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Insights from the Dutch Case

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**The role of public shareholders in government owned port development companies;
insights from the Dutch case.**

Abstract

This paper discusses how public interests in seaports can be secured in the corporatized model. This corporatized model, in which port authorities engage in port development on a commercial basis, is increasingly used. We discuss in detail an important question that so far has not received attention in the literature on port governance: how can public shareholders use their influence as shareholders of port authorities to achieve public policy goals. We advance the theoretical body of knowledge by applying insights from regulatory economics to the ports industry. As an empirical illustration, we analyse the current practices of the public shareholders of the four large Dutch port authorities, based on policy documents and interviews. All of them have explicit shareholder policies. However, some of these policies are too broad to provide sufficient direction for the management team and supervisory board of the port authority involved.

Keywords: port reform, public interests, port authority, corporatization, shareholder policy.

1 Introduction

In the past four decades many governments devolved the responsibility for port development to an independent port authority. Port authorities are mainly government owned in virtually all countries, exceptions include the UK, Greece and Australia (see Van der Lugt et al., 2013). There is a clear transition towards a more autonomous and commercially operating port authority (see Brooks, 2007; Verhoeven, 2010; Debie et al., 2013 and De Langen and Heij (2014). Although De Langen and Hey (2014) identify persistent differences between countries and ports, the conclusion from that review is summarized as follows:

‘Notwithstanding the diversity of port governance models, most reform trajectories have a common broadly defined direction towards a port industry where a publicly owned landlord port authority operates as a commercial undertaking and with an appropriate regulatory framework in place’ (De Langen and Heij, 2014, p. 399).

This implies that port authorities are increasingly positioned as state-owned enterprises (SOEs), and no longer as part of the public administration (for instance as part of the Ministry of Transport). Port authorities in the Netherlands, Germany, France, Portugal, Oman, South Africa, New Zealand, Canada and Saudi Arabia operate as rather autonomous state-owned corporate entities. The ongoing transition towards this model increases the relevance of understanding the role of the government entities as owners of the port authorities: the way in which the owners behave has a substantial impact on port developmentⁱ.

In the analysis below, government ownership refers to the government ownership of the port authority. In this respect, as we have argued previously (de Langen & van der Lugt, 2017) following corporatisation *port development company* (PDC) is a better term than *port authority* as PDC rightly emphasizes the commercial role (see Verhoeven & Vanoutrive, 2012 who define a typology of three port authorities, all of which have a commercial role) and the corporatized entity is subject to regulation and does not have important ‘authority’ in the sense of power delegated by government. In the remainder of this paper, we use PDC for the organisation tasked with managing and developing the port, even though this organisation often is named ‘port authority’ (as for instance with ‘Venice Port Authority’).

While the role of government in seaports has been frequently addressed, starting with the seminal paper of Goss (1990), and more recently with contributions of the role of governments in granting concessions in ports (Farell and Vanelslander, 2015) and a call for critical analysis of governance in the ports industry (Wilmsmeier and Monios, 2015), most of the papers do not

focus on the ‘root question’ why government involvement in the ports industry would be desirable, but describe the ‘business model’ of the port authority in terms of the landlord, toolport or service port models. Our approach is to start with the core issue of identifying the public interests in ports that justify government involvement, and next discuss the implication for how governments can best secure public interests. Other relevant governance issues are addressed in more detail in a related paper (see de Langen and Saragiotis. 2017).

First, we review the literature on state owned enterprises (SOEs) to identify the arguments that justify state ownership in general and analyze the validity of such arguments for state ownership of port authorities. In the next section we identify public interests in ports. This provides a basis for answering the question under what conditions government ownership of the port is appropriate. Next, we describe in detail the shareholder policies of the corporatized Dutch seaports based on publicly available policy documents of the government owners of port authorities in the Netherlands. We end the paper with conclusions, as well as potential avenues for further research.

2 Legitimacy of state-owned enterprises

In an analysis of previous empirical literature, Boardman and Vining (1989) as well as Megginson and Netter (2001) conclude that there is strong evidence of superior performanceⁱⁱ of private corporations compared to state-owned enterprises. Thus, state ownership is generally considered as the ‘second best’ method to secure public interests; it is only appropriate when regulatory or other subsidy mechanisms to secure public interests are not effective (Shirley & Walsh, 2001).

As state ownership in general is likely to negatively impact performance, the argument for state ownership needs to be based upon the fact that SOEs behave differently compared to privately owned enterprises and that such differences are in the public interest (see the OECD guidelines on state-owned enterprises, OECD, 2015 on this issue). The generally held view, clearly put forward in a recent OECD discussion paper on this issue, is that SOEs ‘are expected to act, at least in some respects, differently from private companies in like circumstances’ (Christiansen, 2013, p.6).

In line with the arguments above. Sappington and Stiglitz (1987) argue there is a trade-off between reduced efficiency through government ownership and increased costs and/or

ineffectiveness of the alternative, which is regulatory government involvement. Industry characteristics that favor SOEs include: (a) difficulties related to drafting, monitoring and enforcing a contract between the government and a private firm (more difficulties favor SOEs); (b) competition (less competition favors SOEs); and (c) the importance of continuous improvement (the more important continuous innovation the stronger the case for private companies, as SOEs are not as innovative as their private sector counterparts, see Shleifer, 1998). In most industries (such as retail, car manufacturing, all kinds of services for producers and so on) private sector companies with government regulation is the best modelⁱⁱⁱ.

Various studies demonstrate the need for ‘de facto autonomy’ for efficiency of state owned enterprises (Xu et al., 2005). Menozzi et al. (2012) found that the more politically connected the board of an SOE, the higher the employment levels and the worse the SOE performance. In addition, in some cases, SOEs are protected by regulation and have ‘soft budget constraints’ and consequently do not effectively control operating costs (Lin and Tan, 1999). This explains why SOE performance is better when state budgets are under pressure (Yarrow, 1999). However, there are important exceptions; Hertog (2010) discusses the presence of well performing SOEs in the Middle East where governments have limited budget pressure. This is due to the lack of political interference in the SOE decision making. In summary, autonomy and a board composition based on merit instead of political connections are critical for SOE performance.

In addition, a well-developed mechanism to induce the SOE to act in the public interest is relevant for SOE performance, see Rentsch and Finger (2015). These authors point out that government shareholders of SOEs (local and national) often behave ad-hoc instead of based on a clear policy framework. This reduces SOE performance. Effective state ownership would require an ‘ownership policy’. Important elements of such an ownership policy include identifying the public interests served through the state ownership, detailing the (executive and supervisory) board nomination process and defining the targets (including the dividend policy) and risk tolerance levels (OECD, 2015).

3 Legitimacy of state involvement in ports: public interests

Following the argumentation that state ownership of enterprises is the ‘second best’ method to secure public interests and only appropriate when regulatory (or other subsidy mechanisms) to secure public interests not sufficiently effective (Shirley & Walsh, 2001), government

ownership of port authorities/port development companies can be justified only if there are public interests at stake that cannot be secured sufficiently effectively by regulatory mechanisms.

In this section we provide an analysis of public interests in the ports industry, the regulatory mechanisms to secure these public interests and public interests that cannot be perfectly secured through regulation, thereby providing an argument for state ownership of port authorities. Table 1 shows the public interests in ports, identified through a literature review.

Table 1: public interests in ports

Public interest	Explanation of public interest	Previous studies
Nautical safety	Nautical incidents have effects on the society as a whole, including pollution. In addition, ships navigate in water owned by the state.	Gold (1983); Goulielmos & Pardali (1998).
Minimizing negative externalities	Negative externalities harm the well-being of the general public. This applies to emissions as well as stench and noise and other negative externalities of port activities.	Goss (1990); Ng & Song (2010); Kolk & Van der Veen, (2002).
Sufficient competition	Dominant market positions of either the port authority or service providers in the port may lead to excessive pricing.	Kent & Ashar (2001).
Market access	Insufficient market access reduces competitive pressure on service providers in ports and hurts port users and thus the general public.	De Langen & Pallis (2006); De Langen & Pallis (2007)
Level playing field	Distortions from a level playing field due to differences in government policies (for instance regulation, subsidies, tax practices) lead to an inefficient allocation of resources: some ports will receive more cargoes that in an optimal situation, others less.	Haralambides et al., (2001); De Langen & Nijdam, (2007).
Port development initiative	Given the huge regulatory complexity and uncertainty, initiatives for new port development may not emerge even though they are in the public interest.	Gilman, S. (2003); Asteris & Collins (2006).
Land use changes	Given changing user needs (for instance larger ships), a transition of port facilities to urban functions may be in the general interest, but may not emerge 'spontaneously' given unaligned interests.	Pellegram, A. (2001); Frantzeskaki et al., (2014).
Continuity of port operations	A limited risk profile of the PDC is in the public interest given the effects of financial distress of the PC on port users and thus society at large.	Chen, S. L. (2009).
Positive R&D externalities	Investments in R&D 'spill-over' to third parties. Thus, investments in R&D are in the public interest.	Goss (1990)

The two arguments explain why some widely used public interests are not included in table one. are relevant for understanding. First, table one only lists port specific public interests, in the sense that these public interests require port specific policies. On top of these, a large

number of more general public interests, such as safe working conditions, non-discrimination, road safety, food security and others) are also relevant in ports. However, these public interests require a general policy framework that applies to all economic activities, including activities in ports.

Second, the public interests listed in table 1 are based on arguments for the failure of fully free markets to produce the best outcome for society. Widely accepted arguments include the abuse of market power and the presence of externalities (positive and negative). Based on this 'narrow definition' of public interests, broadly defined public interests such as 'economic development' or 'employment creation' are not included. Seaports do have an economic impact, like all other sectors of the economy, but that does not imply 'market failure' and thus a role for government. More precise arguments about conditions under which free markets fail to produce the best outcome for society are needed to develop sound policies to promote economic development^{iv}.

Table 2 provides a summary of the regulations to secure the public interests listed in table 1 and an assessment of whether or not there are bottlenecks that reduce the effectiveness of regulatory mechanisms to secure the public interests.

Table 2: Overview of public interests in ports and how they are secured by regulation

Public interest	Regulations of international bodies & agencies (including EU).	Regulations of national/regional governments.	Bottlenecks for securing public interests through regulation?
Nautical safety	International safety standards (amongst others: ship safety, crew requirements).	Clear legal framework for responsibilities and requirements of harbour master and pilots.	No, there are no indications that regulated private pilots and a private harbour master would negatively impact nautical safety.
Minimizing negative externalities	International environmental standards (amongst others: carbon emissions, waste reception, protection of ecological assets).	Environmental regulation regarding noise, stench, air quality.	Possibly, environmental regulation is effective to set minimum standards for environmental protection. Efforts beyond the minimum standards cannot be secured through regulation.
Sufficient competition	Legal framework with competition law applicable to port industry	Competition law applicable to port industry, active monitoring of port pricing when required (i.e. when market power is likely - countries where ports have captive hinterlands.	No, competition law can prevent abuse of market power.
Market access	Legal framework to ensure non-discriminatory granting of concessions and entry to essential facilities.	Legal framework to ensure non-discriminatory granting of concessions and entry to essential facilities.	No, competition law can secure artificial entry barriers are removed.
Level playing field	Legal framework that prohibits state aid to port infrastructure, suprastructure and operations.	Legal framework that prohibits local subsidies to port infrastructure, suprastructure and operations.	No, regulation can effectively secure a level playing field ^v .
Port development initiative.	Planning regulations concerning protection of valuable ecological assets.	Planning regulations that enable business case driven port development initiatives. Conditions in land lease to commercially operating landlord.	Possibly. Regulation cannot secure a high level of investments in port development, while the benefits of such investments partially may be societal benefits that cannot be captured by the PDC.
Land use	Spatial planning instruments	Spatial planning instruments	Possibly, regulation cannot secure efficient land use and smooth land-use changes, even though these may be in the public interest.
Continuity of port operations	-	Regulation that limits risk profile of port authority.	No, regulation can secure continuity of operations ^{vi} .

Positive R&D externalities	-	Regulation to provide incentives of training & R&D.	Possibly. Investments by the PDC with positive externalities cannot be enforced through regulation.
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The assessment in table 2 of the extent to which regulation can secure the public interests is relevant: when regulation is not effective, this is an argument for government involvement in the PDC. Table 2 shows that five of the nine public interests can be effectively secured through regulation. However, regulation may not be an effective policy instrument to secure four other public interests^{vii}. Thus, these four public interests may provide an argument for government ownership of port authorities:

1. Insufficient commitment to port development. Investments in port development create value for society, amongst other through lower generalized transport costs and direct and indirect employment creation, as demonstrated by economic impact studies (Musso et al., 2006). Like all commercially operating companies, a PDC aims to ‘capture’ that value creation through charging port dues and land lease fees. However, a PDC cannot capture the full value arising from port development through port dues and land lease fees. For instance, land prices of privately owned land adjacent to newly developed terminals may rise and new port infrastructure may lead to new investments in manufacturing and logistics, which generate employment as well as benefits for established firms through positive effects from agglomeration. In addition to the imperfect value capture, port development projects often require lengthy decision processes as well as construction periods and are often contested projects in the sense that there is serious opposition from one or more interest groups (Aerts et al., 2015). The PDC faces uncertainty regarding approval of investment plans and substantial costs for developing port plans (see Asteris & Collins, 2010 who show this is the case for the fully private port development initiatives in the UK). Both effects: the imperfect value capture and the huge uncertainty and planning costs may lead to lower private investments in port development than desirable from a societal welfare perspective . This is a second argument for government ownership of the PDC, as a government owned PDC generally will be specifically tasked for developing (a) certain port(s). A government owned PDC generally has financial objectives but does not strive for profit maximization and has goals related to port development (see Van der Lugt et al., 2015).

2. Securing positive externalities. Spill-over effects in relation to training, education, and innovation may create positive externalities. This argument is potentially relevant in ports as port development companies are essentially developing a ‘business ecosystem’ (a cluster of interrelated activities) and may be expected to invest in activities that strengthen this ecosystem. As an example, the port business ecosystem benefits from an effective port community system (PCS, see Caro et al., 2008), but the individual companies in the port do not have the incentives to invest in such a system. The same logic applies to investments in stakeholder support, training and education, marketing and information exchange. Thus, a government owned PDC may be expected to make more investments with positive externalities than a private PDC^{viii}.
3. Reducing negative externalities. Regulation cannot secure commitment of the port development company to reducing (local) negative externalities, (stench, noise, small particles) beyond limits imposed by environmental regulation . in the port context, it is important to keep in mind that the overall port complex may be a huge source of environmental pollution in a region/country. For instance, Rotterdam’s port complex accounts for about 19% of the total CO2 emissions of the Netherlands in 2015. Government ownership allows for reducing emissions beyond regulatory limits .
4. Changes in land-use. Port development often requires port expansion and enables the transfer of land from port functions to urban functions (the co-called waterfronts). There are many examples of re-development of port areas into urban waterfronts (see Brown, 2009 for examples in the US). In many port cities, waterfront redevelopment creates public space for the city residents. Such a land use transition cannot be achieved based on a ‘for profit’ model. Thus, in the case of a private PDC, government regulation would have to specify under which conditions land would have to be transferred from the private port company that holds a master concession to exploit land owned by the government or may also own the port land (as is the case in the UK) to a public entity. However, specifying land transfers in a contract is problematic as it depends on many uncertain factors such as re-location decisions of port users, port expansion and technological developments. For instance, larger ship sizes that may reduce the viability of terminals with draft limitations, which often are close to city centers. But the increase of ship sizes was not and cannot be accurately forecasted. Therefore, land transfer from the port to urban functions cannot be effectively regulated. As with the above argument, PDCs differ from other private land owners in terms of the huge size of land they develop. In Rotterdam for example, the area managed by port of Rotterdam that may

be transferred to urban functions, the so-called Stadshavens area, is as much as 40% of the total area of the city of Rotterdam. Furthermore, PDCs manage waterfronts, which may be especially attractive for urban functions, as demonstrated by the waterfront redevelopments in many port cities (Barcelona and Genoa are well known examples). For these reasons, a regulatory approach to land use transitions in port cities is unlikely to be effective.

These four public interests cannot be secured effectively through regulation, provide an argument for government owned PDCs. These may be expected ‘to act, at least in some respects, differently from private companies in like circumstances’ (Christiansen, 2013, p.6), more specifically:

- a higher commitment to reducing negative externalities and creating positive externalities (R&D and training and education);
- commitment to port investments even when benefits are partly external and costs and uncertainty of port planning is high; and
- more prone to agree with municipal or regional government on land transfer or development of port land for urban functions (including as public space).

These four arguments are not necessarily relevant in all ports. A SOE for port development is only appropriate if one or more of these arguments apply. For instance, land use issues are especially relevant for metropolitan ports (New York, Hong Kong and many others), not for ports located outside urban areas (such as Tubarao and Port Hedland). Likewise, in small ports or ‘single user ports’ the positive externalities from investments in the business ecosystem are not likely to be important.

4 Rationale for shareholder policies for state owned port development companies

The four public interests that cannot be effectively secured through regulation makes government ownership of PDCs legitimate. In line with the findings on SOE governance (summarized in section 2), government ownership will only be fully effective if the government develops a mechanism to secure that the PDC acts in accordance with public interests. Without such a mechanism, government owned PDCs cannot unambiguously be expected to act differently compared to privately owned ones, while these differences justify government ownership in the first place.

The appropriate mechanism to make sure the PDC is oriented on public interests is an explicit shareholder policy^{ix} (OECD, 2015). With clear shareholder policies in place, choices can be made in line with the stronger orientation of the government owned PDC on public interests. A shareholder policy provides a long term direction to the PDC, and may prevent ad-hoc interference^x or decision-by-decision discussions on what the relevant public interests are. Table 3 shows the issues that the shareholder policy needs to address, based on the analysis above.

Table 3: Issues to be addressed in shareholder policies

Issue	Expected/ desired difference state owned port development company compared to fully private port development company.
Port development from a social value perspective	Stronger commitment to development of ('home') port' from a wider societal perspective (creating social value next to private value)
Make investments with positive externalities	Stronger commitment to investments with positive externalities.
Decision-making where negative externalities are relevant	Stronger commitment to prevent / limit negative externalities.
Land use planning & transfer	More cooperative approach to transferring land/ a shared approach to/with other state agencies in case of changing land use to urban functions.

5 The government shareholders of port authorities in the Netherlands.

The main theoretical conclusions with regard to shareholder policies are provided in Table 3. Given that current state ownership of PDCs may be as much the result of a historical port reform path as it is the result of deliberate policy choices (Ng and Pallis, 2010 and Notteboom et al., 2013), corporate governance practices of the four largest Dutch ports are analysed. The central aim is to understand whether or not the logic described above is in line with policy practice in the Netherlands. We selected the Netherlands because it is a country with a strong track record in port development, where - following continuous port reform trajectories -

autonomous state owned (corporatized) PDCs have become the standard model (De Langen and Van der Lugt, 2017).

Our research approach consists of two research activities. First, in-depth analysis of the formal documents related to the corporatization. Documents like the shareholder policy document (if available), articles of association, and other formal documents that address the role of the shareholder have been analysed. Second, interviews with the port managers involved in the port reform and the representatives of the shareholders of each of the ports. 10 interviews were held in the period September 2015-March 2016. The interviews addressed the shareholder policies. We first describe the governance structure of the corporatized PDCs. This is followed by an analysis of the shareholder policies related to the identified public interests that justify government ownership.

The structure of government owned port development companies in the Netherlands

In this section we describe briefly the governance structure of corporatized port authorities in the Netherlands (See for a more detailed description De Langen and Van der Lugt, 2017). We only discuss the four larger ports in the Netherlands, that together account for over 95% of all throughput in the Netherlands^{xi}.

The largest port in the Netherlands, Port of Rotterdam Authority, was corporatized in 2004. The port authority has two shareholders, the municipality of Rotterdam, (the majority shareholder with about two thirds of the shares), and the Dutch state. The division of responsibilities between the shareholders, the supervisory board and the executive board is in line with the corporate governance laws, with some specific provisions in the articles of association. The executive board is appointed by the shareholders, based on a proposal by the supervisory board. The remuneration policy (use of bonuses for instance) is decided by the shareholders, the specifics of the remuneration (the level of the bonus) by the supervisory board. The major decisions need to be approved by the supervisory board, the shareholders need to approve only strategic decisions, such as very large investments, very large loans, investments outside the Netherlands and mergers and major participations. Long term strategic vision documents and business plans require approval of both Board of Commissioners and Shareholders. The other port authorities also were transformed to roughly the same corporatized model as PoR:

- Zeeland Seaports was transformed to a government owned company the first of January 2011, with four shareholders: the Province of Zeeland, and three municipalities. These four shareholders participate in a holding organization that is the sole shareholder of Zeeland Seaports. The government shareholders continue to provide loans to the corporate entity, through the holding organisation, as Zeeland Seaports cannot attract debt against good conditions. The aim is to terminate the loans guaranteed by the stakeholders, as soon as the solvency allows Zeeland Seaports to borrow independently.
- Port of Amsterdam became a commercial entity on the first of April 2013. All shares are held by the municipality of Amsterdam. The company has an executive board consisting of a CEO, COO and CFO. The supervisory board consists of six members, all of which are independent.
- Groningen Seaports became a government owned corporate entity as of 14 June 2013. Like Zeeland Seaports, the sole shareholder is a holding, in which the province of Groningen and the municipalities of Delfzijl and Eemshaven participate. The Board of commissioners consists of three civil servants, one from each of the involved administrations and two ‘independent’ board members.

All four corporate entities are subject to laws applicable to corporate entities (private law). This is in contrast to the old governance structure that was subject to laws for public administrations (public law, for instance on transparency, i.e., all documents had to be made publicly available, and open procedures for purchasing had to be followed).

The division of responsibilities between the shareholders and the supervisory board is similar in all four ports, and is to a large extent determined by corporate governance law in the Netherlands^{xii}. The Board of Commissioners of the port of Rotterdam and Amsterdam and Zeeland Seaports consist of independent members (in the sense that they do not represent a specific shareholder or are board member because of their job position with one of the shareholders). For the Port of Groningen, board members represent the province and the two municipalities involved.

The supervisory board approves major decisions; the shareholders only approve strategically important decisions, for instance regarding equity stakes and major investments. One notable difference between the port authorities is that in the case of Groningen Seaports, the shareholders directly appoint the director, instead of formally appointing a director based on a proposal of the supervisory board.

Shareholder policies; general approach in the Netherlands and the case of the PDCs

The general approach to SEOs in the Netherlands is that state control should be exercised through legislation, regulation or contracts, and only as a last resort through shareholder powers. In general the government shareholders of the Dutch ports do have explicit shareholder policies. The national government - which owns a minority share of PoR - has a general policy on dealing with state participations. Likewise, the city of Amsterdam (100% owner of Port of Amsterdam) and Rotterdam (the majority shareholder of PoR), have formal policies regarding municipally owned corporate entities.

In the general Dutch policy regarding SOEs, it has been established that the government does not aim for profit maximization. Nevertheless, sufficient return on investment is a key policy principle. There is no generally applicable norm for the rate of return, for every specific SOE, a reference rate of return is established based on benchmarks. These benchmarks may include similar SOEs in other countries or within the Netherlands.

The shareholders of PoR do not have a formal joint shareholder policy. The municipality of Rotterdam does have a specific shareholder policy, which may have been informally shared with the central government. The province of Zeeland and the municipal shareholders have agreed on a formal shareholder policy specifically regarding Zeeland Seaports. The shareholders of Groningen Seaports have in 2016 developed a specific shareholders strategy developed, containing specific goals for Groningen Seaports, merely from a public interest perspective. In Amsterdam, a broader shareholder policy on all municipal participations also specifically addresses the objectives for Port of Amsterdam.

Concerning the financial goals, in all four cases explicit norms for dividend are stated. In the case of Amsterdam, the dividend policy has been agreed in the corporatization process, with a fixed minimum annual dividend of €24.5 million, and potentially a variable part depending of the financial performance, with guarantees regarding liquidity and solvency. In the case of Rotterdam, dividends were also fixed for the first years after corporatisation, (at 4% of the value of total equity) later dividends grew substantially as PoR's profit increased. The long term agreement was that the dividend would be increased to 60% of net profits from 2021 onwards. At the time of the agreement the idea was that the investment needs would reduce, following the finalization of the port expansion project Maasvlakte 2. These agreements were modified in 2014, leading to a 'super dividend' to the state as shareholder, in exchange of a

reduction of dividends from 2021 onwards. In the case of ZSP there is an explicit goal of 8% return on equity. The dividend policy specifies no dividends will be paid until the shareholders no longer have to guarantee loans of ZSP. The shareholders strategy document of Groningen Seaports (2016) specifies a return on equity of at least 6%, of which 50% is normally dividend for shareholders. The document further specifies that this dividend may also be used for financing the achievement of public goals that cannot be achieved within market based financial conditions, as long as continuity of Groningen Seaports is not at stake. This dividend policy is also applied to Groningen Seaports.

6 Assessment of shareholder policies related to public interests in Dutch seaport

This section analyses the extent to which shareholder policies address the public interests that cannot be completely secured through regulation (see table 2).

Commitment to port development

In all four cases, the statutory goals reflect the commitment to the development of the (home) port from a wider societal perspective. Rotterdam mentions as performance indicator the economic impact of the port complex for the municipality. There are however no explicit policy requirements with regard to the creation of societal value by means of specific investments. The shareholder policy for ZSP mentions that 20% of employment in the province of Zeeland is related to the port complex, therefore the port is regarded as a strategic asset for the province. Goals such as employment are mentioned in the shareholder policy document, but not quantified. In the in 2016 published shareholders strategy of Groningen seaport, economic development - and especially employment - is specified as one of the main goals for Groningen Seaport: a concrete goal of 2% employment growth per year is stated. In the case of Amsterdam, no specific performance indicators are mentioned in the shareholder policies.

Investments with positive externalities

The vision documents of the four PDCs mention ‘innovation’ as a core success factor for long term competitiveness. However, none of the stakeholder policies explicitly has objectives

regarding investments in innovation, nor outcomes of innovation activities like knowledge and competence development,

Likewise, none of the shareholder policy documents explicitly mentions the importance of cruise traffic, even though Amsterdam, Rotterdam and Zeeland Seaports attract cruise calls and the local economic impact of these cruise calls is significant – in Rotterdam studies claim total expanses of a cruise call in the local economy amount to about €500.000 per ship.

Investments with negative externalities

The shareholder policies of Rotterdam and Amsterdam mention sustainability as an important objective. For Rotterdam specific goals are mentioned: to reduce the CO2 footprint of port activities and to reduce the share of containers transported by truck. In addition, Rotterdam explicitly mentions the CO2 emissions as performance indicator. Amsterdam requires all SOEs of which it is a shareholder to report on CO2 emissions. However, this instrument may be too focused on the emissions directly of the port authority, and not address the CO2 emissions of the entire port complex, even though Port of Amsterdam influences these, amongst others in (re-)negotiation of concession contracts. For Port of Groningen the shareholders have specified a reduction of 40% CO2 between 2015 and 2030. For Zeeland no explicit policies were identified.

Land use planning & transfer

In all four ports in the Netherlands, the government shareholders of the PDCs own the port land and have an ‘perpetual’ concession contract with the PDC. Amsterdam has the most explicit mechanisms to deal with land transfer. The two main characteristics are:

1. Port of Amsterdam needs approval from the municipality for land lease agreements with non port-related activities.
2. The municipality can decide that port land will be transferred to urban use. Such a transition decision needs to be embedded in zoning plans and may require a long period of transition, in which the port activities are continued.

Even though the issue of transition of port land to urban functions is also relevant in Rotterdam, no explicit mechanisms have been developed. Furthermore, the shareholder policy does not address this issue.

The shareholders strategy document for Groningen specifies that land allocation should be done taking into account the public interests in the port. Explicit example is reserving land plots for labour intensive activities.

Overview of items in shareholder policies

The extent to which the four public interests mentioned above are explicitly addressed in the formal shareholders policies is summarized in table 4:

Table 4: Summarizing overview of shareholder policies with regard to public interests in Dutch seaports

Issue	Rotterdam	Amsterdam	Zeeland Seaports	Groningen Seaports
Port development from a social value perspective	In statutory goals, limits to international participations.	In statutory goals.	In statutory goals.	In statutory goals, specific goal of 2% employment growth per year
Investments with positive externalities	No explicit objectives.	No explicit objectives.	No explicit objectives.	No explicit objectives.
Decision-making regarding negative externalities.	CO2 emissions as performance indicator.	CO2 emissions as performance indicator.	Importance of sustainability mentioned: no specific objectives.	Specific objective of 40% CO2 reduction between 2015 and 2030.
Land use planning & transfer.	Requirement to periodically develop a long term plan for port development.	Mechanism that enables the shareholder to transfer port land to urban functions.	No specific mechanisms.	No specific mechanisms.

This table shows that some public interests are explicitly addressed, but others are not. In Rotterdam, the municipal independent internal policy auditor evaluated the mechanisms to

exert influence over PoR. They concluded that the presence of an explicit shareholder policy is good, but that the shareholder policy is not explicit enough regarding some items, more specifically land use and investment decisions with positive externalities for the municipality. In Groningen the lack of a clear shareholders strategy was identified two years after corporatization and a shareholders strategy document was published in 2016.

In the other ports, PDCs were like Groningen Seaports recently corporatized and there are no evaluation studies.

Based on our analysis into the existence of shareholders policies regarding public interest that are not or cannot be completely safeguarded by law we draw the following preliminary conclusions:

- On port development the statutory goals cover also the public interests, but specific policy requirements for creating social value by specific investments is overall lacking
- On innovation there is hardly any performance requirement mentioned by any of the shareholders
- On environmental effects there are goals mentioned, but not in all cases specifically enough and in one case only very recently introduced
- Some supervisory board members of Groningen Seaports are appointed based on their administrative function (i.e. the provincial politician responsible for economic development) instead of their capabilities in monitoring a PDC.

7 Conclusions and further research

This paper adds to the body of knowledge on the governance of port development by theory building, based on applying insights from regulatory economics to the ports industry. The Dutch cases by and large support the theoretical arguments put forward in this paper. Even though the cases are from the Netherlands alone, the identified public interests as well as bottlenecks for securing them through regulation are ‘universal’ in the sense that they are potentially relevant in all ports around the world. However, this does not imply that there is one standard best governance model for port development^{xiii} (see Ng and Pallis, 2010).

The theoretical exploration of public interests in seaports and mechanisms to secure them, in combination with empirical analysis of formal shareholder policies in the Dutch seaports has led to the following conclusions.

First, the theoretical overview identifies eight public interests in seaports that require port specific regulatory or other mechanisms to secure these public interests. Second, independent of government or private ownership of the PDC, each of those eight public interests require an appropriate regulatory framework. This regulatory framework is partly supra-national and partly national.

Third, on top of regulation, there is a case for government involvement in the port development company. Government ownership in the form of government owned corporatized port development companies is a means to further align port development with the public interest. This argument does not necessarily apply for all ports, as in some ports the benefits of government ownership may be minor, while there are also disadvantages. Case by case analysis is required, based on the framework presented in this paper.

Fourth, insights on the functioning of SOEs in general show that the appropriate instrument for securing the PDCs orientation on public interests is through an explicit shareholder policy. . The paper identifies four areas that deserve attention in shareholder policies for government owned PDCs.

Fifth, in the Netherlands, the government shareholders of the port authorities do have developed explicit shareholder policies, but they do not fully address the four public interests which are not fully secured through regulation. The analysis of documents reveals that the process of developing detailed and informed shareholder policies is ongoing. In some cases this goes hand-in-hand with efforts to reduce other mechanisms to influence the choices of the PDC, such as the composition of the supervisory board or discussions in the city council regarding port development. This shift towards formal shareholder policies provides greater clarity and consequently is expected to result in better alignment of PDC decisions with public interests.

This paper is to our knowledge the first paper that addresses shareholder policies for government owned port development companies. Given the ongoing transition of port authorities towards this model, more analysis is needed. Various issues deserve more attention, such as the comparison of the model of corporatization with government ownership of a landlord port development company with a model with one master concession for port development to a fully privately owned company, the analysis of government owned PDCs in ‘institutionally weak’ environments (see e.g. Cannizzaro and Weiner, 2014), as well as in depth

analysis of advisory board meetings based on meeting records (see Cariou et al., 2014, for a first exploration).

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- i The recent attention for political interference in decision-making of the Port Authority of New York and New Jersey (PANYNJ) -the closing of some lanes, causing congestion at some exits was linked to the Republican Senator Chris Christie who at the time was the chairman of PANYNJ, see https://en.wikipedia.org/wiki/Fort_Lee_lane_closure_scandal- is one illustration of this relevance.
- ii Comparing performance is not straightforward. Government owned corporations may more often hold dominant market positions that may lead to high performance in terms of profitability (Ramaswamy, 2001). Even though some scholars disagree (see Bance and Obermann, 2015 for an introduction to a special issue on the value of SOEs), the conclusion by Megginson and Netter (2001) and Boardman and Vining (1989) conclusion is widely accepted.
- iii Public transport sector constitutes a good example of a sector where some of the above characteristics are relevant, especially in cases where governments have policies to make public transport attractive through subsidies: (a) contracts between governments and private companies are complex; (b) competition with other public transport providers is limited; and (c) the product is fairly stable over time. Other sectors where SOEs may be appropriate are energy, education and health care. In many countries, SOEs play a large role in these sectors.
- iv Economic development is best thought of as a ‘second order’ theme: most of the public interests listed in table 1 promote economic development. For instance, sufficient competition and continuity of port operations are public interests due to their contribution to economic development.
- v In most countries there is no legal framework that secures a level playing field. However, this is due to ill advised policy making, not due to the problematic nature of regulation.
- vi To avoid an unwanted transfer of land to third parties, the long lease agreement contains a standard clause. This enables the municipality to finish the agreement in case of bankruptcy or serious failure in leasehold liabilities and compliance to the Harbor Agreement. The municipality then compensates the Haven Amsterdam NV for the actual value of the long lease claims.
- vii These public interests can also not be contractually agreed between government and the SO, due to imperfect contracting. There are so many uncertainties and contingencies that contracts are not effective.
- viii Private initiative of all companies in the cluster (for instance to invest in R&D and training and education) is problematic (de Langen, 2008). Furthermore, a private PDC lacks incentives to fund and/or coordinate activities with benefits for the entire cluster. Government may provide funding and/or incentives, but cannot effectively initiate cooperation and get the project selection right.
- ix A shareholder policy is a different instrument compared to a contract between the SOE and government. Whereas a contract requires specifics, the shareholder policy can set general goals and ambitions for the SOE. The independent supervisory board, that is appointed by the shareholders, should be committed to these goals and ambitions.
- x A full analysis of other mechanisms through which government shareholders can exert influence is beyond the scope of this paper. This is an important issue, as too much political influence over the decisions of the PDC is likely to reduce the quality of decision-making.
- xi This description is an update of a previous paper on port governance in the Netherlands (De Langen and Van der Lugt, 2006).
- xii In the Netherlands, the shareholders have relatively much influence in SOEs, for instance, they can fire the board of directors. Furthermore, the law explicitly states that the government shareholders are required to actively play a role as shareholder.
- xiii For instance, the right choice between government ownership and regulations, as mechanism to secure public interests, depends both on characteristics of the ports in question and the success of using SOEs in the country in question in general.