list of the five main types of cargo traffic handled in the selected ports on which the comparative study would be based; the choice of cargo traffic would involve choosing between containers, bulk cereals, foodstuffs in bags, metallurgical products, cement or clinker, vehicles…. this targeted list will need to be limited in order to focus the consultant's efforts and provide the most effective results according to the allocated budget for the study;

- Establish a table of port transit costs regional comparison from a basis applicable to Djibouti: port dues for vessels, pilotage, towing and mooring, port dues for cargo, stevedoring and shore handling operations to delivery on trucks or storage areas, administrative transit services (excluding land transport and customs taxes);
- Collect all the necessary data to reconstitute all the port transit costs in each port selected and for all cargo traffic concerned; the data collected will be drawn from available public tariffs and interviews with shippers and port operators able to justify their costs with invoices;
- Collect all the necessary data to evaluate the quality of port services, infrastructures and performance levels, notably ship berthing times in each port selected; the data collected will be based on available and accessible information in each port;
- Carry out a regional comparative analysis of port transit costs for vessels calling in each selected port;
- Carry out a regional comparative analysis of port transit costs for cargo handled in each selected port;
- Produce a final report of the comparative study on regional port competitiveness.

The budget to be provided for the comparative study of regional port competitiveness will depend on the cargo traffic and costs to be analyzed, the ports selected and the ease of difficulty of obtaining necessary information, probably without the help of the local Port Authority (excepting Djibouti).

The potential competitors to the port of Djibouti on Ethiopian transit traffic and prospective traffic from South Soudan are theoretically Mombasa, Port-Soudan, Berbera and Assab. Even if they are the closest to Djibouti in geographical terms, competition from the ports of Berbera and Assab is extremely limited due to their current political contexts and required information will probably be more difficult to obtain than in the other ports.

Considering a list of 5 ports (**Djibouti, Mombasa, Port-Soudan, Berbera and Assab**) and 5 main types of traffic to be studied, the budget to be provided for a comparative study of regional port competitiveness would be **210 man-days of which 100 days and 6 trips to the different countries concerned.**

Reducing the list to 3 ports (**Djibouti, Mombasa and Port-Soudan**) and 5 main types of cargo traffic, the budget to be provided for a comparative study of regional port competitiveness would be **130 man-days of which 60 days and 4 trips to the different countries concerned.**

5. STEVEDORING AND SHORE HANDLING PERFORMANCES

5.1. ACTION TO BE IMPLEMENTED

Update the minimum required performance levels for licensed stevedores and establish the obligation of results as a means of regulating port operations.

5.2. CONDITIONS OF IMPLEMENTATION

The aim of this action is to have performance indicators of which the regular control would permit measuring the operational competitiveness of the port of Djibouti and provide the means of regulating stevedoring and shore handling operations through an obligation of results.

For each vessel operated, stevedores establish a report of the operations effectuated per shift, per day and per port call. More or less complete extracts of these reports are transmitted to the PAID in non-standardized formats.

The PAID services have a database on the progress of each port call and reports on the productivity rates of stevedoring operations per shift, per day and per port call. The standardization of these data and their systematic integration into the port computerized database would enable the PAID to regularly publish the performance indicators recorded.

Within the framework of the cargo-handling cost study recommended in the action plan, the consultant will need to evaluate the productivity levels to be taken into account in order to update stevedoring tariffs.

This necessary evaluation of productivity levels per type of cargo would in parallel, permit establishing a table of performance levels (minimum, maximum and average) that could be used as the basis for negotiations between the PAID and a commission instituted by the Port Community for the purpose of updating minimum performance levels required for stevedoring and handling operations.

Adding this secondary task to the overall mission and the above provisional budget for the consultant in charge of the cargo-handling costs analysis does not include any technical assistance possibly required by the PAID to improve its computerized statistical database.

5.3. INSTITUTION IN CHARGE OF IMPLEMENTATION

Whatever the institute designated as Port Regulator, the **Ports and Free Zones Authority** is entitled to launch and pilot negotiations aiming at updating minimum productivity levels for stevedoring and shore handling operations with a commission instituted for this purpose by the **Port Community**, bringing together all the parties concerned (handling operators, public authorities, Djiboutian and Ethiopian shippers, shipping agents, freight forwarders…).

The official decision to update minimum productivity requirements and controls to ensure they are complied with would subsequently come under the prerogatives of the designated **Port Regulator.**

5.4. PRIORITY AND COMPLETION TIME

The update of minimum productivity requirements for stevedoring and shore handling operations is a **priority 2 action**. Its completion time is estimated at **12 months** from the date the consultant is appointed to carry out the analytic study of cargo-handling costs.

6. FREIGHT FORWARDERS' LICENSING REGULATIONS

6.1. ACTION TO BE IMPLEMENTED

Review the Decree and the terms and conditions governing freight forwarder licensing and operational requirements.

6.2. CONDITIONS OF IMPLEMENTATION

The aim of this action is to establish a legal framework adapted to the stated objectives and the need to regulate freight forwarding operations taking into account the current Djiboutian market counting over a hundred issued licenses.

The diverging interests dividing the profession into different categories and the varying conditions under which existing regulations are applicable calls for a complete "root-and-branch- review" of the current situation, implying all the parties concerned under the authority of the designated Port Authority.

During the course of the present study, two possible options were discussed with the main parties concerned and theirs opinions remain divided:

- Option 1: Separate official regulations for customs brokers exclusively providing forwarding documentation services, exempted from minimum equipment requirements, and official regulations for freight forwarders or logistics providers supplying both documentation services and material services subjected to minimum equipment requirements comparable to those provided for by existing regulations;
- Option 2: Maintain and ensure a stricter application of existing regulations and its current definition of freight forwarder as simultaneous provider of documentation and material services and subject to minimum cargo-handling equipment and transport requirements.

The aim of option 2 would be to clean-up the profession by withdrawing the majority of licenses issued to operators generally failing to comply with minimum equipment requirements. It would necessarily have a social impact in terms of redundancies and job losses.

The aim of option 1 would be to adapt regulations to current market conditions in Djibouti by separating the two existing sub-professions to better regulate competitiveness and operating conditions. It would probably involve some form of compensation in order to preserve the economic interests of freight forwarders having made an effort to invest in equipment.

The best choice between the two options would need debating between all the public and private parties concerned. It should not be limited to discussions between the public authorities and the existing professional association as it represents less than 30% of officially issued freight forwarding licenses.

6.3. INSTITUTION IN CHARGE OF IMPLEMENTATION

The review of existing freight forwarding regulations and/or the clarification of their conditions of application and control would come under the authority of the designated **Port Regulator.**

The latter would need to rely on the proposal and advice of a consultative commission instituted for this purpose by the **Port Community,** bringing together all the parties concerned (public authorities and different freight forwarder categories).

6.4. PRIORITY AND COMPLETION TIME

The review of regulations governing freight forwarder licensing requirements is a **priority 2 action**.

Its completion time is estimated at **12 months** from the date the consultative commission is instituted by the Port Community and the Port Regulator has been designated.

7. FREIGHT FORWARDING TARIFFS

7.1. ACTION TO BE IMPLEMENTED

Establish reference tariffs for licensed freight forwarder services.

7.2. CONDITIONS OF IMPLEMENTATION

The Decree of 2001 governing the freight forwarding profession provided for fixing maximum tariffs for their services, approved by the Ministry of Equipment and Transport on advice from the professional organizations. Failure to comply with the officially approved maximum tariffs entails the risk of license withdrawal.

This maximum approved tariff clause is not applied and contrary to the stevedores and shipping agents, freight forwarders are the only operators not to have a document indicating the official or unofficial tariffs practiced.

According to the different opinions collected during the study on the regulation of tariffs in the port of Djibouti, freight forwarders are divided between:

- Maintaining the current situation without fixing reference tariffs,
- Establishing minimum tariffs to counter "unfair competition" from the "informal freight forwarders" without equipment,
- Establishing maximum tariffs providing more freedom to negotiate practiced tariffs.

If the aim of regulating activities in the port of Djibouti is to be achieved, reference tariffs must be established for every profession, including freight forwarding.

Establishing a table of reference tariffs for this profession presupposes the elaboration of an acceptable, standardized list of items likely to appear on a Djibouti freight forwarder's regulatory invoice. It would then involve fixing a reference tariff for each item, notably differentiating between:

- The dues, fees and other services that can be paid by the freight forwarder on behalf of his client (port dues, cargo-handling, transport, customs, taxes…); these items are normally re-invoiced to the client on the same basis of tariffs charged by the administrations and operators concerned;
- Eventual commission on disbursements effectuated by the freight forwarder on behalf of the client; current practice in Djibouti is extremely variable with a more or less significant percentage of the initial charges invoiced as commission on disbursements; Certain freight forwarders nevertheless declare that they never invoice a commission on disbursements;
- Documentation services provided by the freight forwarder that can be broken down into different items to be defined together with their reference tariffs (customs brokerage fees, application fees…);
- Material services supplied by the freight forwarder that can be broken down into different items to be defined together with their reference tariffs (cargo lifting services, stripping, haulage…).

The establishment of reference tariffs for forwarding services could be achieved by negotiating price adjustments, guided by market conditions and based on existing tariffs billed by freight forwarders and paid by Djiboutian and Ethiopian shippers.

This working base could be the subject of a reverse evaluation process associating all the parties concerned and enabling them to discuss, express and justify their claims regarding the evolution of existing tariffs. At the end of the evaluation process, the parties concerned would be in a position to negotiate justified reference tariffs, acceptable to all parties and taking into account current market conditions and the common interests of the Port Community as a whole.

7.3. INSTITUTION IN CHARGE OF IMPLEMENTATION

The establishment of a table of reference tariffs for freight forwarding services and controls to ensure they are complied with would come under the authority of the designated **Port Regulator.**

The latter would need to act on the basis of proposals and advice submitted by a consultative commission instituted for the purpose by the **Port Community,** bringing together all the parties concerned (freight forwarders, public authorities, Djiboutian and Ethiopian shippers…) under the presidency of the **APZF**.

7.4. PRIORITY AND COMPLETION TIME

The establishment of a table of reference tariffs for freight forwarding services is a **priority 2 action**.

Its completion time is estimated at **12 months** from the date the Port Community institutes the required consultative commission and the Port Regulator has been designated.

8. SHIPPING AGENCY TARIFFS

8.1. ACTION TO BE IMPLEMENTED

Establish maximum tariff rates for services provided by licensed shipping agents.

8.2. CONDITIONS OF IMPLEMENTATION

Contrary to the stevedores and freight forwarders, Djiboutian regulations governing shipping agents do not make provision for reference tariffs.

A shipping agent is paid by the ship owner hiring him as his local representative, and is generally the result of confidential commercial negotiations between two companies of unequal size, or two entities belonging to the same shipping group.

The services billed by shipping agents to Djiboutian and Ethiopian shippers on the other hand, are based on more or less open public tariffs. They are the result of numerous discussions with the PAID and the tariffs practiced for each service are known.

The establishment of maximum tariff rates for shipping agents' services could be undertaken on the basis of existing tariffs used to invoice Djiboutian and Ethiopian shippers.

This working base could form the basis of an evaluation and negotiation process aimed at fixing maximum levels for justified tariffs acceptable to all parties concerned, taking into account current market conditions and the interests of the Port Community of Djibouti as a whole.

8.3. INSTITUTION IN CHARGE OF IMPLEMENTATION

The establishment of maximum tariff rates for shipping agents' services and the subsequent controls to ensure their application would come under the authority of the designated **Port Regulator.**

The latter will have to rely on the proposals and advice submitted by a consultative commission instituted for this purpose by the **Port Community,** bringing together representatives of all the parties concerned (shipping agents, public authorities, Djiboutian and Ethiopian shippers, freight forwarders…) under the presidency of the **APZF**.

8.4. PRIORITY AND COMPLETION TIME

The establishment of maximum tariff rates for shipping agents' services is a **priority 2 action**.

Its completion time is estimated at **12 months** from the date the required commission is instituted by the Port Community and the Port Regulator is designated.

9. STEVEDORING AND SHORE HANDLING EQUIPMENT

9.1. ACTION TO BE IMPLEMENTED

Update the minimum equipment requirements for licensed handling operators.

9.2. CONDITIONS OF IMPLEMENTATION

The continuous increase in containerized traffic, the development of a modern bulk terminal (cereals and fertilizers) and the evolution of the structure of general cargo traffic in Djibouti justifies the need for consultations between the public authorities and the private operators on the utility and relevance of the list of minimum equipment required to obtain a stevedoring license.

If the mandatory equipment requirements stipulated in the regulations is to be maintained, the equipment requirements for a licensed stevedore should be updated and adapted to evolutions in port traffic and operating conditions.

Updating the minimum equipment requirements should be the object of consultations between all the parties concerned. The list of equipment requirements could be kept general and be identical for all stevedores whatever the type of traffic handled. Or it could be broken down and adapted to each main type of traffic according to different stevedoring specialization (Ro-Ro, bulk cargo, metallurgical products, bagged cargo…).

The analytic study of cargo-handling costs will require a prior evaluation of the structure of human and material resources necessary for each handling service provided. In addition to the information provided by the parties concerned, this evaluation could provide useful indications in justifying the equipment requirements for each type of cargo-handling operation.

9.3. INSTITUTION IN CHARGE OF IMPLEMENTATION

The official decision to update licensed stevedores' minimum equipment requirements and controls to ensure they are complied with would come under the authority of the designated **Port Regulator.**

The latter will have to rely on the proposals and advice submitted by a consultative commission instituted for this purpose by the **Port Community**, bringing together representatives of all the parties concerned (shipping agents, public authorities, Djiboutian and Ethiopian shippers, freight forwarders…) under the presidency of the **APZF**.

9.4. PRIORITY AND COMPLETION TIME

The official update of minimum equipment requirements for licensed stevedores is a **priority 3 action**.

Its provisional completion time is estimated at **12 months** from the date the Port Community is instituted and the Port Regulator designated.

10. STEVEDORING AND SHORE HANDLING PERSONNEL

10.1. ACTION TO BE IMPLEMENTED

Update minimum personnel requirements for licensed stevedores.

10.2. CONDITIONS OF IMPLEMENTATION

The 2001 operating terms and conditions applicable to licensed stevedores include an appendix specifying personnel requirements. These are standard, general requirements limited to supervisory personnel employed by stevedoring companies to oversee dockworkers, whatever the type of traffic being operated.

It does not concern dockworkers as the size and composition of work gangs (11 to 22 persons per gang, per hatch and per vessel, according to type of vessel and cargo) and the piece-work rates of gang remuneration (per ton, per gang by type of traffic) are the subject of specific agreements negotiated between the stevedoring companies and the BMOD (Dock Labour Bureau).

The appendix to the operating terms and conditions relative to supervisory staff requirements could be updated on the basis of trends and developments in the port market structure and changes in cargo-handling operations. This is not, however, one of the major problems concerning stevedoring companies or the other parties concerned. It would have greater importance if the staffing requirements for licensed stevedoring companies included a minimum number of salaried dockworkers.

Should it be decided to maintain regulatory standard requirements for supervisory staff, the list of staffing requirements for licensed stevedoring companies should be updated and adapted to evolutions in port traffic and changes in cargo-handling operations.

Any updates to the minimum supervisory staff requirements will have to be the result of a joint agreement after consultations between all the parties concerned. A standard list of requirements applicable to all stevedoring companies whatever the main type of traffic operated can be maintained. Or it could be broken down and adapted to each main type of traffic according to stevedoring companies' specializations (Ro-Ro, bulk cargo, metallurgical products, bagged cargo…).

The analytic study of cargo-handling costs will require a prior evaluation of the structure of human and material resources necessary for each stevedoring service. In addition to the information provided by the parties concerned, this evaluation would provide useful guidelines in establishing supervisory staffing requirements for each type of cargo handling operation.

At the same time, consultations on the updating of minimum staffing requirements for the supervision of dockworkers should also be taken as an opportunity to discuss the need for improving BMOD operations and reactivating its management committee associating the PAID, dockworkers representatives, handling companies and representatives of their supervisory staff.

The traditional organization of dock labour is an extremely sensitive issue that should be managed with a great deal of caution given its socio-economic implications. It falls outside the scope of the present study on the regulation of private port operators in Djibouti.

Reactivating the BMOD Management Committee could nevertheless favour global reflections on current working conditions and needs for cargo-handling personnel. The aim would be to search for the best ways of adapting the profession's human resources (composition of work gangs, training, wage levels…) to the qualitative and quantitative evolutions in port traffic (nature and volume of the different types of cargo) and the need to improve competitiveness of costs and performance levels.

10.3. INSTITUTION IN CHARGE OF IMPLEMENTATION

The official decision to update the minimum supervisory staffing requirements for licensed stevedoring companies and controls to ensure compliance with the regulations would come under the authority of the designated **Port Authority.**

Any decisions taken by the latter will have to take into consideration the proposals and advice of a consultative commission created for the purpose by the **Port Community** and bringing together all the parties concerned (handling operators, public authorities, dockworkers and supervisors' representatives, shippers, shipping agents, freight forwarders…) under the presidency of the **APZF**.

10.4. PRIORITY AND COMPLETION TIME

The official update of minimum supervisory staffing requirements for licensed stevedoring companies is a **priority 3 action**.

Its provisional completion time is estimated at **12 months** from the date the Port Community is instituted and the Port Regulator nominated.

11. HANDLING OPERATORS' LICENSING REGULATIONS

11.1. ACTION TO BE IMPLEMENTED

Update the Decree and operating terms and conditions regulating licensed handling operators.

11.2. CONDITIONS OF IMPLEMENTATION

The review of the 2001 decree regulating licensed handling operators and its adaptation to market conditions in the port of Djibouti should focus on:

- Nationality requirements for license applicants;
- Professional, financial and equipment requirements for license applicants;
- The interdiction or possibility for a stevedore to combine this activity with that of freight forwarder and/or shipping agent;
- Formulating a clearer definition of free competition and monopoly positions as applied to activities in the port of Djibouti.

The review of operating terms and conditions regulating stevedoring and shore handling operations and their adaptation to current market conditions in the port of Djibouti should also take into account aforementioned actions concerning:

- Maximum stevedoring and shore handling tariffs;
- Minimum required productivity levels for cargo-handling operations;
- Minimum equipment requirements for cargo-handling operations;
- Minimum supervisory staff requirements for stevedoring companies.

11.3. INSTITUTION IN CHARGE OF IMPLEMENTATION

The review of the Decree and operating terms and conditions regulating licensed handling operators and improvements in the control of their application would come under the authority of the designated **Port Regulator.**

Decisions taken by the latter will have to take into account proposals and advice submitted by a consultative commission instituted for this purpose by the **Port Community** bringing together all the parties concerned (public authorities, handling operators…).

11.4. PRIORITY AND COMPLETION TIME

The review of the Decree and operating terms and conditions regulating licensed stevedores is a **priority 3 action**.

Its provisional completion time is estimated at **12 months** from the date the Port Community is instituted and the Port Regulator nominated.

12. SHIPPING AGENTS' LICENSING REGULATIONS

12.1. ACTION TO BE IMPLEMENTED

Update the Decree governing licensed shipping agents.

12.2. CONDITIONS OF IMPLEMENTATION

The review of the 2001 Decree governing licensed shipping agents and its adaptation to current market conditions in the port of Djibouti should focus on;

- Nationality requirements for license applicants;
- Professional, financial and equipment requirements for license applicants;
- The interdiction or possibility for shipping agents to combine their activity with that of freight forwarder and/or stevedore;
- Competition between local independent shipping agents and those operating on behalf of international shipping groups as local subsidiaries based in Djibouti;
- Establishing maximum tariff rates for services provided by licensed shipping agents.

12.3. INSTITUTION IN CHARGE OF IMPLEMENTATION

The review of the Decree governing licensed shipping agents and improvements in the means of controlling its application would come under the authority of the designated **Port Regulator.**

Decisions taken by the latter will have to take into account proposals and advice submitted by a consultative commission instituted for the purpose by the **Port Community** bringing together all the parties concerned (public authorities, shipping agents…).

12.4. PRIORITY AND COMPLETION TIME

Review of the Decree and operating terms and conditions for licensed shipping agents is considered a **priority 3 action**.

Its provisional completion time is estimated at **12 months** from the date the Port Community is instituted and the Port Regulator nominated.