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REGULATORY ORGANIZATIONAL AND STAFFING PLAN

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I. INTRODUCTION

The Government of Haiti has introduced draft legislation aimed at reforming the port sector. The legislation was intended to separate port regulatory from operational responsibility by creating two new institutions to assume these responsibilities. The proposed two new entities, ANAREP (for port regulation) and SONAGEP (for port operations) would replace the National Port Authority (APN), with ANAREP and SONAGEP subsumed as part of the Ministry of Economy and Finance and the Ministry of Public Works, Transport, and Communication, respectively. While advancement of the legislation has stalled, and there is some doubt as to the legislation will secure Parliamentary approval, APN still wishes to pursue a course of firming up its role as a port regulator¹. Generally, this means that APN will have a stewardship role over port lands and properties while ensuring that the port authority, port users, and service providers perform their activities in a safe, secure, efficient, and competitive manner in accord with the regulatory framework established by APN.

¹ Under a typical landlord model, port services are performed by private sector operators from the entrance buoy to the port gate. Buoy-to-gate services usually include pilotage, tug assist, vessel stevedoring, and storage and gate operations. In some cases the port authority may provide some of these services, especially where there may be a risk of monopoly (e.g. pilotage) and/or insufficient traffic or volume to warrant private sector investment or enable competition (e.g. tug assist). Where cargo volume is not sufficient to warrant investment in terminal improvements or construction, some port authorities have opted to provide equipment (the so-called tool port concept), allowing licensed stevedores to compete for the vessel stevedoring business (e.g. the port of Tema in Ghana or Costa Rica's Puerto Limon). There are also instances where licensed stevedores may provide the equipment but not invest in terminal development or improvements (e.g. Puerto Quetzal in Guatemala). Whatever the form of port services provision, the landlord model of administration is considered global best practice; see, for example, the World Bank's *Port Reform Toolkit*, "Module 3: Alternative Port Management Structures and Ownership Models", Washington D.C., 2003, Box 5, page 20 for a comparison of port management models (available at: <http://documents.worldbank.org/curated/en/120991468762301637/pdf/297970PAPER00182131504613.pdf>). Also, the Asian Development Bank states the following: "The best institutional structure for promoting private sector involvement in public port operations and investment is the landlord port", that "The landlord model is the best structure for promoting PSP (private sector participation) because it accommodates different forms of public-private partnership", and "Best Practices supports a policy of promoting the development of private cargo-handling terminals and allowing them to compete for third party cargo". See Asian Development Bank, *Developing Best Practices for Promoting Private Sector Investment in Infrastructure – Ports*, Manila, Philippines, 2000, p. ix, 15, and 62, respectively (available at: <https://www.adb.org/sites/default/files/publication/27906/ports.pdf>).

Accordingly, as a landlord authority, regulatory functions pertinent to APN include:

- Port tariff analysis, with which the port authority can determine the impact of port dues adjustments on its cash flows and port competitiveness;
- Port performance monitoring so that the port authority can ensure that services provided by the port authority and port service providers are in accord with acceptable standards and (concession) contract terms;
- Port competition monitoring, where APN can monitor for anticompetitive behavior and conduct inquiries on related complaints;
- Operational regulation to facilitate adherence to global standards governing port safety and security and facilitating port-state control; and
- Contracting and other legal vehicles to facilitate private sector engagement for providing port services and monitoring and enforcement of contractual obligations.

USAID is supporting APN to enhance capacity to carry out its regulatory role, particularly in view of the impending contract to engage a private sector operator for a new container terminal at Cap Haitien. Nathan Associates Inc., who assisted USAID in assessing the merits of a new or improved port on Haiti's north coast and provided advisory services for structuring the port transaction, was retained to prepare training materials and conduct training relative to each of APN's regulatory responsibilities, specify the regulatory IT system requirements, and to prepare a staffing plan reflecting the requirements for APN's regulatory role. This report addresses the staffing plan needed to support APN's regulatory functions.

In the sections that follow, we first elaborate on the regulatory functions pertinent to APN's role as a landlord authority. This is done to define the skill sets needed to perform each of these regulatory functions. We then describe the APN's organizational structure and the framework envisioned as part of the national port sector reform efforts and make some observations about their suitability relative to APN's regulatory role. We also highlight other functional areas that APN should eventually address and present a conceptual organizational structure that includes regulatory and other roles. Finally, we identify staffing requirements for supporting APN's regulatory responsibilities. In so doing, we consider staffing needs for both APN as well as Cap Haitien, the latter of which serves as guidance for the regulatory role for other ports falling within APN's domain.

2. APN'S REGULATORY FUNCTIONS

APN in its role as a landlord authority will focus its activities on ensuring a safe, secure, and competitive environment for its customers and port users. Doing so requires the effective execution of the regulations identified above. We describe each of these functions below.

PORT TARIFF REGULATORY ANALYSIS

Before their evolution towards landlord administrations, port authorities were “operating” ports. That is, port authorities provided the full range of services from berth to gate and, in some cases, provided some or all services between the entrance buoy and berth, including pilotage, tug assist, navigation channel maintenance, and navigation lights and buoys, though these latter buoy-to-berth services may have been assigned to other government authorities. Port authorities also provided the capital assets needed to deliver these services and thus would impose a charge related to the use of these assets. So prior to becoming a landlord administration, port authorities would be the primary charging agent for port tariffs, port dues, and other fees. Figure 1 shows the range of services port authorities as operating entities charged to port customers and users, with the majority of charges imposed on carriers and shippers. Pre-landlord administration status, the port authority was effectively the “charge hub” for port transactions, imposing cargo and vessel handling tariffs and fees for the bulk of services rendered in a port.

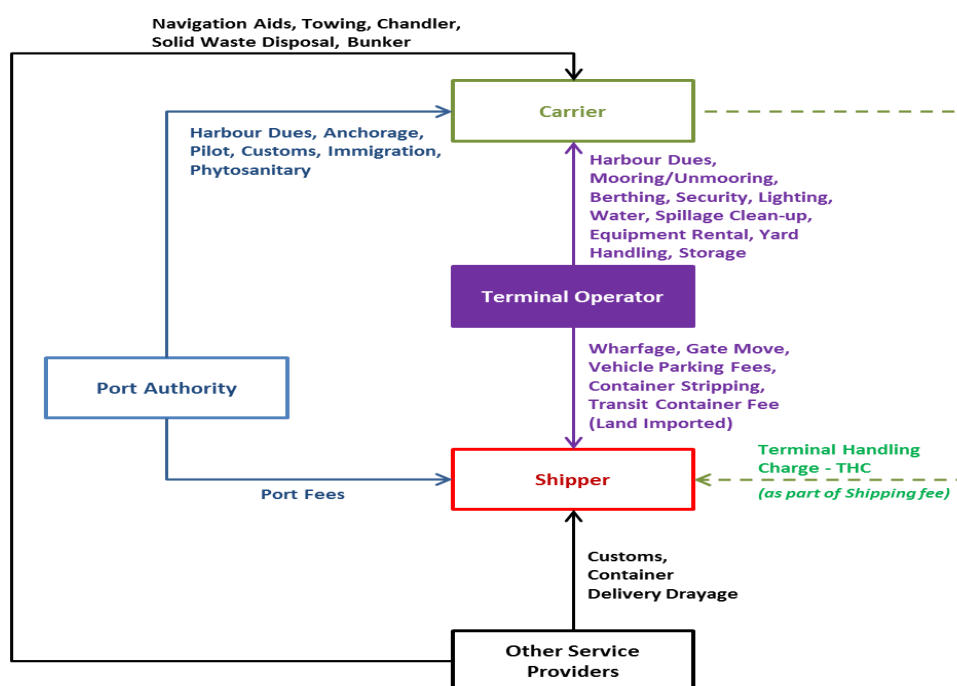
The transformation to landlord ports would render more complex the system of charges imposed on port customers and users. The system of charges would be distributed among other parties, in addition to APN, reflecting the shift of services responsibility to other service providers. Figure 2 depicts the flow of charges at the Port Lafito operation near Port au Prince. As the future container terminal is

concessioned to a private operator in Cap Haitien, we can expect Figure 2 to reflect a similar flow of charges there.

TARIFF ANALYSIS FUNCTION

APN has the authority to impose charges for the services it provides, such as pilotage, tug assist, and a wharfage on cargo. In contemplating the level of charges to impose, port authorities are generally guided by two principles: the first is to ensure that charges cover port authority costs for providing the service and the second is to ensure ports are competitively priced to avoid diversion of their cargoes to other ports. Generally, port authority costs include both the cost of common user assets (e.g. navigation channel and traffic routes inside the port area) and the cost (capital and operating expenses) of the services they provide. However, charges that are too heavy of a burden on producers will constrain pricing competitiveness of their products. Eventually, exports will decline as demand shifts to similar products that are produced less expensively elsewhere and the price of domestic consumer goods will increase due to the higher cost of imported production inputs and imported consumer items, the total cost of which includes port and carrier freight costs.

Figure 1. Flow of APN and Non-APN Charges at Port Lafitio



So APN needs the ability to gauge the impact of the charges it imposes for port authority services on its own financial performance while being mindful of the potential impact of tariff adjustments on port competitiveness. An effort to increase charges for APN services may negatively impact the port's competitiveness, while at the same time APN could adjust other revenue sources and expenses to avoid a negative impact. For example, rather than increasing pilotage fees, which increases the cost to vessel

operators, a port authority could instead consider raising property lease revenues which may not be related to port services. Another strategy might be to identify ways to reduce the cost of operations to avoid increases in fees and charges.

The consideration of adjustments in charges should not be done in isolation of benchmarking port costs with potential rival ports. Most terminal operators and port authorities are required to publish tariffs and charges. However, published tariffs of terminal operators do not necessarily reflect actual charges. Most terminal operators charge less than their published charges, especially for carriers; terminal operator discounts on the all-in charges to carriers, along with vessel productivity guarantees, are normally provided in exchange for commitments to call the terminal and/or minimum throughput guarantees. Such provisions are found in service agreements signed between carriers and terminal operators. What this means, therefore, is that if APN increased its charges in view of published tariffs of other ports, then it risks having tariffs that are artificially higher than the actual charges in benchmarked ports. Importers and exporters are often associated with more than one port; for example, importers and exporters in Haiti may also do business in other countries. In such cases, the port authority can validate the extent of pricing differences with sample invoices from shippers and freight forwarders.

Skill and Knowledge Domains for Perform Tariff Analysis Function

The following skills sets and knowledge domains are required for effective performance of this function: accounting/invoicing, port operations, and finance.

COMPETITION REGULATION AND MONITORING FUNCTION

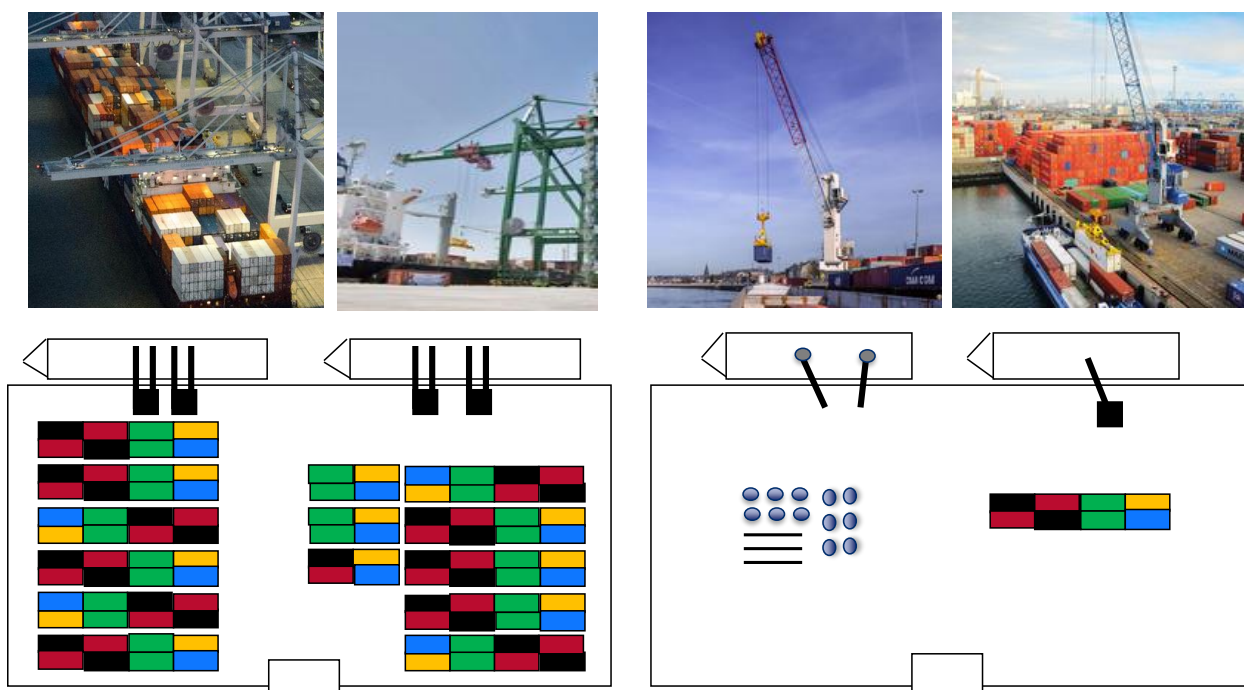
Haiti does not now have a competition law. This presents a weakness in Haiti's ability to prevent anticompetitive behavior. The weakness is acknowledged by government authorities, where the draft port reform law, in establishing the port sector's regulatory body (ANAREP), prohibits practices that prevent, restrict, or distort competition and abuse of dominance, reflecting the essence of modern competition law today. APN aims to exercise this authority as it continues to evolve and acquires the capacity to undertake this complex form of regulation. Concomitant with the authority to prevent anticompetitive practices is the important role of a regulatory body to promote and advocate for competition.

As a competition regulator, competition or prevention of abusive behavior can be accomplished in several ways:

- I. An existing port or the layouts for the future port development plan can be configured in such a way that competition is induced by subdividing the port into two or more terminals, assuming future demand can accommodate more than one terminal operator; the terminals need not be exact reflections of each other, but instead have the ability to handle similar cargoes. For example, one terminal, served by two gantry cranes, can compete with another terminal also offering gantry crane services. Further, a multi-purpose terminal served only by mobile or vessel cranes can also compete with an integrated container terminal (see Figure 3). While the

productivity of a terminal with gantry crane service will be far superior to the productivity of a terminal served only by ship's gear and/or mobile cranes, some vessel operators, particularly those having low loading or discharge volumes, or multipurpose vessels, will be perfectly happy to use their own gear or mobile cranes. This type of scenario is referred to as overlapping competition.

Figure 2. The “Overlapping” Competition Concept for Terminal Operations



2. As demand increases and capacity is reached (normally a container berth utilization rate of about 70 percent indicates approaching maximum capacity), then the port authority can consider adding capacity with a configuration that reflects two or more operators (or two or more terminals). Such a configuration should be incorporated into the port development plan, which typically shows staged development in accord with projected demand.

As the situation in Cap Haitien shows, expected container volumes will not be sufficient to support inter-terminal competition in the coming few years. The plan is to build a container terminal, while other areas of the port will focus on other forms of cargo. Accordingly, the draft concession agreement allocates containerized cargoes to the container terminal concessionaire. Presumably, this monopoly allocation holds true only as long as there is sufficient capacity for the new container terminal to meet demand. As demand approaches full capacity (as indicated by the berth utilization rate), then the port authority can begin to think about introducing additional capacity, either by providing for overlapping competition or introducing additional physical capacity. The concessionaire is likely to seek ways to expand capacity by improving berth productivity or truck turn times to ameliorate congestion risk; in fact, the draft concession contract imposes level of service standards which, if not met, may subject the

concessionaire to penalties. This will encourage the concessionaire to seek all possible means to ensure sufficient productivity is in place to mitigate congestion risk. Eventually, however, as demand rises and congestion risk appears while the concessionaire has exhausted all possible measures to prevent congestion, the port authority will take the initiative to provide for capacity expansion, either within the confines of the existing port, or in a nearby location where a new terminal can serve the same hinterland markets.

Maximum Tariff Limits

In addition to the two methods described above, the regulator has other options to safeguard competition. These include:

1. Incorporating maximum tariffs in the concession contract. This involves the detailed specification of a “basket” of services for which maximum tariffs will be set. This can be done two ways, including allowing concession bidders to propose the lowest tariff as a bid term for the basket of services, which then becomes the maximum tariff, or the government setting the maximum tariff based on its own assessment of what a “fair” tariff should be. Usually, a fair tariff is a reflection of investment risk and acceptable profitability.
2. Monitoring competition behavior. This involves determining the relevant market, assessing the transport options that “service” buyers have for the relevant market, monitoring pricing behavior relative to variances of pricing of services by terminal operators and other service providers, monitoring berth utilization rates to determine if congestion exists (congestion normally indicates the potential existence of monopolistic or oligopolistic behavior), and determining the concessionaire’s profitability (return on equity and return on assets). The assessment of realistic transport options is based in part on cost and carrier frequency of service (number of calls). If cost is “high” and carrier frequency is low, then there is a risk of monopoly as shippers (importers and exporters) will choose better options (lower cost and higher frequency of service) if they exist.

Experience shows that in cases where maximum tariffs are incorporated into concession contracts or other legal vehicles, terminal operators will seek ways to expand the range of services they offer to maximize revenue generation opportunity. This behavior is acceptable in circumstances where the buyer of the service has other options. For example, the terminal operator may offer container repair services, which can also be offered by other service providers outside the port area. Similarly, container storage can be offered by off-dock operators who compete with the terminal operator to provide storage services.

Terminal operators, however, may also attempt to introduce other services by unbundling them from what might be considered standard services. For example, let’s take the case of hatch moves. The hatch is the cover on the deck of the vessel that has to be removed to access containers for discharge or to load them onto designated “slots” (Figure 4). The carrier’s stowage plan communicates to the terminal operator in advance of the ship’s arrival the location of containers on the vessel that have to be discharged at the terminal and the slots in which containers to be loaded should be placed. The terminal operator will then prepare a vessel operations plan to stage its services to the vessel after it

arrives. The terminal operator's software will determine the "choreography" of the operation to minimize the number of re-stows. As the terminal operator needs to move the hatch to get to containers below deck, as indicated by the stowage plan, then this is a necessary procedure for the terminal operator to make revenue on containers below deck and, accordingly, should be absorbed as part of the cost for the loading/discharge operation. Accordingly, it is not the norm for terminal operators to impose a hatch move charge. However, in circumstances where the move is not indicated in the stowage plan when it is filed, then the carrier will make a special request for the container below deck; in these circumstances, the terminal operator is normally entitled to impose a hatch move charge.

Figure 3. Vessel to Berth Hatch Move

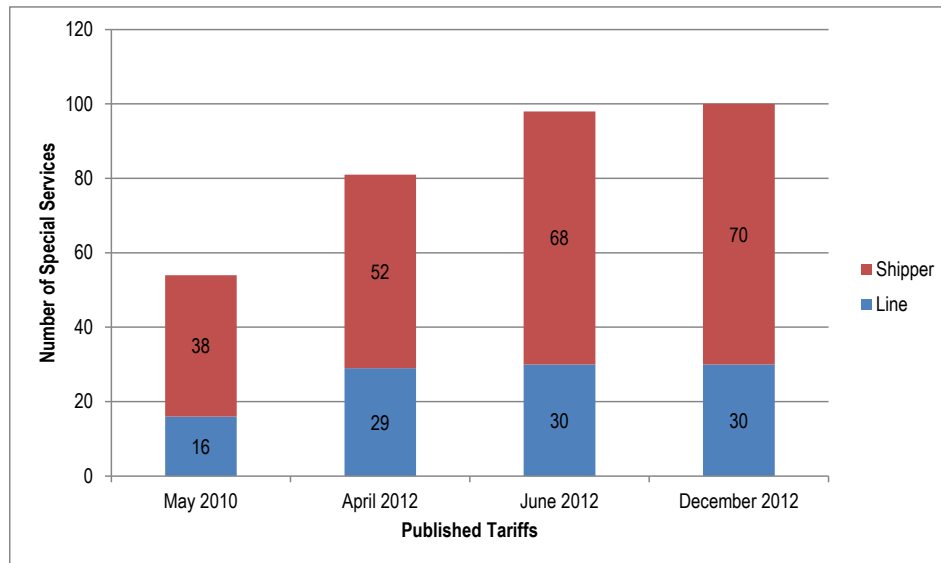


The problem with the above example for hatch moves is that the regulator is not as knowledgeable as the operator is in terminal operations. To the typical regulator, a hatch move is a hatch move and, not knowing the fine-line distinctions of the circumstances for hatch moves, regulators are inclined to accept a terminal operator's request to charge for this service as long as that operator convinces the regulator that the service is not bound by the regulated tariffs. In so doing, terminal operators are adding a charge for a service that normally forms a part of a container handling charge, thereby circumventing the maximum tariffs permitted under the concession contract. It should be noted that the operator may attempt to impose such charges where the shipper is held captive, meaning the shipper does not have a practical option to get the service elsewhere.

Figure 5 shows the growth of the number of charges after a concession was awarded to a global container terminal operator in Peru; in Peru, all charges for services not covered by the concession contract require approval from the regulator. While some of the charges are certainly for services not bound by concession contract terms, others were "invented" with the intent to collect fees for services that are normally combined with the basket of services governed by the contract. For example, the operator assesses an EDI charge for the electronic conveyance of manifest data or the stowage plan. For its own operational efficiency, the terminal operator benefits from electronic conveyance; in fact, one could argue there should be a charge to those who do not transmit data electronically as not doing

so affects operational efficiency. The EDI service instead should be considered as a cost embedded in the cargo and vessel handling fees. It is important, therefore, that contracts are precise in their definitions of tariffs, addressing the operational details composed in the tariffs.

Figure 4. Growth of Published Tariff Items for Global Terminal Operator in Peru Since Concessioned Container Terminal Became Operational



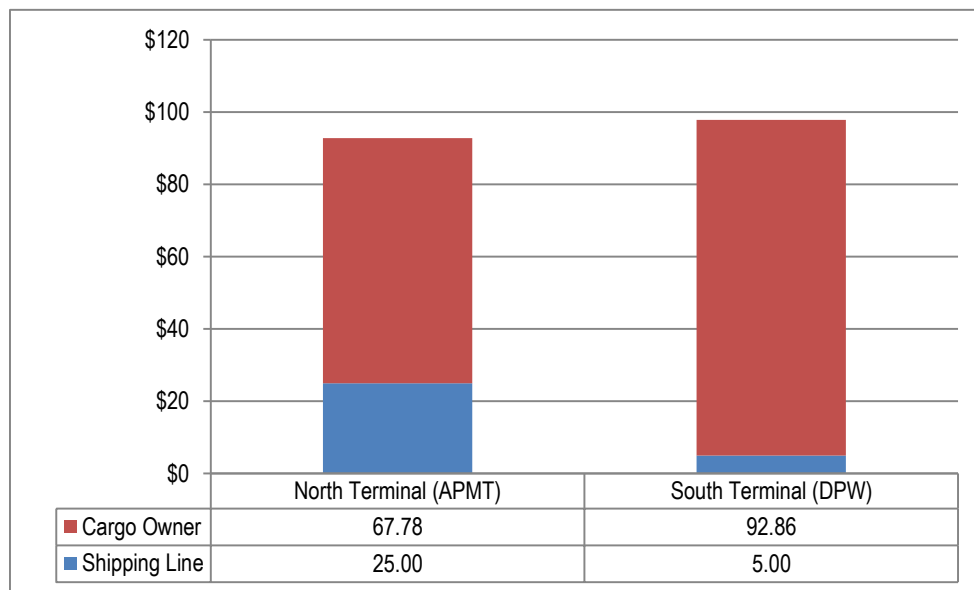
Source: Author's Review of Published Tariffs

Allocating Charges between Shippers and Carriers

It is acknowledged that terminal operators need pricing flexibility. They need the ability to adjust tariffs (within maximum tariff constraints) in accord with competitive conditions. However, there are occasions, even in monopoly environments, where terminal operators will do everything possible to minimize the cost to carriers because of their dominant positions. The discounts to carriers, unless otherwise prohibited, are then covered by increasing charges to shippers. Terminal operators are able to do this if the concession contract does not associate maximum tariff levels with a particular party.

For example, the charge for vessel handling is normally charged to the carrier; let's assume the charge is \$90 per move. The terminal operator may decide it will only charge \$5 per move to the carrier and then charge the shipper \$85 for the same move, even though the shipper does not benefit from the vessel handling service. The terminal operator can do this when the concession contract does not relate a specific maximum charge to a specific party. The concession contract, for example, may set forth a price limit for vessel handling, but should also specify that the charge can only apply to the vessel operator. Such careful specification will prevent the terminal operator from transferring charges to parties that do not receive the service. This will require the regulator to audit and validate charges with obtaining copies of terminal operator invoices to shippers and carriers.

Figure 5. Allocation of Vessel Handling Charges between Carriers and Shippers



Source: Author's Review of Published Tariffs

Competition Monitoring

The above discussion centered on circumstances where tariffs are regulated. However, there can be circumstances where they are not regulated. For example, if there are several stevedores with licenses to serve the same (relevant) market, then it is assumed there is competition. However, some service providers, particularly where the number of them is relatively limited, can be tempted to collude on prices and markets. For example, let's say there are five stevedoring companies and amongst themselves there is an agreement that none will price below a certain charge for cargo loading or discharge. Such a practice restricts competition and the agreed upon price is likely higher, albeit the

same as or below a regulated rate, than what the market may otherwise indicate what the price would be.

The regulator can monitor for such behavior by reviewing tariff filings to gauge the pricing differences among rivals. Licensed stevedoring companies and terminal operators should both be required to publish tariffs and submit filings to the regulator each time a tariff is revised, enabling the regulator to monitor pricing behavior, and such requirement should be reflected in both concession contracts and licensing agreements. Additionally, as noted earlier, published prices can differ from actual prices; even in a monopoly environment, terminal operators and stevedores may offer discounts from the published rates. As terminal operators and in some cases, licensed stevedores, engage in services agreements with carriers, then these agreements should also be filed, under strict confidentiality, with the regulator.

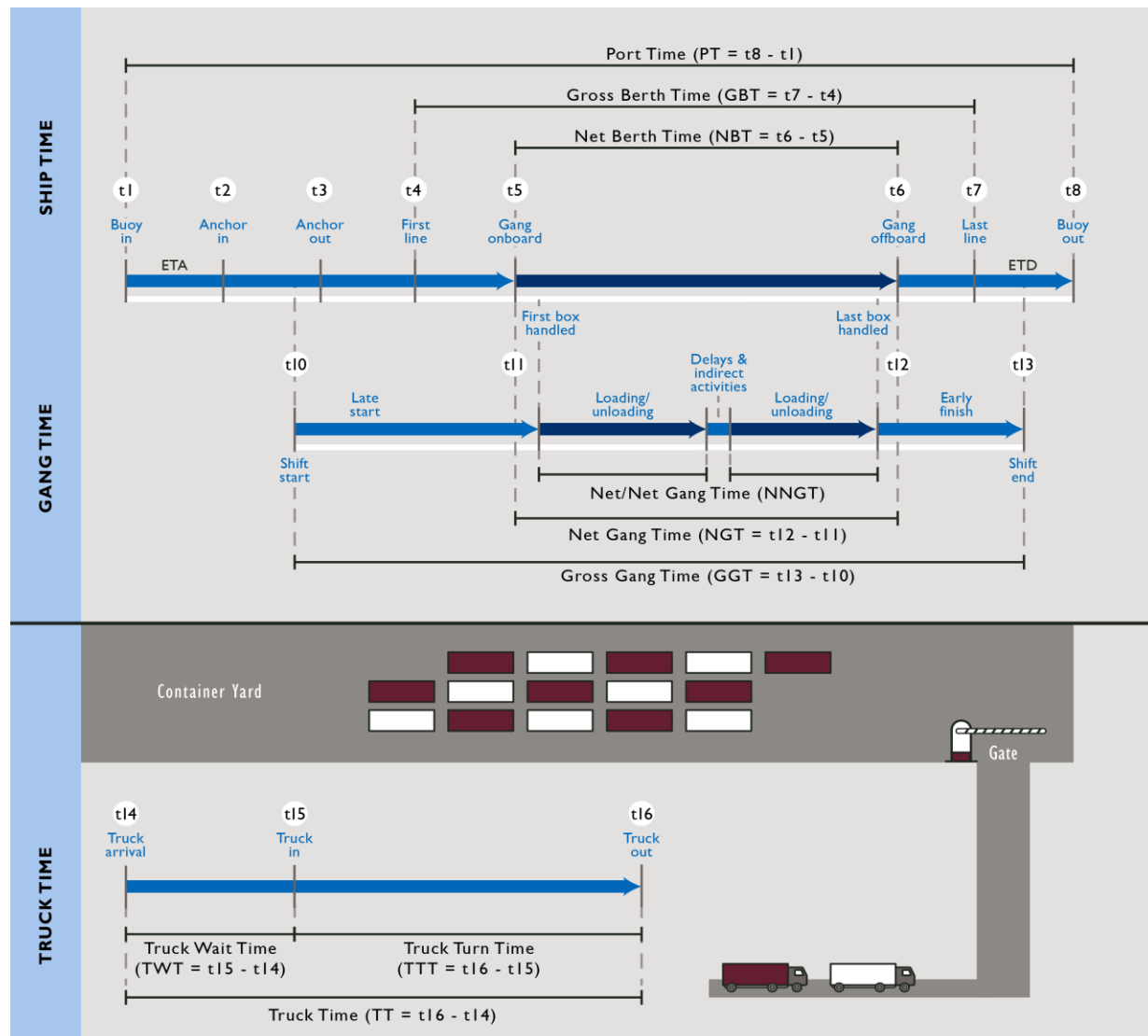
Skill Sets or Knowledge Needed to Perform Competition Regulation and Monitoring Function

Competition regulation and monitoring require a broad range of skills sets and knowledge domains due to the nature of analysis required to conduct the needed analysis. Skill sets and knowledge domains include: accounting/invoicing, port operations, finance, contracts/legal, tariff analysis, industrial economics, and port planning.

OPERATIONAL PERFORMANCE MONITORING FUNCTION

Monitoring the performance of port service providers aims to ensure port users and customers receive quality services. But monitoring is also done to gauge the port's overall competitiveness relative to rival or benchmarked ports and the port's previous years' performance. Monitoring is also done to ensure adherence to operational standards set forth in port concession contracts and to determine if service providers are abusing monopoly positions.

In the case of Cap Haitien, the regulator wants to ensure concession contract performance standards are being met and, when they are not met, to determine the causes for less-than-standard performance. This is done by assessing the time associated with each of the activities that take place along the port logistics chain, that is, the activities that take place between the port's entrance buoy and the port's gates (Figure 6). Having performance that falls below contract standards or that of the level of performance of rival ports places risks of increasing costs for a number of port users (including carriers, shippers, and trucking companies). Increasing costs can result in diverting cargo away to ports that provide superior services or in increased freight charges imposed by carriers and trucking companies.

Figure 6. Time Accounting System for Port Operations

Source: Time accounting system concept originally developed by Dr. Asaf Ashar for the Port of Seattle Productivity Indicator system in the 1980s. Later presented in Asaf Ashar, Paul Kent, *et al*, *Port Reform Toolkit*, Module 6, Port Regulation: Overseeing the Economic Public Interest in Ports, World Bank, Second Edition, 2007; available at https://ppiaf.org/sites/ppiaf.org/files/documents/toolkits/Portoolkit/Toolkit/pdf/modules/06_TOOLKIT_Module6.pdf. Subsequently modified to include truck-related indicators in: Kent, Paul E., Asaf Ashar, and Gerardo Ayzaano, "How Fit Are Central America's Ports? An Exercise in Measuring Port Performance", paper presented to the International Association of Maritime Economists, Norfolk, Virginia, July 2014.

Increased freight costs in turn also increases production and distribution costs for domestic and export production.

In general, port performance address three broad categories of port activities, including berth operations (vessel productivity, vessel waiting time, and berth utilization rates) and truck turn time. APN operational services, which include services that terminal operators do not provide (e.g. pilotage and tug assist), should also be monitored relative to performance of these services, such as waiting time between tug or pilot request and arrival, as delay in these services can add to port time and vessel waiting time. Additionally, APN as an agency should monitor the effectiveness of its administration. Administration effectiveness is measured relative to financial performance, administration productivity, and resource allocation. Additionally, there should be an indicator reflective of female gender inclusion given Haiti's constitutional provisions associated with gender equity.

Skill Sets or Knowledge Needed to Perform Operational Performance Monitoring Function

Operational performance monitoring is expected for both operational performance and port authority performance relative to management effectiveness. Operational performance relates to productivity and efficiency of port services (operational services provided by private parties inside the port areas and those provided by APN, such as pilotage and tug assist) as well as the effectiveness of the port administration relative to resource allocation, labor productivity, and gender equity. Hence, requisite skill sets and knowledge domains include accounting/invoicing, port operations, budgeting/finance, and human resources.

OPERATIONAL REGULATION

Ports straddle the interface between land and water bodies, indicating that ports are usually governed by both the law of the land and of the harbor. The majority of port operations are administered by public port authorities and they are thus charged with establishing the ground rules for providing services and conducting any activity within the port's jurisdiction. The port's jurisdiction is normally defined as that area between the port's entrance buoy and the port's gate. While the harbor master, which may or may not be a port authority employee, usually has the responsibility for ensuring navigation and safety within the harbor; port authorities in turn are responsible for establishing certain rules governing conduct within the port's jurisdiction, including setting forth regulations regarding the use of berths, warehouses, cargo handling equipment, and other facilities within the port's jurisdiction.

Port authorities do not regulate ships and manning. This is normally done by the port-state control entity of a country, which exercises the rights of the state to inspect and as appropriate detain sub-standard ships. The port authority is not involved in this process and, even if it is aware of the fact, it has no powers to exclude a sub-standard ship unless it can prove that the vessel or its cargo is dangerous as defined in legislation or regulation. Additionally, the port state control entity aims to ensure that there is effective control of compliance with international standards by ships in a country's ports and thus ensure that ships sailing in a country's waters have been appropriately constructed and are adequately maintained. To this extent, the port-state control entity normally has jurisdiction over a country's entire territorial waters, including harbors and coastlines.

Against this backdrop, Haiti's SEMANAH has been given the technical responsibility for conducting port-state control responsibilities. In addition to assurance of navigation safety and marine environmental protection, SEMANAH also is the party responsible for ensuring compliance with all international agreements and treaties to which Haiti is a signatory, such as the International Maritime Organization and the International Labor Organization. Haiti is not yet obligated to adhere to the full force of international protocols as it has signed onto only a limited number of them; these include SOLAS 74, Load Lines Convention 66, Tonnage Convention 69, STCW Convention 78, and London Convention 72. SOLAS 74, as amended with the ISPS security protocols, provides that the state meets certain port and navigation security requirements. Accordingly, SEMANAH ensures that APN satisfies these security requirements and, as appropriate, ensures they are reflected in the body of APN's operational regulations. SEMANAH also has an important role in assessing the impact of potential commitments to other and future IMO and other international standards.

Port operational regulations also include the charges imposed by the port authority and the basis from which they are calculated and applied. The regulations need not report charges of other parties providing port services as port users of these services engage such services directly. Volume incentives qualifying customers for discounts from port authority tariffs, invoicing and payment procedures, and late penalties for non-payment, are normally indicated in the tariff section as well.

Haiti is void of national environmental regulations. Hence, the port authority as well as the harbor master serve as the front regulatory line for environmental regulation. Operational regulations should set forth rules prohibiting air, land, and water pollution, procedures for reporting and responding to environmental and safety incidences, and designation of spaces for hazardous cargo storage. Rules should also address the discharge of ship wastes into port waters, tank cleaning, and the use of port waste reception facilities.

Operational regulations also specify the working hours of the port, vessel arrival notification requirements (in coordination with the harbor master), security (e.g. fencing and lighting) requirements for leased properties within the port area (that are not governed by ISPS rules), vehicle access and parking rules, licensing procedures for port services, a description of the port's boundaries, location of navigation lights, buoys, turning basins, and anchorage areas, personal identification and individual access permit requirements, gate and berth operating hours, among other provisions. Regulations should also provide for a complaint disposition and dispute resolution process related to activities conducted within the port area or interpretation of port regulations.

Skill Sets or Knowledge Needed to Perform Operational Regulation Function

Operational regulation is associated with ensuring a safe and secure environment for port users, employees, and customers. Accordingly, needed skill sets and knowledge domains include port operations, port planning, worker safety, environmental protection/mitigation, law enforcement/security, and legal.

CONTRACTS AND LEGAL MECHANISMS FOR PRIVATE SECTOR PARTICIPATION IN PORT SERVICES

The entry of private sector participation that began in the 1980s has led to a number of legal instrument for engaging private sector participation. Though there are exceptions in the features for each type of contractual scheme, the most commonly used ones include:

- 1) concession contract, which implies substantial investment in a port terminal in exchange for the right to build or improve a terminal and provide services in the terminal for a specified number of years, usually sufficient to cover investment costs and reasonable rates of return or profits; concession contracts are normally awarded for terminal operations. They can be awarded for both brownfield terminals (which usually have lower investment costs) or greenfield terminals (which usually have higher investment costs).
- 2) licenses, which are awarded to companies that demonstrate capabilities and qualifications to provide a specific service, and usually providing their own equipment to do so. These have been used for pilotage, tug assist, line handling, and stevedoring services.
- 3) leases, which authorize tenants to use a property within the port's jurisdiction for a specified period of time, though the property's use may not be restricted to maritime or port related services and usually do not require significant investment; leases can be short-term or long-term, depending on market conditions and investment commitments.
- 4) operating agreements, which are structured similarly to leases, but activities conducted on the premises are restricted to a port or maritime related activity.
- 5) management contracts, where operators provide a service and are compensated by the port authority to do so. .

Lawyers will have a field day for arguments over the features of each of these legal vehicles and others that they may have used. In some cases, actual legal vehicles may be hybrids of any of the above, but generally global transaction experience has been limited to the general types defined above. As market conditions change, one form might be considered as a transition to another. For example, many ports where demand is not sufficient will provide for licensing of port services, such as for stevedores, as cargo growth increases over time, port authorities may gravitate to a concession contract provided the investment is justified by cargo growth. A management contract may also be used as an interim agreement between licensing and concession contracts if the port authority determines there can be efficiency gains by engaging a single operator, though cargo volume may not justify substantial investment. Efficiency gains, investment needs, cargo volumes, the impact on competition, and the ability to constrain anticompetitive behavior all should weigh in on the decision as to what legal instruments should be used.

Haiti is pursuing a contract for the operation and management of a container terminal in Cap Haitien. As Haiti's port system evolves over time, and as cargo demand increases, it is likely that APN will engage in other legal relationships to engage port service providers. APN's interest is to contribute to economic growth. Its success will result in greater demands for lands, facilities, and port services. Among other things, concession contracts address tariffs, concession fees and the basis from which fees owed are calculated, operational performance standards, terms of default and conditions for force

majeure, cross references to regulations, investment requirements, dispute resolution process, obligations of the state and/or port authority, and a host of other provisions that are generally designed to address risk allocation between the parties to the contract. Licenses address qualifications and insurance requirements and the conditions in which licensees may have access to the port and specific definitions of the services they may provide under the terms of the licenses.

In addition to formulating legal documents, mechanisms and procedures, APN will also have to monitor compliance by service providers. From experience we know that contract non-compliance is often tied to the service provider not meeting the schedule and standards associated with a construction program, exceeding tariff limits or circumventing them (see earlier discussion on how terminal operators can do this), and failing to meet operational performance standards (refer to earlier discussion related to performance monitoring).

While we emphasize clarity and preciseness in all contractual provisions, these features are especially important regarding standards and milestones incorporated into the contract. It is not possible, for example, to determine if a fifty percent construction completion requirement is met by a certain date without defining what 50 percent constitutes. Similarly, meeting a productivity performance standard of say 20 moves per ship hour cannot be verified without specifying at what point the clock starts for productivity calculation, such as, for example, the clock starting when the first (or last) line is tied and ending when the last line is untied, or the clock starting when a crane's spreader or hook is secured onto the first container to be discharged until the spreader or hook is detached from the last container loaded or discharged from the vessel. In cases where the contract language is not precise or clear, in this productivity standard example, then the operator will argue for an interpretation that provides the widest latitude on which to make the calculation.

Finally, some concession contracts pressure the operator to expand the physical capacity of a terminal if berth utilization reaches 70 percent or so because at this level there is a berth congestion risk. The operator, based on other performance standards, will make every effort to increase berth productivity to avoid making more expensive capacity expansion. But at some point, based on a maximum berth utilization rate standard, hypothetically the operator may interpret the basis for calculating berth utilization to be different than intended by the contract. Again, it is important to precisely define the basis for the calculation of any norms and standard to be incorporated into the contract.

Skill Sets or Knowledge Needed to Engage in Port Contracts Function

Contracts and other legal instruments address not only their structure, but also the array of provisions representing concerns and risk associated with parties to these instruments. Skills and knowledge in law, public domain, public procurement, contracts, land and real estate regulations, accounting, tariff analysis, port operations, and port planning are all required to ensure the efficacy of legal instrument templates as well as assessment of contract compliance.

3. REGULATORY SKILL SET REQUIREMENTS AND INTER-UNIT RELATIONSHIPS

The discussion above described the activities associated with APN's regulatory function responsibilities. For each, we identified the general skill areas required for their successful performance. Table I summarizes the requisite skill areas for each of the regulatory functions described above. Note that all of the functions require skill sets and knowledge associated with port operations while four of the five regulatory areas require skill sets in accounting and invoicing.

The skill sets and knowledge for these functions normally reside within a landlord port authority. Competition regulation is an exception as in most countries this is assigned to a regulatory entity with jurisdiction over the transport sector (e.g. Peru's OSITRAN) or over the port sector (e.g. South Africa's Independent Port Regulator), or by competition commissions or authorities. As Haiti does not have a competition authority, the responsibility is to be assumed by APN; however, as Table I indicates, the majority of basic regulatory skill set requirements are normally found within a port authority.

Figure 7 presents APN's organizational structure. While we could not obtain a structure from APN, its functions are identified on its website, though not fully detailed to discern the full range of activities for each unit. However, we assume that the functions are performed in accord with global practice. Using this as a backdrop, we then map out the relationship between regulatory functional performance and the relationship with each of the units that perform activities related to, or house or generate information needed for, specific regulatory functions. Figures 8 and 9 show the inter-relationships among units and where the information needed to perform the regulatory function resides.

The inter-relationships shown in Figures 8 and 9 illustrate the need for access to information collected and/or generated by relevant units. It also demonstrates a certain degree of the extent of collaboration needed among various units to perform specific functions.

Table I. Skill Sets and Knowledge Requirements for Performing Regulatory Functions

Function	Skill Sets/Knowledge											
	Accounting/ invoicing	Port Operations	Finance/ Budgeting	Tariff Analysis	Contracts	Legal	Port Planning	Industrial Economics	Human Resources	Port Worker Safety	Environmental Protection/ Mitigation	Law Enforcement/ Security
Tariff Analysis	✓	✓	✓									
Competition Regulation and Monitoring	✓	✓	✓	✓	✓	✓	✓	✓				
Operational Performance Monitoring	✓	✓	✓						✓			
Operational Regulation		✓				✓	✓			✓	✓	✓
Port Contracts/Legal Vehicles for Private Sector Participation	✓	✓		✓	✓	✓	✓					

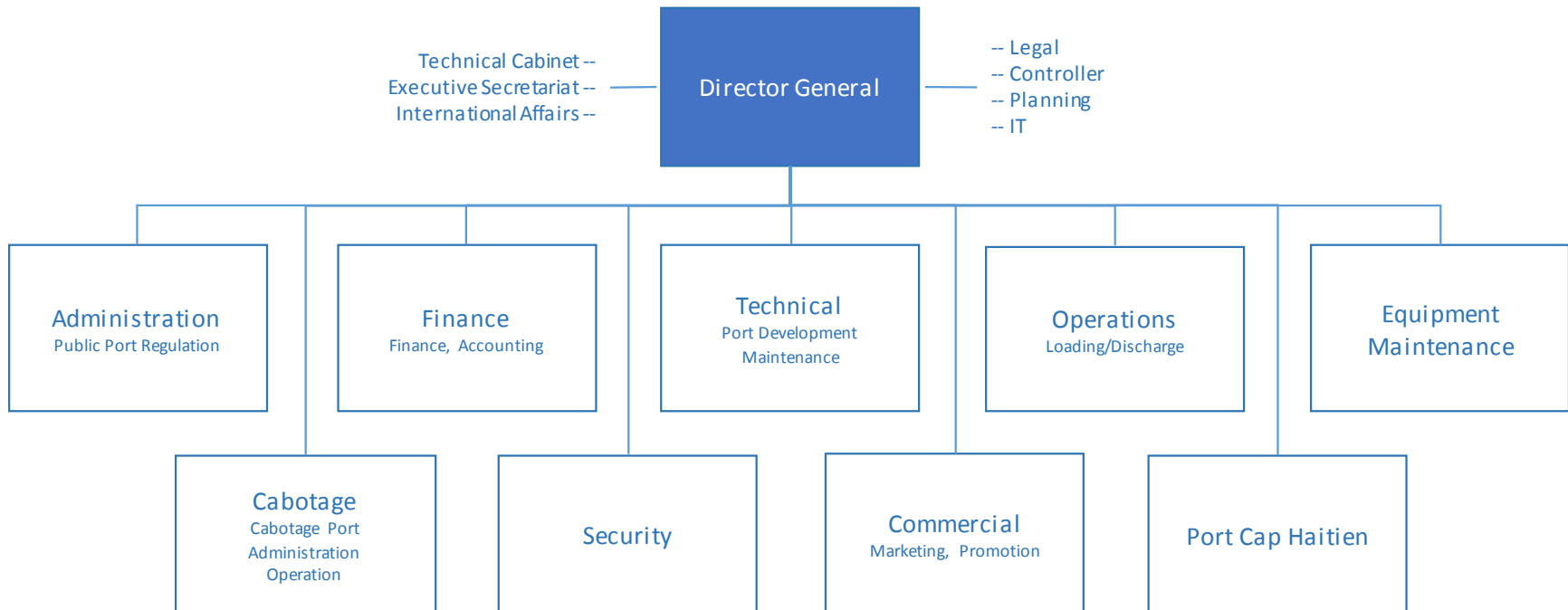
Figure 7. APN Organizational Structure

Figure 8. Relationships Between Tariff Analysis, Competition Regulation and Monitoring, and Operational Performance Monitoring Functions and APN Organizational Units

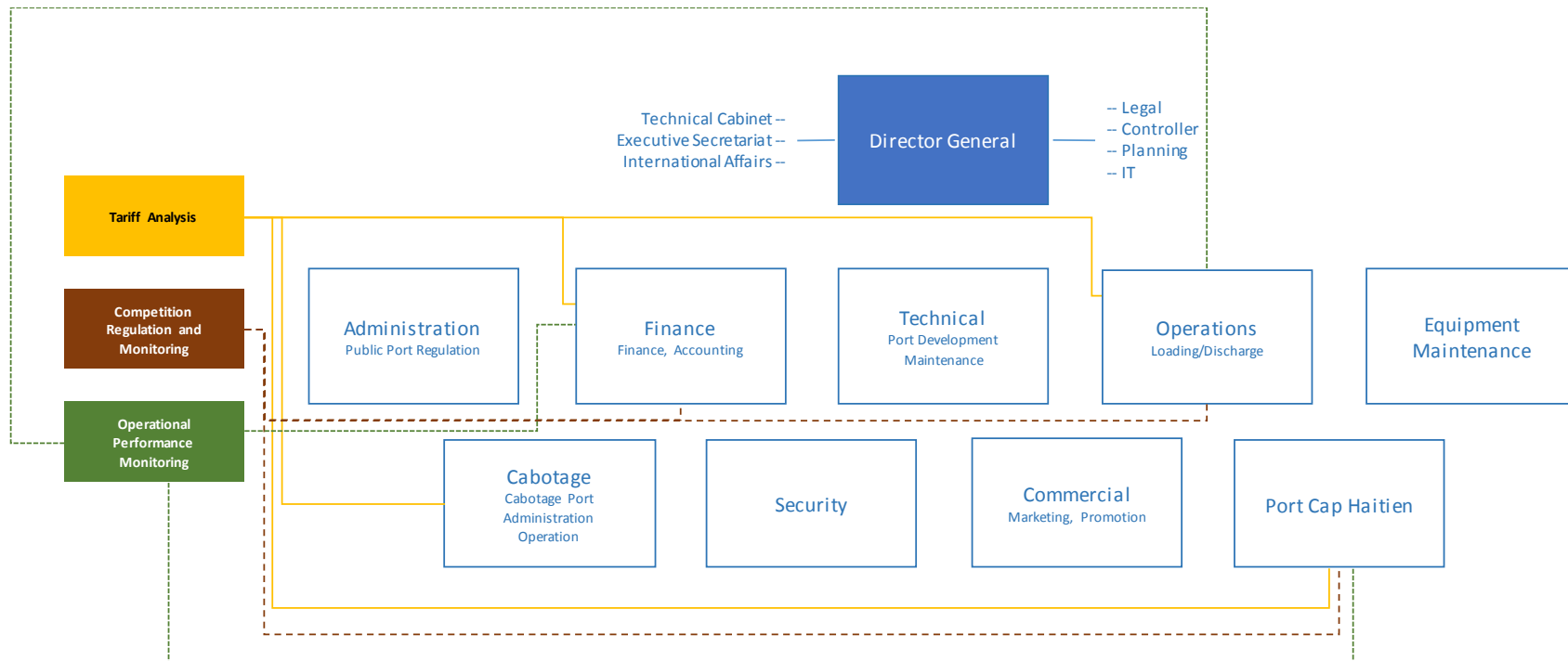
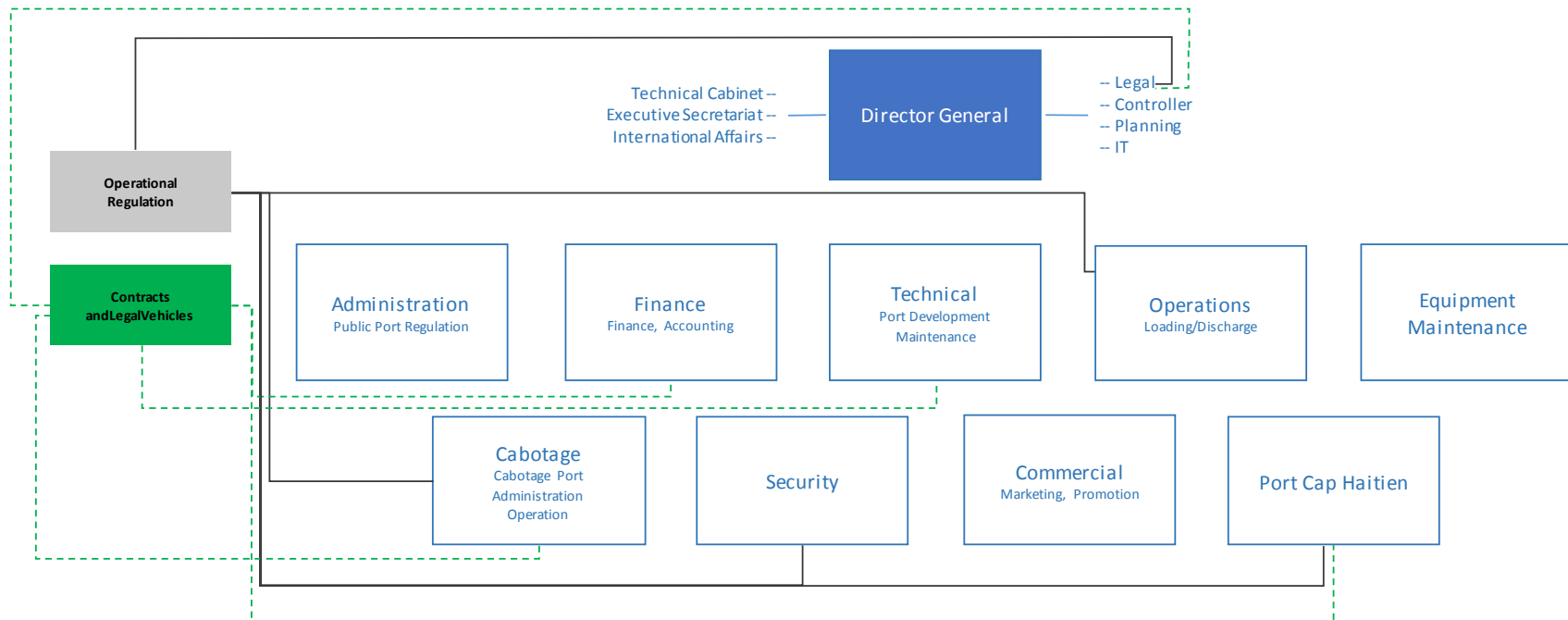
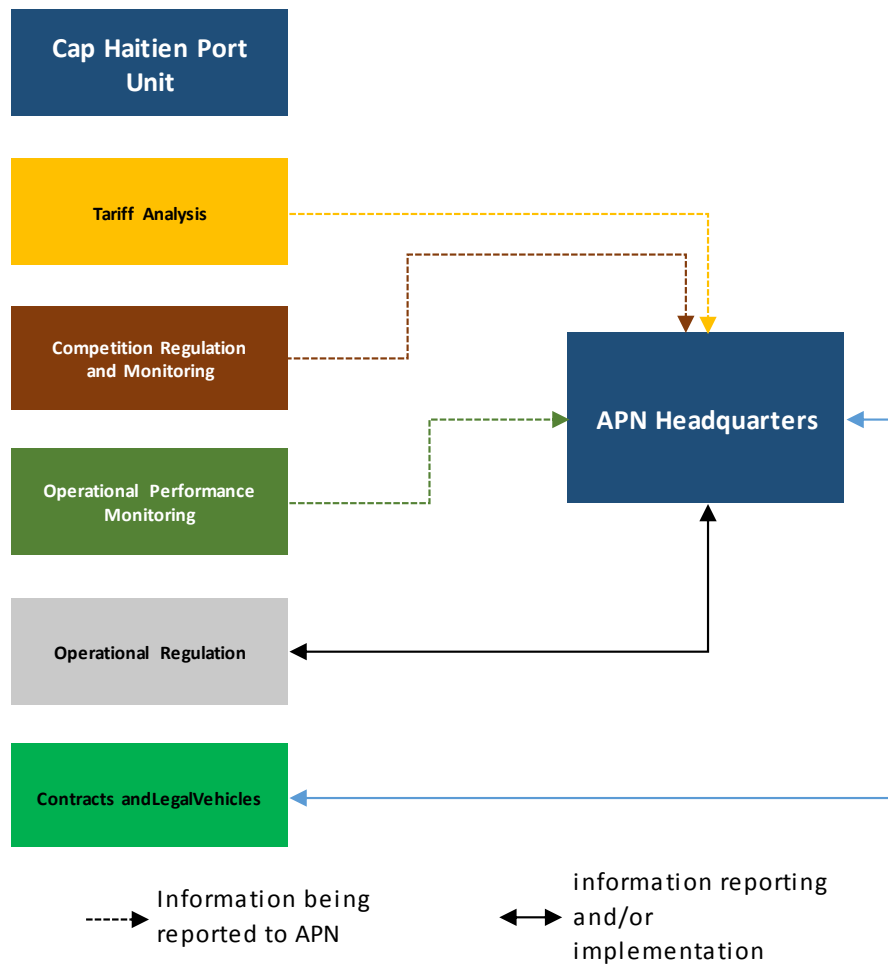


Figure 9. Relationships Between Operational Regulation, Contracts and Legal Vehicles Functions and APN Organizational Units



The figures also indicate that only the Cap Haitien unit has a relationship with all of the regulatory functions. As Cap Haitien is on site as the port administrator there, their primary role, with the exception of operational regulation, is to ensure that relevant information is collected and reported to APN Headquarters by Cap Haitien. This also means that Cap Haitien will have to ensure that future terminal operators also report the requisite operational performance indicators needed to support APN's performance and concession contract monitoring. Similarly, APN Headquarters would need to do the same for operators in Port au Prince. As the entity on the front lines, however, Cap Haitien is responsible for implementing operational regulations. As operational regulations need to reflect both standard best practice as well as Cap Haitien's unique operational environment, it is envisioned that the promulgation of operational regulations will be done through an iterative process between Cap Haitien and APN Headquarters. However, monitoring adherence to Cap Haitien's operational regulations will be the Cap Haitien unit's responsibility.

Figure 10 shows the reporting and information flow relationship between APN Headquarters and the Cap Haitien port administration department. APN Headquarters would have primary responsibility for Tariff Analysis, Competition Regulation and Monitoring, and Operational Performance Monitoring with APN's ability to perform these dependent upon information reporting by the Cap Haitien port unit. Operational Regulation, which relies on both international standards and local conditions, is viewed as a shared responsibility, though as earlier noted, the Cap Haitien port unit would have front-line implementation responsibility. Similarly, APN Headquarters would prepare contracts and other legal documents for its ports to use, but the local port units (e.g. Cabotage and Cap Haitien) would be engaged in ensuring that contractual parties are complying with the obligations and standards imposed upon them in the contracts, with status and information reporting done by Cap Haitien to APN headquarters.

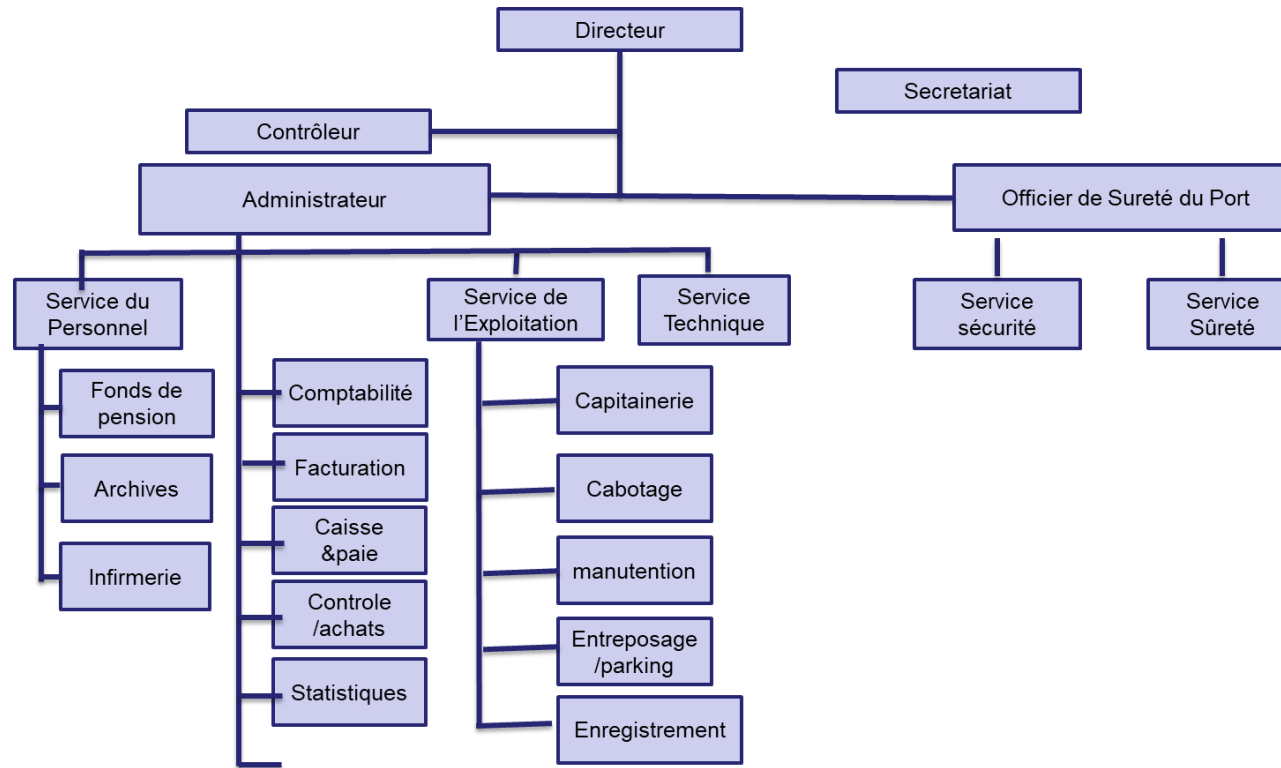
Figure 10. Regulatory Function Reporting and Information Flows

4. ORGANIZING THE REGULATORY UNIT

As indicated above, Cap Haitien will have information reporting to APN regulatory functions, but will also have implementation responsibility relative to monitoring adherence to legal instrument obligations and operational regulations. Figure 11 presents the current organizational chart for CHP. A review suggests that the functional areas currently performed by CHP are appropriate for the CHP's envisioned regulatory role. For example, the accounting, invoicing, and statistics functions within the Administrator's unit are certainly well suited for providing needed information relative to tariff analysis and (in part) operational performance. The Administrator's exploitation unit is well suited for operational performance monitoring as it is this unit that reports operational data for invoicing purposes. The statistics function is also well suited for reporting operational performance given at least a good portion of the data would be related to cargo and other data garnered by this unit. Skills and abilities notwithstanding, the functions as reflected in the CHP organizational unit are well suited for supporting APN's regulatory responsibilities.

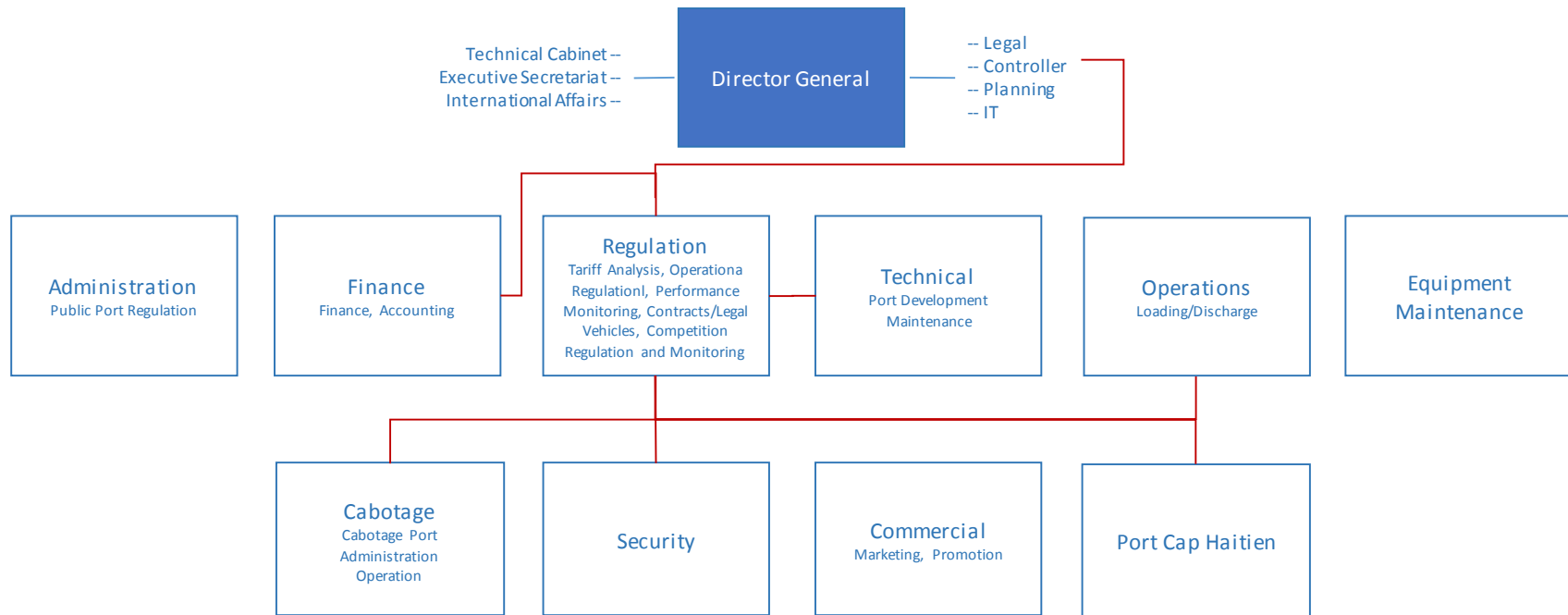
A review of APN's Headquarters organizational structure (see Figure 7 above) shows that requisite components of the regulatory function are scattered throughout the structure. This suggests that already existing functional units are in some way generating some of the regulatory information that is needed by APN as a regulatory body. Figure 12 shows the new Regulation unit within APN's existing organizational structure. As the figure shows, the Legal, Finance, Technical, Operations, Cabotage, Security, and Cap Haitien units all have a regulatory role.

Figure 7 above shows a relatively wide management span of control relative to the Director General. *Harvard Business Review* reports that over the past twenty years, a CEO's average span of control has

Figure 11. CHP Current Organizational Chart

Source: National Port Authority (APN)

Figure 12. APN Headquarters Organizational Structure with New Regulation Unit and its Inter-Unit Relationships



increased from about five direct reports to around ten.² There are both benefits and detriments to a wide span of control – wide spans encourage delegation, can render the organization more agile with improved and speedier communications, and promote engagement among subordinates who enjoy greater autonomy. But wider spans of control can result in high managerial burdens as well, especially in public entities in which the nature of the leadership role requires substantial face time with an array of stakeholders, including public (national and local) agencies, legislators, and public officials, trade associations, current tenants and customers, transport and logistics service providers, and trade associations. As such, the increased demands for management’s attention on internal matters tend to correlate with the number of direct reports to management, depriving leadership of the time required to manage the important public interface of the organization. APN’s General Director currently has no less than 15 people reporting to him. Incorporating the new regulatory unit adds another senior level manager in the reporting sphere.

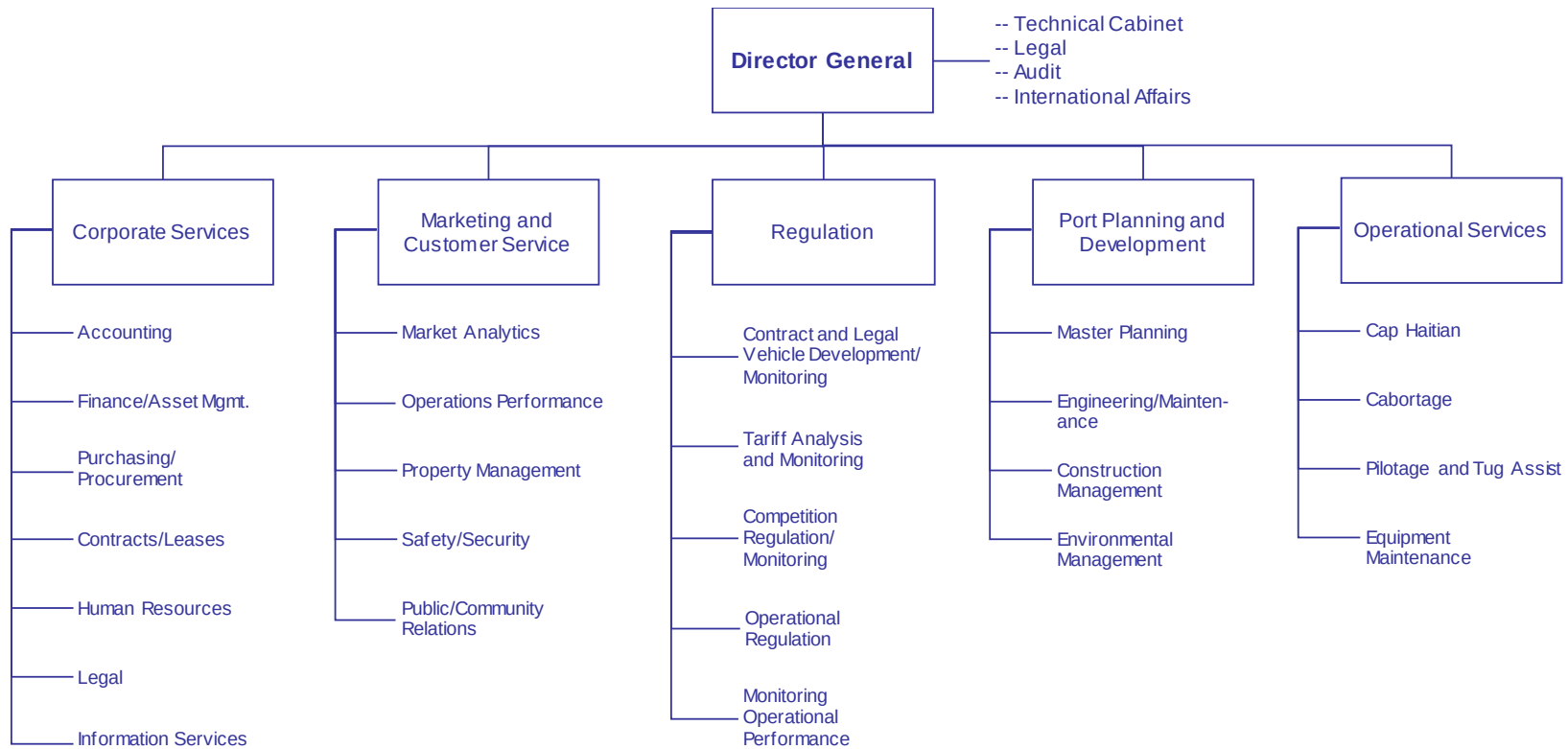
Reducing span of control, essentially making the organization “taller”, also induces the creation of smaller teams, facilitating more rapid communication, creating greater degrees of specialization, and more opportunities for employee advancement, even in smaller organizations. The incorporation of a regulation unit provides the opportunity to conceive a new structure to reflect the external demands on the director general. Figure 14 provides a conceptual organizational structure for APN with a significantly reduced management span of control. This reflects a modernized landlord form of port administration with an emphasis on customer service as well as ensuring a safe, secure, and competitive environment through APN’s regulatory role. Interestingly, the combination of ANAREP and SONAGEP is something of a hybrid structure proposed by a consultant to assist in Haiti’s port reform efforts. ANAREP is the regulatory successor organization to APN to perform a regulatory role as envisioned in the earlier-noted draft port law.

While important, changing the organizational structure alone is not the panacea for effective regulatory performance. It is often said that an organization’s most important asset is its people. APN needs to form its staff, specifically in the area of regulation, with personnel that offer sufficient industry-relevant experience and will be dedicated to APN’s expanding role as a regulator.

Just as APN must provide excellent customer service, it must also provide a positive work environment for employees. This environment is created both from the top down through the management and board leadership and from the bottom up through the effort and input of every member of APN staff. When employees are empowered to realize their full potential and have access to the tools and resources they need to do their jobs, they are more motivated, and therefore more effective. Similarly, when the professional culture is rooted in two-way communication and a strong team identity, all members of the staff better understand how their role supports the APN mission.

² Neilson, Gary and Julie Wulf, “How many direct reports?” *Harvard Business Review*, April 2012.

Figure 13. Conceptual New Organizational Structure for APN, Incorporating a Regulation Unit



As earlier indicated, regardless of the organization structure APN adopts, there are requirements for cross-unit synergies. This means that subject to experience and training, personnel for the regulatory unit can be drawn from other units on both a permanent basis and an intermittent one. Thus, permanent staff of the Regulation unit can be supported on an intermittent basis as the need arises. APN should encourage the needed cross-collaboration through the use of “tiger teams”; these are sub-units that bring together staff from other units on a temporary basis that have the needed diverse backgrounds and responsibilities assigned to specific regulatory tasks. It is conceivable, for example, depending on the regulatory issue being addressed, to include members of Finance, Cap Haitien, and Operations onto the same tiger team.³ We believe this will provide the agility needed in APN to respond to the ebbs and flows of regulatory events that the staff needs to address without hiring a larger permanent staff for the Regulation unit. This is not to say that a permanent core Regulation staff is not needed, but the core staff can be supplemented through the use of such tiger teams. Tiger teams can be created for each of the regulatory functions or created as regulatory-related complaints are submitted to APN. Tiger team staff members ideally will have been trained in the USAID port regulation materials, either through the recently conducted training or that conducted by APN trainers.

³ Note that the Tiger Team term originated from the National Atmospheric and Space Administration in its efforts to identify technical solutions. See Dempsey, J. R., W. A. Davis, A. S. Crossfield, and Walter C. Williams, "Program Management in Design and Development," Society of Automotive Engineers, *Third Annual Aerospace Reliability and Maintainability Conference Proceedings Volume 3 (Astronautics)*, 1964, pp. 7-8. Today, many organizations, public and private, employ the technique as a way to better manage resources while also creating a team focused on the subject at hand.

5. STAFFING THE REGULATORY UNIT

The previous section addressed the recommended organizational option for organizing the regulatory function. Interrelationships among units within APN Headquarters and between Headquarters and Cap Haitien were shown, indicating the reporting information flows required for regulatory monitoring and implementation. As suggested by these interrelationships, the staffing for the regulatory unit has to reflect the same disciplines as those the Regulatory Unit will depend upon for information and implementation, though at a more advanced level. Skill sets for data collection, for example, are quite distinct from those required for data analysis.

Figure 14 presents a profile for the Regulatory Unit. The Unit's scope of activity is defined by the primary objectives set forth in the profile. It is envisioned the Unit will be directed by a Chief Regulator who manages the individuals associated with each of the regulatory functions. We emphasize that this is conceptual. The Chief Regulator will determine how its unit will be organized. Accordingly, we provide a description of each of the regulatory functions and identify the skill, experience, and academic requirements that need to reside in the individuals assigned to perform the function. It is not intended that APN should assume one person for each function; indeed, it is conceivable that one person can perform two functions depending on the background of the specialist. The important consideration is that the Chief Regulator have access to the identified skills sets for each of the functions and that each individual is continuously engaged in upgrading pertinent skill sets. Additionally, as the functions of the Regulatory Unit evolve, it is important that other, more junior individuals that offer potential should be identified to "shadow" the lead specialists for each function.

As earlier stated, regulation is a collaborative effort. It requires interfacing and coordination with other APN units and local port administrations as well as input from and engagement of the port user community. The Chief Regulator is not only a regulator, but an advocate for compliance and due process. Among the Chief Regulator's management responsibilities will be public advocacy for APN regulations and the installment of a complaints disposition process. Complaints can be expected from individuals that complain about certain regulations or those that are affected by adverse operational or

competition practices. “Adverse” does not necessarily imply a breach of any rules or regulations; but the Chief Regulator and staff must consider the merits of each complaint, refer to appropriate authorities any complaints over which APN has no jurisdiction, or refer complaints that may have merit for internal review. It should be noted that complaints can be initiated internally; one of the functional areas may have determined the possibility of a breach of rules, allowable pricing and service practices, contracts, or other port service legal vehicles. Such internally initiated complaints should also be submitted for deliberation and a determination if the complaint is valid or should be dismissed.

Finally, an important note about gender integration at APN. Based on the project’s gender integration assessment and report, female participation rates are historically low at APN, particularly in management positions. Far from granting women additional responsibility, men continue to dominate decision-making processes and dominate all positions at Cap Haitien. Cap Haitien’s female participation rate of about 25 falls well short of Haiti’s 2011 Constitutional amendment requiring 30 percent females in public service organizations. Positions that women do hold tend to be associated with lower seniority. At the same time, there are very few opportunities for women to engage in training and development activities that will enhance their skills and capabilities.

USAID’s port regulatory training programs offer an opportunity for APN to improve the women’s workforce participation rate throughout APN’s ranks. APN senior management should provide training on a regular basis with the use of the regulatory training and tools provided to APN and targeting women that show an interest in moving up APN’s career ladder. And while the training materials focus on regulatory functions, women will have the opportunity to attain knowledge in a wider range of subjects as regulatory functions address operations, administration, accounting, and finance matters. The cadre of trainers developed as part of USAID’s efforts can ensure sustainability provided senior management supports continuous training and development of women within its ranks. To the extent that the port administration is committed to training and development, then the human resources unit should formally recognize the training as a prerequisite for advancement. The combination of senior management support for training and development and it being a prerequisite for advancement will encourage greater women’s workforce participation rates. To that end, APN’s progress can be monitored with the use of an indicator for women’s workforce participation rates by employee seniority category. In fact, such an indicator is recommended as part of an important set of indicators designed to assess and monitor operational performance as well as APN’s management effectiveness.

Figure 14. Conceptual Organizational and Staffing Framework for the Proposed Regulatory Unit

Regulatory Unit Primary Objectives ▪ Develop and update regulatory guidelines to be applied to port industry customers and users ▪ Incorporate best practice standards in regulatory functions ▪ Provide for consistency and applicability of regulatory guidelines to all of Haiti's ports and/or territories under APN's jurisdiction ▪ Ensure port performance and pricing competitiveness relative to rival and benchmarked ports ▪ Monitor port service providers for compliance with performance, pricing standards, and contractual and other legal obligations ▪ Promote equity of access to facilities and services provided in APN ports ▪ Promote fair competition and discourage anticompetitive behavior among terminal providers and other port service providers ▪ Establish complaint procedures and disposition process associated with APN's regulatory jurisdiction	
Regulator Function Leadership Regulatory Unit is to be headed by a Chief Regulator reporting directly to the Director General. The Regulatory Unit will have regulatory responsibility related to tariff analysis, operational performance monitoring, operational rules and regulations, competition regulation, and contracts and legal instrument and establish processes for assessments and receipt and treatment of complaints. The Chief Regulator must have an academic degree in law, accounting/finance, or economics plus 10 years' experience in managing regulatory compliance activities with government agencies, port authorities, private firms subjected to government regulatory compliance, or as a regulatory lawyer, accountant/controller, or economist with consulting or law firms providing regulatory compliance services. Experience in the port or maritime sector required. Excellent presentation, verbal, and written communications skills required.	
Regulatory Function Areas	Functional Objective and Description
Tariff Analysis	Objective: Monitor impact of APN tariff revisions on port competitiveness and APN and individual port financial performance; ensure compliance of port service providers with tariff limits and adjustment provisions within their contracts, licenses, and other legal vehicles engaging port service providers. Tariff analysis function subunit entails assessing the impact of proposed adjustments to APN financial performance and as appropriate the financial performance of APN ports relative to pricing competitiveness with rival and benchmark ports. The tariff analysis function will also set forth tariff filing requirements and petitions for adjustments to tariffs or introduction of new tariffs, fees, or charges to port service provider customers. The function will coordinate its tariff filing requirements and petitions for adjustments, or petitions for introducing new tariffs, fees, or charges, with the Contracts and Legal Vehicles subunit and shall not approve such adjustments and introduction without prior approval of both the Contracts and Legal Vehicles function and the Competition Monitoring function. Senior Tariff Analysis Specialist: Specialist should have five years' experience in accounting, invoicing, or operations for ports, port service providers, or for APN. Must demonstrate familiarity with port or port services pricing practices. Participation in port tariff-related training with international organizations, trade associations, or APN's internal tariff analysis training strongly preferred.
Operational Performance	Objective: Establish an operational performance reporting and monitoring system and monitor operational performance of APN operational services and those contracted or legally authorized to provide terminal, vessel handling, and cargo handling and storage services.

Monitoring	Operations performance monitoring function shall define performance indicators and devise a system to facilitate reporting between port service providers and APN. The function shall coordinate with operations units and port captains or harbor masters, as appropriate, setting forth data collection and reporting and the frequency of which they will be collected and reported to allow for performance monitoring. The function will also generate port authority performance indicators relative to operational services provided by APN as well as APN management effectiveness, including indicators related to operating and labor ratios, employee productivity, and gender workforce participation rates. The function shall interface with the Contracts and Legal instrument to enable the contracts to monitor compliance with contractual, licensing, and other legally obligated requirements and report operational indicators relevant to the legal instrument requirements for meeting operational performance standards. Data, information and documentation generated from this function shall also be transmitted to the contracts to ensure legal compliance with operational standards as appropriate as well as the Competition Monitoring Function. The function shall also generate performance reports at a frequency sufficient to allow for performance monitoring and to allow immediate intervention as needed for APN and port service providers to take corrective action. Senior Operations Analysis Specialist: Specialist should have seven years' experience in accounting, invoicing, or operations for ports, port service providers, or for APN. Must demonstrate extensive familiarity with port operational services. Participation in port operations training with international organizations, trade associations, or APN's internal port indicator training strongly preferred.
Contracts and Legal Instruments	Objective: Develop, procure, negotiate, implement, update and supervise contracts and other agreements for engaging private sector port service providers, update them in accordance with Haitian law, and monitor for APN and port service compliance. The legal will formulate and update contract, licensing, and legal instrument templates for use by APN for engaging port service providers in accordance with applicable Haitian law and international best practices. In formulating the templates, the legal department shall interface with the Operational Performance and Tariff Analysis functions to determine appropriate standards and maximum tariffs and other charges to be incorporated in the contracts and monitor compliance relative to operational standards, tariffs, and other provisions of the legal vehicles. The legal department shall also coordinate with the Tariff Analysis Function in the evaluation of petitions for tariff adjustments and introduction of new tariffs, fees, and charges to ensure such adjustments and introductions do not circumvent the tariff maximum limits imposed by the legal vehicles. The legal department shall also coordinate with the Competition Monitoring (CM) function to enable an assessment of the impact of adjustments and revisions on competition. The legal department shall also issue corrective action or cease and desist orders when it is determined there is a breach of contract and provide recommendations for penalties or other actions to be undertaken by APN. Senior Contracts and legal Specialist: Specialist should hold an academic degree from an accredited law school in law and have seven years' experience in law or operations for ports, port service providers, or for APN. Must demonstrate familiarity with contracts and legal vehicles for port or port services. Participation in port legal or operations training with international organizations, trade associations, or APN's internal contracts and legal instrument training strongly preferred.
Operational Regulation	Objective: Develop and implement operational regulations governing the use and activity within the confines of APN ports and ensure operational regulations reflect best practices as well as those imposed on Haiti by international protocols to which Haiti is a signatory. The Operational Regulation (OR) function is associated with setting forth the rules and regulations that govern port user, service provider, and customer activities that take place within the harbors and lands under APN's jurisdiction. This is done in furtherance of operational safety and security of APN ports. The OR function shall interface with Haiti's port-state control authority, SEMANAH, or any successor organization to ensure operational regulations reflect as appropriate port-state control regulations. The OR function shall also report violations of operational rules and regulations to APN's legal counsel as well as the CLV for ensuring compliance with contracts and legal vehicles and to take enforcement action. The OR function shall also establish APN local port administration requirements for reporting violations of operational rules and regulations, receiving complaints of alleged violations, while ensuring APN local port administrations are implementing operational rules and regulations effectively. The OR function shall also review complaints relative to alleged breaches of regulations and to determine their merit and recommend a course of action to be taken by the Chief Regulator. Senior Operational Regulation Specialist: Specialist should hold a degree in port management and logistics from an accredited university and have seven years' experience in port, terminal, or stevedoring operations, safety and security enforcement in a port area, or experience with a port-state control authority. Must demonstrate familiarity with ISPS code and best practices for safety and security regulation in ports. Participation in operational regulation-related or safety and security training with international organizations, trade associations, or APN's internal operational regulations training strongly preferred.

Competition Regulation	Objective: Create an environment that promotes fair competition and constrains anticompetitive behavior of terminal operators and other port service providers. The Competition Regulation function (CR) function is associated with monitoring for anticompetitive behavior and advocating for fair competition among the port community. The CR function will monitor pricing behavior of port service providers by reviewing petitions for tariff adjustments or introduction of new tariffs, fees, or charges. The CR function shall also review operational performance indicators and determine if the causes of declining or poor performance are attributable to competition constraints. The CR will work closely with other functions within the Regulatory Unit as appropriate. Additionally, the CR shall review all master plans, or adjustments of them, and assess their impact in promoting or constraining competition and determine if competition can be induced relative to physical capacity, market demand, and other factors as appropriate. The CR shall also review complaints relative to competitive behavior to determine their merit and recommend a course of action to be taken by the Chief Regulator. Senior Competition Regulation Specialist: Specialist should hold a degree in accounting or economics from an accredited university be an accountant or economist with seven years' experience in utility or infrastructure pricing and/or performance regulation. Must have academic degree in economics or accounting and excellent communications skills. Maritime or port industry experience as well as advanced academic degree preferred. Participation in competition or economic regulation with international organizations, trade associations, or APN's internal competition regulation training strongly preferred.
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