



## EFFECTS OF GOVERNMENT REGULATION IN A PORT IN SOUTHERN BRAZIL

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### ABSTRACT

This article aims to analyze the effects of government regulation from the experience of the Port of Imbituba, located in the southern region of Brazil. Methodologically, it is a descriptive and exploratory research, adopting the strategy of a case study, with literature review, documentary survey and field research. For the data collection in the field, we conducted in-depth interviews out with the agents that have a relationship with the Port of Imbituba. The data were analyzed and discussed, using an essentially qualitative approach. We find that with Law no. 8.630/93, port capitalization, port modernization, leases for private enterprise and availability of tax incentives to increase were made possible. On the other hand, the regulations of the 1990s failed to delegate responsibilities to the Port Authority. With the new Ports Act no. 12.815/2013, positive aspects arise with the attempt to promote a national logistic development plan in Brazil, expansion of the possibilities of capital contribution, participation of the private sector and the development of the Master Plan for the ports. Among the implications of the new standard, we still need to understand the new modeling and the new concepts brought by it, regional specificities and historical problems of training and professionalization.

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### INTRODUCTION

The efficiency of Brazilian port structures, through public and private ports, and the country's economic development, are related in parallel. So that these structures can contribute as inducing the strengthening of internal and external trade, it is essential to create conditions for a national logistics integration plan (Zilli, Gianezi & Vieira, 2015). On the other hand, it is verified that the Brazilian port infrastructure, characterized by its diversity of management models, presents historically, problems in terms of the flow of production, which have been accentuated since the beginning of the 1990s, decade of the country's commercial reopening. Such problems have impacted on the competitiveness of the organizations that demand these services, both in the domestic market and in the international market. Added to this, the precariousness of road and rail access and the lack of dredging, which are also considered to be historical obstacles to the development of the country's logistics system, and in particular to production regions dependent on the port system, as is the case in the south of the state of Santa Catarina. In order to minimize such "logistical delay", the Brazilian government has sought to

make investments in port infrastructure, improvement of access roads to ports, draft dredging and modernization of services. Through the implementation of the National Port Logistics Plan (NPLP), Development and Zoning Plan (DZP), Master Plan (MP) and General Concession Plan (GCP), a port development program is planned, at the national level, integrated with the needs of its users, with a view to reducing logistics costs, increase competitiveness in exports, encourage private investment and better logistics efficiency. In the Brazilian context, with special emphasis on the port sector, developing a plan that promotes integration between maritime, terrestrial, air is important, since according to the Special Secretariat of the Ports of the Presidency of the Republic - SEP/PR<sup>1</sup> (2012, p. 45): "[...] productivity is one of the determinants of logistics costs incident in national and international trade" (Brasil, 2012). Therefore, the concretization of these investments and actions will be fundamental, given that ports have economic relevance as a locus through which approximately 80% of exports and 75% of Brazilian imports occur. In the scope of Santa Catarina, these data are more evident and relevant, especially in relation to the cargoes coming from the international market, representing 86%.

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<sup>1</sup>Currently called the National Secretariat of Ports and directly linked to the Ministry of Transport, Ports and Civil Aviation.

Table 1. Evolution of the modeling of public ports

THEMES	BEFORE LAW 8.630/1993	AFTER LAW 8.630/1993	AFTER LAW 12.815/2013
Administration	Public	Public (a), Private and PUT (a)	Public (b), Private, PUT, FTS, PSPF, PTF.
Operation	Public	Private	Private (c)
Equipment and Facilities	Public	Private	Private - Same situation as the transaction (c)
Port Work	Public (linked and unlinked, by trade unions)	Private (d) (unlinked, linked and logged), employment relationship (productivity)	Private (same situation, but now the wharfage has to come from the MMBO).
Rate	Public	Public/Private	Public/Private (e)
Infrastructure	Public	Public	Public
Superstructure	Public	Essentially Private (f)	Essentially Private (f,g)
Other Functions	Public	Public/Private	Public/Private (h)

Source: Prepared by Zilli (2015, p.134) from the CNI(2007) and Law no. 12.815/2013.

This is because the State of Santa Catarina has a diversified port structure, with four Organized Ports (OP) and nine Private Use Terminals (PUT), both with equally differentiated management models. In the north of the state, there is the Port of São Francisco do Sul, a state government agency, and the Port Terminal of Itapoá, with private administration. In the Itajaí Valley, we highlight the Port of Itajaí, with municipal administration, and the Port Terminal of Navegantes, with private administration. And in southern Santa Catarina, according to the National Waterway Transportation Agency – ANTAQ (2015), three port structures stand out, the Public Ports of Imbituba (administered by SCPAR Porto de Imbituba S.A), Laguna (administered by *Companhia Docas de São Paulo – CODESP*) and the Imbituba Port Terminal, a Private Use Terminal, administered by *Imbituba Empreendimentos e Participações S/A* (Brasil, 2015). With greater emphasis in the region, the Port of Imbituba was historically linked to the coal movement and to the Dona Tereza Cristina Railroad, interconnecting the port with the coal mines (Goularti Filho & Moraes, 2009). According to Silva, Zilli and Dal Toé (2013, p.5) with the development of the southern mesoregion of Santa Catarina, the Port of Imbituba “[...]w as structured for the storage and handling of its main shipping product, that is, the coal extracted from several municipalities, such as Criciúma, Tubarão, Siderópolis and Urussanga”.

For decades the Port of Imbituba was a reference for the coal mining and transportation sector, moving in the 1980s, about 4 million tons per year. However, the reduction of import taxes and the loss of the coal subsidy in the 1990s, made the port change its profile, going from being essentially an exporter of coal, to a receptive port for other types of goods (CDI, 2015). This change of profile, accompanied by a new port management model, added other possibilities to Imbituba, which gradually gained importance as a main or alternative port for several productive sectors of southern Santa Catarina. After 70 years, administered by *Companhia Docas de Imbituba*, the port passed to a management linked to the government of the State of Santa Catarina, through SCPAR *Porto de Imbituba S.A*, in 2012. This management model was designed specifically to meet the needs of the port of Imbituba, as well as positioning itself competitively in front of the other ports of Santa Catarina and the southern region of the country (Silva Zilli & Dal Toé, 2013). The observation of such context, together with the perspectives of the previously mentioned policies and the bibliographical reference previously selected, served as a basis for initial reflection and problematization of the research object, as well as to elaborate the following questioning: What are the contributions and implications of government regulation for Brazilian ports? And more specifically, how was this reflected in the development of the Port of Imbituba? From this context, this article aims to

analyze the effects of government regulation from the experience of the Port of Imbituba.

**Literature Review on Port Regulation:** Historically, the regulation of the Brazilian port sector has been carried out by initiatives, in some cases, exclusively private, and in others, public initiatives. According to the studies by Goularti Filho (2007), after 1930 the State appears as provider of investments in ports, centralizing its administration in the Company of Ports of Brazil S.A. (PORTOBRAS), a period that is occurs until the 1990s. Until 1993 the Union had the monopoly of the port activity, through the Public Service management model (World Bank, 2001), involving the administration, investments, operation, equipment, facilities, tariff, infrastructure, superstructure and other activities related to port activity. With the opening of the economy to the international market, a public policy was designed with the objective of solving the problems of inefficiency and delay in operations; modernization of equipment, increase productivity, reduce costs in the port operation and enable the partnership of the public and private sectors in the port administration (Alfredini & Arasaki, 2009; Pierdomenico, 2010; Caron Bósio, 2013).

Thus, in a moment of uncertainty, disorganization in the national port administration, due to the extinction of PORTOBRAS, and lack of references and public policies (Monié & Vidal, 2006), on February 25, 1993, a new standard, known as the Modernization of Ports Act is implemented (Law no. 8.630). Based on the scope of the trade liberalization reforms of the 1990s, this law established that the government should invest and maintain port infrastructure and, that investments in superstructure and operation in areas and port facilities in organized ports, would be the responsibility of private enterprise (Brasil, 2012). With a new organizational configuration, the Port Authority centralized the responsibilities of administration, planning, grantor power, regulation and supervision of its environment (primary and secondary zone), as well as the introduction of private initiative in port management. Thus, Brazil adopts the Landlord Port management model (World Bank, 2001), where the State is the provider of infrastructure and private initiative, through concession and leases, and responsible for investments in superstructure, being also responsible for carrying out port operations. Also noteworthy are the exclusively private investments characteristic of the Fully Privatized model (World Bank, 2001; Pierdomenico, 2010). It should be mentioned that, according to Goularti Filho (2007), in accordance with Decree no. 1.746 of 1869, the private sector was expected to solve the challenges of the national port sector. However, with the competitiveness of the international market, historical problems in the port logistics structure, such as the lack of effective management, dredging, draft, access

roads, port costs, disqualified equipment, terminals and labor and lack of integration between the intervening bodies (Hoffman & Silva, 2001; Segre, 2007, Ipea, 2010) have not yet been overcome with the approval of the Modernization of Ports Act. Faced with these challenges, it is implemented on July 5, 2013, a new framework for Brazilian port regulation, again approving a new ports law, Law no. 12.815/2013. In the framework of federal regulation, we seek in Table 1 to promote a synthesis of regulatory developments, which include the following changes.

Table 1 highlights important points, referring to administration, operation, equipment, port work, tariff, infrastructure, superstructure and other functions, such as:

- a) Port of Imbituba, it was the only public port, administered by private initiative. PUT referred to the Private Use Terminal.
- b) Currently, there is no public port with private administration, although the legal possibility exists. Also new designations have emerged as: Private Use Terminal (PUT), Freight Transshipment Station (FTS), Public Small Port Facility (PSPF) and Port Tourism Facility (PTF), in accordance with Article 2 IV, V, VI and VII of Law no. 12.815/2013.
- c) Keeps operation private, although it persists in some ports (as persisted throughout the 20 years of the previous law) operation remains, such as supply and even equipment operation, exploitation of warehouses (faithful custodian) that could not be rented.
- d) Port work under the aegis of Law no. 8.630/93 was eminently private, considering that it was done (with some exceptions, see text on the operation under the new law) by private Port Operators (PO). However, these POs had hiring limitations (they either used unlinked registered individuals/ registered to the Manpower Management Bodies (MMBO) or they hired self-employed workers for indefinite time). However, these had to be requested first from the MMBO, and if there was no interest from MMBO workers, the PO could not hire workers in the market, with the exception of wharfage workers.
- e) The public tariff charged by the Port Authority for the use of infrastructure was maintained, but the PO may charge fees for their services. There is no public tariff in the PUT.
- f) Since Law no. 8.630/93 the superstructure (warehouses, silos, equipment) essentially private, although there are still public investments in this area, which is against the objective of the new regulation, since Law no. 8.630/93.
- g) The current superstructures are private and the oldest ones are public.
- h) Increasingly, the public sector withdraws from activities, maintaining essentially the exploitation of the infrastructure and the security, besides the control and inspection of the private activities (operations) in the facilities of common use (public or private).

Considering the institutional environment, Table 2 summarizes the evolution of the institutional framework of the port sector in Brazil, during the 1990s and after 2013. Institutionally, Law no. 12.815/2013, by means of Decree no. 9.048/2017, presents the Ministry of Transport, Civil Aviation and Ports (MTACP) as responsible for the grantor authority, and transferring the

powers of the former Special Secretariat of Ports of the Presidency of the Republic (SEP/PR). Currently linked to the MTACP is the National Secretary of Ports (SNP). ANTAQ is responsible for regulating and supervising the activities of providing water transport services operation of port and waterway infrastructure, and the Port Authority, the local administration. The private initiative continues with its participation in the management and increase of investments in the primary and secondary zone.

**Table 2. Evolution of the institutional framework**

THEMES	LAW no. 8.630/1993	LAW no. 12.815/2013 Decree no. 8.033/2013	LAW no. 12.815/2013 Decree no. 9.048/2017
Administration	Port Authority	Port Authority	Port Authority
Planning	Port Authority	SEP/PR	MTACP/SNP
Grantor Power	Port Authority	SEP/PR	MTACP/SNP
Regulation	Port Authority	ANTAQ	MTACP/ANTAQ
Inspection	Port Authority	ANTAQ	MTACP/ANTAQ

Source: Prepared from Cristino (2013) and Decree n° 9.048/2017.

For the CNI (2014), the new regulation stands out as it has advanced the creation of a favorable environment for the development and management of ports, greater participation of the private sector, through concessions or leases (eliminating barriers and linking to efficiency), eliminated the distinction between exclusive and mixed terminals, in public ports the hiring must be via MMBO and in private terminals the law provides for free hiring. ANTAQ is responsible for the concession and leasing announcements and the SNP/MTPAC is also responsible for the policies of the river and lake ports. Still according to the CNI (2014), the new regulations provide that the administration of ports may be carried out via the Union (by private concessionaire) or Municipality or State (by delegation). The change refers to the elimination of obligations such as the execution of the bidding processes, control of leases by parts of these administrators, delimiting only the management of the port operation. In this process of creating and developing public policies for the port sector, based on a national development program, Araújo (2013) and CNI (2014), point out that challenges such as strengthening of the institutions involved, the implementation of the new port model, professionalism of management, reduction of costs, intensification of efficiency, increased customs clearance procedures, port accessibility, intensification of private investment, planning capacity and, above all, to develop a national plan, from a long/medium term perspective, so that competitiveness combined with an efficient management can contribute to the development of the country.

At the end of this section, it is worth mentioning the transversal regulations, which cover environmental issues, such as the National Coastal Management Plan (NCMP), institutionalized through Law no. 7.661, of May 16, 1988, the Integrated Maritime Border Management Project (Waterfront Project), contemplated by means of Laws no. 7.661, of May 16, 1988 and no. 9.636, of May 15, 1998 and the Federal Plan of Action for the Coastal Zone, established by Law no. 7.661, of May 16, 1988, and which are used as legal documents that integrally support the objectives and actions of the *Orla* Project. Institutionalized through Law no. 9.985, of July 18, 2000, the National System of Conservation Units of Nature (NSCU) highlights the concept of Environmental Protection Area (EPA). From this regulation, the EPA of Baleia Franca is created in the State of Santa Catarina, by Federal Decree s/n°,

September 14, 2000, involving nine municipalities, from the south of the island of Santa Catarina to Balneário Rincão. These environmental regulations are directly related to the development process of the Port of Imbituba, since, unlike the other ports of Santa Catarina, it predominantly handles solid and liquid granules that, when not adapted to international safety standards, may have a direct impact on the coastal zone, with emphasis on the EPE of Baleia Franca. With this, the port has an internal program to adapt its safety standards, adapting to international regulations, such as, the so-called certification International Ship and Port Facility Security Code (ISPS)<sup>2</sup>, already properly implemented and consolidated within the internal structures, as well as specific programs for solid and liquid waste, dealt with in the following subsection. In short, federal regulation, in addition to addressing and directing actions to consolidate and develop the institutional management of SNP/MTPAC, ANTAQ and Port Authority, the participation of public and private actors in infrastructure and port superstructure, also needs to be in line with environmental regulations, respecting their characteristics and the local insertion medium.

### Methodological Procedures

Regarding the type of research, this study is characterized as an applied, descriptive and exploratory research. With regard to research strategies, a single case study was chosen, since it involves only the Port of Imbituba. Documentary research and field research were also part of the strategies of this research.

Through documentary research, the laws and public policies for port modernization were identified, with emphasis on the new regulation of the Brazilian port system (Law no. 12.815/2013), as well as plans, programs, tax incentives, national and international partnerships and cross-sectional regulations. These regulations were searched in the Portals of Legislation of the Presidency of the Republic of Brazil, Legislative Assembly of the State of Santa Catarina, City Council of Imbituba, as well as documents available on the website of the National Secretariat of Ports of the Ministry of Transport, Ports and Civil Aviation (SNP/MTPAC). We performed field research through the collection of data, using interviews, with the support of a semi-structured script. Interviews were conducted with three professionals, linked to organizations that have extensive experience near the Port of Imbituba with one being an Engineer of Ports and Waterways with professional experience in management through the CDI (E1); the Chief Executive Officer of Imbituba Port (E2); and the Technical Coordinator of the DZP (E3), both residing in the city of Imbituba. The interviews, scheduled for two hours each, were recorded and transcribed. Then, they were sent by e-mail for the approval of the content by the interviewees, who returned with the text duly revised.

## RESULTS AND DISCUSSION

**Port of imbituba - contributions and implications of law no. 8.630/1993:** Historically linked to the outflow of coal production in the South of Santa Catarina, o Porto de Imbituba, during the period of validity of Law no. 8.630/1993, was administered by *Companhia Docas de Imbituba S.A.* (CDI),

<sup>2</sup>The ISPS Code establishes certain rules, which make ships and port facilities safer. Among the measures adopted we can highlight the following: *i)* Establishment of greater control of entry and exit of people and vehicles in port facilities; *ii)* Delimitation of the perimeter of the port; *iii)* Installation of surveillance system for the limits of the perimeter of the port and the pier; and *iv)* Need to register people and vehicles entering the port facility (PORTO DE VITÓRIA, 2015, p.1).

characterizing itself as the only public port in the country run by a private company. The management model adopted by the port is linked to the characteristic Landlord (WORLD BANK, 2001), because CDI, port Authority had jurisdiction over the port and exercised “[...]on behalf of the State of Santa Catarina and the Union, the property rights over the port areas and neighboring areas of the Union” (Brasil, 2012, p. 330). According to the current Engineer of Ports and Waterways “[...]we had a concession since 1941, which exploited the port as a non-port-public business, without a specific development function, business expansion [...]” (E1). However, development is a focus on the mission of the port, because according to SEP/PR, the mission, when administered by the CDI: “The Port of Imbituba will be the propeller of the development of the South of Santa Catarina. And it will do this in a sustainable and integrated way with the region of its influence, preserving the cultural characteristics of the populations involved” (Brasil, 2012, p.215). “The first time I visited the port in 1985, I was surprised that it was the only public port in Brazil, administered by a private company, but it seemed to be more state-owned of all ports, with outdated and archaic characteristics” (E1).

The new regulation and the institutionalization of the intervening bodies changed this scenario, allowing and opening ports for the participation of private capital and privatizing the port operation. In the case of the port of Imbituba, the entry of new actors from the private sector in the exploration of the port, made significant capital contributions, which neither the government nor the CDI had. Other Santa Catarina port structures have also undergone transformations in recent years. The Chief Executive Officer of Imbituba Port (E2), highlights that in Santa Catarina, important investments in the Port of São Francisco do Sul, and, mainly in the Port of Itajaí, materialized a new model of port management. The municipalization of Itajaí, with sound financial management, made it the second port in Brazil in the handling of containerized cargoes, behind only the Port of Santos. There was also a change in the capital-labor ratio, with the appearance of the Port Operator (PO), directly involved in negotiations with the union, without the interference/participation of the government. Previously, it was done through the National Superintendence of the Merchant Navy (SUNAMAM) and by the Maritime Labor Stations (MLS), presided over by the captains of the ports, of the Brazilian Navy, establishing compositions of terms and remuneration. For Interviewee 1 “These two factors, capitalization of the port and the privatization of the port operation, were preponderant to completely change the scenario in Imbituba”. In the perception of Interviewee 2, after the extinction of PORTOBRAS, in the 1990s, a new regulation of the port sector in Brazil was needed, since it was not directed. “At that historic moment Law no. 8.630/1993 fulfilled its role, while regulatory framework by entering the bids and bringing mainly the entity of the private sector in port operations, thus providing new investments and a new direction in Brazil” (E2).

Subsequent to this regulatory framework, new standards were implemented: the Law on Bids no. 8.666/1993 and Law no. 8.883/1994, Concessions Law no. 8.987/1995 and Law no. 9.074/1995, the Law of Delegation no. 9.277/1996, the Privatization Law no. 9.491/1997, as well as Law no. 10.233/2001 creating the ANTAQ, which was later regulated by Resolution no. 55, of December 16, 2002, approving the

rules on leases of port areas and facilities. Interviewee 1 adds that in the early 1990s, before the Modernization of Ports Act, the Port of Imbituba underwent privatization processes. These experiences began in the 1980s, from the perception that the port had the capacity to move other goods, besides the coal, needing to be urbanized. With urbanization, since 1987, it has been possible to aggregate clean loads (rice, sugar, frozen chicken and containers). In this sense, the regulation has modernized this process, forcing the port to respond to the demands of the private sector, which was accelerated as a result of the enactment of Resolution no. 55/2002 of ANTAQ, already mentioned previously. Interviewee 1 states that “[...] this was the first major “boom” in development that took place in Imbituba until the coal crisis”, because even with the diversification started, the ore still represented about 80% of the movement and revenues of the Port. When asked about the new attributions of the Port Authority, with the authority to administer, plan, grantor power, regulate and supervise the operations in its port structures, Interviewee 2 pointed out that “[...]they had to adjust to a different and historical moment, looking for ways of administrative management to follow their functions”. Regarding the administrative management, it is worth mentioning that the Port of Imbituba had problems long ago, since its board was centralized in Rio de Janeiro, since 1940, and Imbituba functioned as an appendix to the CDI. Only in 1986, a board of directors was set up, due to the organizational restructuring. About this condition, Interviewee 1, who at the time was the Director of the CDI, states that “[...] to be managing a port in Rio de Janeiro, in a suit and tie, was not very much my profile. There was the need for a director in loco. This board was in Imbituba until 1993”. On investments, Interviewee 1 informs that the port started with rudimentary facilities and its construction, as an organized port, in the late 1930s and early 1940s, was totally with private capital contributions; these contributions continued in the 1960s when the Wharf II was built and extended the 100 meters of the coal wharf (Wharf I), originally built by Henrique Lage and inaugurated in 1941. This was the great investment, with the coal box, wharfs and the railroad that reached the primary zone. It is worth mentioning that in the construction of the wharf, a considerable part of these investments originated in the Union and the rest of the CDI. “Many of CDI's investments were actually made with tariff anticipation and special rates established by the Union. After these investments, the CDI shareholders practically invested nothing until the end of the concession in 2012” (E1). At the end of the 1980s, with the state project *Indústria Carboquímica Catarinense* (ICC), the Union entered with all the capital contribution and significantly changed the Port of Imbituba. The main financial contributions (investments) are summarized in three periods, as shown in Table 3.

**Table 3. Summary of main financial contributions**

PERIOD	INVESTMENT
1980 to 1990	ICC Investments, construction of the new wharf, landfills for territorial expansion, equipment for discharge of phosphate rock (subsequently adapted for coal loading), ducts. Capital exclusively of the Union.
1990 to 2001	End of the coal cycle, small investments, such as forklift trucks, i.e., no significant investment in a port structure. The processes of leasing began.
2001 to 2012	Rental of new terminals, with the financial contribution coming from VOTORANTIM, FERTISANTA, AGIL and SANTOS BRASIL. Exclusively private capital, as according to the opening made possible by Law no. 8.630/93.

Source: Prepared from research information (E1).

Interviewees 1 and 2 agree that in the specific case of the Port of Imbituba, the Port Authority has fulfilled its function, despite the late adjustment of the new regulations, since it initiated and completed the processes of five leases of terminals for private initiative, adapting to the new regulations. Leasing is one of the modalities provided by law so that the provision of public services, exploited by the Union, can be transferred to the private sector, resulting from a bidding process, in accordance with what is established by Law no. 8.666/1993. In this sense, the Port of Imbituba made five lease agreements, with start and end dates, as shown in Table 4 and described in the sequence.

**Table 4. Lease Processes in the Port of Imbituba**

LESSEE	START	END
Fertilizers Santa Catarina S.A.	02/17/2012	02/17/2037
Warehouse General of Imbituba Ltda – AGIL	03/15/1996	03/15/2013
TECON Imbituba S.A.	04/07/2008	04/07/2033
CRB Port Operations	01/29/2003	01/29/2028
Union Warehousing and Port Operations	02/13/2006	02/13/2031

Source: Brasil (2012, p.337).

Starting its activities in 1992, the Fertilizer and Animal Feed Terminal (TERFER), operated by Fertilizers Santa Catarina Ltda. (FERTISANTA) was the first to be leased. In 2012, FERTISANTA renewed the lease for a term of 25 years<sup>3</sup>. With the importation of inputs for the manufacture of fertilizers, it also moves for export corn and soybeans (Brasil, 2012d; Araújo & Duarte, 2013). The Refrigerated Load Terminal (TERFRIO) was leased to *Armazéns Imbituba Ltda* (AGIL), initially belonging to FRANGOSUL, in 1993. In 1996 a new lease with a validity of 16 years and 9 months was done (extendable for the same period). In 1998, FRANGOSUL is sold to the Doux Group and in 2012 was leased by JBS S.A (CDI, 1995; Brasil, 2012). The Container Terminal (TECON) granted in 1994 to the Terminal of Containers of Imbituba Ltda (CONTER). In 1996, TECON started to be operated by *Multiterminais Bonded in Brazil Ltd* (SANTA CATARINA, 2004). In 2005, CDI's shareholding control was transferred to Royal Transport and Services Ltd (ROVIRIEGO, 2013), an operating contract with the Libra Terminal Imbituba S.A., belonging to the LIBRA Group, began to operate the TECON. Investments were made in the wharf, yard and equipment acquisition (CDI, 2008; Neu, 2009). In 2008, Santos Brasil, through TECON Imbituba S.A., leases TECON for a period of 25 years. The company makes investments in loading and unloading equipment, such as, *MHC Post Panamax, reach stacker, portêineres* (SANTOS BRASIL, 2011a; BRASIL, 2012). With approximately 284 million USD, Santos Brasil also carries out expansion works, mainly in the extension of the dockable berth to 660 meters and introduction of 24 reffers, with works completed in 2011. Another strategic investment made by the terminal, was the acquisition of an area of 2 million square meters, located 6 kilometers from the port, in front of the BR-101 motorway, destined to the Industrial Retroport of Imbituba. The space is part of an expansion project for the storage of containers, including activities of cold storage, patio regulator and movement of loads, thus decentralizing such activity (Santos Brasil, 2011b). The Solid Bulk Terminal (TGS) was leased in 2003 by CRB Port Operations, company of the Votorantim Cement Group, for the period of 25 years. In partnership with Loxus Granéis Ltda, investments were made in dredging, civil works, belt

<sup>3</sup> Extendable for an equal period.

system for landing cargo and acquisition of cranes (Brasil, 2012; FIESC, 2003). The General Cargo Terminal (TCG) was leased in 2006 by the Group LIBRA, through Union Warehousing and Port Operations S.A., for the period of 25 years. In 2008, the container operator Santos Brasil acquired the Union company, thus controlling the TCG (Colucci, 2006; Brasil, 2012). Regarding the tax incentive programs, the CDI concessionaire and the tenants, used the incentives: REPORTO for the importation of equipment and Financing for Machinery and Equipment (FINAME), according to Table 5.

**Table 5. Equipment via incentives REPORTO and FINAME**

REPORTO (IMPORTATION)	INVESTMENT
10 Reach Stacker	500,000.00 USD/each
02 Ship-to-Shore (STS)	15,000,000.00 USD/each
06 Mobile Harbor Crane (MHC)	3,000,000.00 EUR/each
01 Ship Loader	1,500,000.00 GBP/each
FINAME (NATIONAL MARKET)	INVESTMENT
01 Tractor	393,000.00 USD/each
04 Loaders Shovels	355,000.00 USD/each
16 Trucks	218,000.00 USD/each
16 Tow trucks	38,000.00 USD/each

Source: Research Data.

On the basis of the concept of load capacity, in line with the regulation, Interviewees 1 and 2 mention that the Santa Catarina ports were tied to fixed shippers, that is, at the Port Terminal of Navegantes, the Mediterranean Shipping Company (MSC) was organized, in the Port Terminal of Itapoá, the Hamburg Süd, in the Port of Itajaí, the Maersk Shipping Line, and in the Port of São Francisco do Sul, Mitsui OSK Line.

**Table 6. Profile changes, contributions and implications of Law no. 8.630/1993 for the development of the Port of Imbituba**

PROFILE
<p><b>a) 1880 to 1919:</b> developed jointly with the Dona Teresa Cristina Railroad aiming at the flow of coal from the south of Santa Catarina, it was abandoned by the British in 1919.</p> <p><b>b) 1919 to 1942:</b> Henrique Lage assumes administration, resuming the disposal of coal. In 1941 the CDI obtained the concession to commercially exploit the port.</p> <p><b>c) 1942 to 1990:</b> It was adjusted to the National Coal Plan, becoming the coal port of Brazil, with private management via CDI and totally focused on the disposal of the ore.</p> <p><b>d) 1990 to 2000:</b> Marked by the restructuring of its coal extractor profile, in detriment of the dismantling of the infrastructure of the coal industry of Santa Catarina. Totally turned to coal, it found itself without a diversification of goods, going through a serious crisis, with private management via CDI.</p> <p><b>e) 2000 to 2010:</b> Adjusting the new regulations, the Port Authority promoted the leasing of terminals, providing a greater diversification of services. In 2008, Santos Brasil entered into operation, for the handling of containerized cargoes, promoting a restructuring in terms of equipment for moving containers.</p> <p><b>f) 2010 to 2012:</b> With the expiration of the concession in 2012, the concessionaire SCPar Porto of Imbituba S.A. linked to the government of the State of Santa Catarina took over the administration of the port, ceasing to be the only public port in Brazil, managed by a private company.</p>
CONTRIBUTIONS
<p>Capitalization of the Port of Imbituba; privatization of the port operation, appearance of the Port Operator, port modernization, availability of tax incentives (E1). Possibility of bids, introduction of the private initiative in the port operation, new direction for the sector, availability of tax incentives (E2).</p>
IMPLICATIONS
<p>Port Authority was not prepared for the obligations required by the new regulations and concept of cargo capacity and third parties brought by the regulation (E1). "As every law is tied to a dynamic of needs, in that historical moment (1990s), and at the same time, Brazil being a country with continental dimensions and a series of peculiar and extremely regional situations, Law no. 8.630/1993 attempted a homogenization, but created certain elements that did not meet the country's need" and the concept of cargo capacity and third-party cargo (E2).</p>

Source: Authors' own elaboration based on research information.

From the exposed retrospective and the information of the interviewees, aggregating subsidies were found to the discussion of this study and that allowed the elaboration of a table (Table 6) with: *i*) the main profile changes; *ii*) the contributions; and *iii*) the implications of Law no. 8.630/1993 that allowed and promoted the development of the Port of Imbituba.

### Port of imbituba: contributions and implications of law no. 12.815/2013

This section deals with Law no. 12.815/2013, the new Ports Law. According to Interviewee 1, the great contribution of this Law, lies in the planning of the operation at the national level and the strengthening institutions. What the old regulations allowed to be done in all ports (individually), the new law modified, by creating integrated national management instruments, for example, of national plans, such as the National Transport Logistics Plan (NTLP), National Port Logistics Plan (NPLP), Master plan (MP), Development and Zoning Plan (DZP) and the General Grant Plan (GGP), ordering, in national terms, export and import flows, and thereby redirecting investments in the port sector better. According to CNI (2014), Brazil occupies the 70th position in terms of infrastructure in the ranking of the Global Competitiveness Report 2012-2013 and in terms of port logistics, it ranks 135th, being below average when compared to countries that are in the same stage of development. Corroborating with Interviewee 1, the CNI (2014, p.75) understands that there is a need to strengthen the governance of institutions involved, and at the same time "[...]the logistics efficiency depends on the adequate integration among them along the main logistical axes that carry goods manufactured in the country. Therefore, it is necessary to develop the integration infrastructure [...]", through the construction of distribution centers, multimodal integrating terminals and transshipment terminals.

Interviewee 2 also notes this new arrangement in a positive way, in the sense that it intends to create a national plan for the development of the port sector. However, he adds that the centralization of planning in SEP/PR, should take into account the specificities of each region, in view of the country's territorial magnitude and regional diversities. "What may be good for a port structure in the Northeast may not be applicable to the South (vice-versa), once the volume and characteristics of the loads and customers are different" (E2). On the side of the capital injection, the new law repealed a series of restrictions, increasing the possibilities of investments and participation of the private sector. However, the Interviewee [E1] considers that there was a strategic error regarding leases in public ports, since they were referred to the Union Court of Auditors (UCA) dozens of new lease projects, at once, without an understanding of the new modeling and of the new concepts presented in the new regulation. As a consequence, since 2013, there was no concession for port lease. To understand this dynamic, in relation to the processes with the UCA, it is worth noting that through Administrative Rule no. 15 of the SEP/PR, the list of 159 leaseable areas was released in February 2013, organized by the North, Northeast, Southeast and South. The document presents seven areas for rent in the State of Santa Catarina, one in the Port of São Francisco, two in the Port of Itajaí and four in the Port of Imbituba (Brasil, 2015). Then, still in 2013, the SEP/PR organized the leases in blocks, containing the contemplated

ports and the scheduled investments, as quoted below (BRASIL, 2015a):

- a) Block I: Santos/SP (9), Vila do Conde/PA (4), Santarém/PA (4) and Belém, Miramar and Outeiro/PA (12), totaling 20 processes submitted to the UCA and with investments of 2.1 billion USD.
- b) Block II: São Sebastião/SP, Salvador and Aratu/BA, Paranaguá and Antonina/PR with investments of 1.8 billion USD.
- c) Block III: Maceió/AL, Suape and Recife /PE, Cabedelo/PB, Fortaleza/CE and Itaquai/MA with investments of 1.5 billion USD.
- d) Block IV: Rio Grande e Porto Alegre/RS, Imbituba, Itajaí and São Francisco do Sul/SC, Rio de Janeiro, Niterói and Itaguai/RJ, Vitória/ES and Manaus/AM with investments of 1.3 billion USD.

Corroborating with Interviewee 1, pointing out flaws in the leasing process, due to the lack of understanding of the modeling of the new bidding processes for leases, only in October 2015 (two years after the possibility allowed by the new regulations), ANTAQ announces on its website the notice of convocation for the process of auctions of Block I. Despite this obstacle, the Port of Imbituba benefits, even if there is no lease in this package with the UCA. There are also a number of areas in primary zone and in the retro area that can be transformed into terminals, or be added to the existing terminals. For the expansion of this scenario, the interested party should analyze what has load in the Master Plan and what should be done to meet the demand. In view of all elements listed in relation to federal, state and municipal plans, programs, incentives and partnerships, it was verified that the Port of Imbituba is impacted nationally by the Master Plan of SEP/PR, which directs the actions so that the Port Authorities can organize their DZP. Among the federal programs, the port is part of the Paperless Port, of the City-Port Relation Program, through the Compliance Program for the Management of Solid Waste and Liquid Effluents from Ports (PRGRS) and in the Federal Program of Support to Regulation and Port Environmental Management (PRGAP). Also included in the port projects, we find the Port Lease Program (ARP) and the Port Intelligence Program, through the Port 24 hours, Port Traffic (VTMIS) and the PORTOLOG. Through the National Dredging Program (NDP), in 2014 works were carried out to expand the access channel (from 16 to 17 meters), expansion of the maneuvering basin (from 12.5 to 15.5 meters); expansion of cribs 1 and 2 (from 12.5 to 15.5 meters) and the expansion of crib 3 (from 10.8 to 12 meters). With the works, the port will be able to receive super-post-Panamax ships, carrying up to 6,500 containers (Brasil, 2015a,b,c).

According to SEP / PR, the investments in dredging were “[...]16 million USD, of which 15 million USD from the National Dredging Plan, which is part of the Growth Acceleration Plan (GAP) of the Federal Government, and other 1.3 million USD of counterpart of the State” (Brasil, 2015b, p.1). Regarding the tax incentives provided by the federal government, the Port of Imbituba, is contemplated in imports with the Merchant Navy Renewal Freight Additional. The REPORTO tax incentive was applied by leased terminals, such as SANTOS BRASIL, in the purchase of port equipment. With regard to national and international partnerships, we highlight partnerships with the *Universidade do Sul de Santa Catarina* (UNISUL) in the preparation of the DZP, with the

Federal University of Santa Catarina (UFSC), and finally, a partnership between the government of the State of Santa Catarina and the Port of Barcelona, started in 2013. At the state level, Interviewee 2 cited the State Plan for Logistics and Transportation (PELT-SC), contemplating an effort of the State of Santa Catarina, initiated in 2013, which is the result of a research conducted by the Federal University of Santa Catarina (UFSC), with funding from the Foundation for Scientific and Technological Research Support of the State of Santa Catarina (FAPESC), aiming at technical support to the definition of Government strategies regarding the provision of infrastructure and the definition of policies and programs that promote its more efficient use. In the municipal scope, it was verified that the Port of Imbituba and all its actions, mainly the DZP, are aligned directly with the Imbituba Development and Sustainability Master Plan, mainly due to the Port-City relationship. Following the example of the previous section, we found aggregating subsidies to the discussion of this study and that led to the elaboration of Table 7.

**Table 7. Changes in the profile, contributions and implications of Law no. 12.815/2013 for the development of the Port of Imbituba**

<b>PROFILE</b>
With 3 years of the new state administration, via SCPar concessionaire Port of Imbituba S.A., is currently with environmental projects, via SCPar concessionaire Porto de Imbituba S.A., currently has environmental, organizational and operational restructuring projects.
<b>CONTRIBUTIONS</b>
Creation of national management instruments, by means of NTLP, NPLP, MP, DZP and GCP, redirecting investments in the port sector, expansion of the possibilities of capital contribution and participation of the private sector (E1). Creation of a national plan for the development of the port sector, implementation of the Master Plan SEP/PR, directing the actions so that the Port Authorities can organize their DZP (E2).
<b>IMPLICATIONS</b>
It did not solve problems of qualification and professionalization that already existed for 20 years since the old law, worsening relations, further engulfing port work, lack of understanding of the new modeling and new concepts presented in the regulation (E1). Centralization of planning in SEP/PR, take into account the specificities of each region, given the country's territorial magnitude and regional diversities (E2)

Source: Authors' own elaboration based on research data.

**Projects, Partnerships and Policies:** All leases made in the Port of Imbituba, in the former concession, have been cautious about having ANTAQ, representing the Union, as the guarantor of the initial term of 25 years of each contract. Thus, all the contracts remain valid, and with the support of the port administration, they adapt to the new market scenarios. In addition to the five leases achieved, two major structuring projects were being submitted and were inherited by the new management: *i)* dredging to 15 meters deep, to be borne by the Union and already completed; and *ii)* the doubling of road access, which continues to await definitions by the Government of the State of Santa Catarina, to whom the company that manages the port belongs. Currently the new management is developing projects that contemplate the training of its team of employees, as well as projects for environmental certification, necessary for their development and increasing their carrying capacity with the hinterland. With regard to the DZP of the port, 170 actions and projects were planned (plans of management, accesses, routes, extension of the wharf 3, extension of the wharf 2; new gates and pipelines) with an estimate exceeding 465 million USD, of which approximately R \$ 400 million of the government of the State of Santa Catarina and the remainder via public x private relation. According to information from Interviewee 1 the Port of Imbituba, as the only public port under private

administration (until 2012), was not favored by specific regional development policies. However, it should be mentioned here that there were projects of national scope that eventually benefited the port, such as investments in the energy crisis and national coal consumption benefits, or in the import substitution policy that led to the implementation of the ICC. With few Union investments focused on the development of port capacity, the Port of Imbituba competes with public ports under public (and political) management as Paranaguá, Itajaí, São Francisco and Rio Grande, and is restricted to the entrepreneurial capacity of the old concessionaries, which are insufficient to meet the demands of the development of southern Santa Catarina. As the current management is carried out by delegation of the Union to the State of Santa Catarina, it is expected that the port will finally contest the attentions of the public power with the same priority of the other. Under the perception of Interviewee 2, public policies at the federal, state and municipal levels contribute significantly to the development of the Port of Imbituba. However, it adds that the regulations must respect the regional specificities where ports are inserted, since Brazil has regions with different economic approaches that end up impacting on the development capacity of its port structures.

### Final Considerations

With the purpose of collecting information and opinions with the management agents regarding the policies aimed at the development of the Port of Imbituba, it was verified that with Law no. 8.630/93 it was possible to capitalize the Port, modernization of ports, leases to the private sector and availability of tax incentives to increase competitiveness. On the other hand, the regulations of the 1990s failed to delegate responsibilities and to professionalize the Port Authority, without even preparing it for such actions and did not understand the regional characteristics in which the ports were inserted in that historical moment. From the new Ports Law no. 12.815/2013, which has not yet been fully implemented through concrete actions in the port sector and in the Port of Imbituba, the positive aspects are the attempt to develop a national logistic development plan in Brazil, integrating transport modes, focusing on strategic plans and instruments, expansion of the possibilities of capital infusion, private sector participation, management actions for the Wharfs Companies and the development of the Master Plan for ports.

Comprising one of the main instruments of the new administration of the Port of Imbituba, the Development and Zoning Plan (DZP), is being planned from the Master Plan of SEP/PR, respecting the indicators and regional aspects, as well as analyzing the productive demands of its hinterland and the Port-City relationship. Among the implications of the new standard, we still need to understand the modeling and the new concepts brought by the standard, centralization of planning in SEP/PR, regional specificities and historical problems of training and professionalization. In a conclusive way, it reiterates the idea that the policies for port development should not overlap the service to the socioeconomic development of Brazil. Thus, according to the themes or impacts of interest, such policies may be only state/governmental or “public” in fact, from the discussion of society and the actors involved in the short and long term, as it is presented in a democratic collective process and, above all, inducing the port development and the entire logistics chain, adapting to regional issues, as well as the dynamics of the national and

international economy. This dynamic indicates that the management and management of information, for the implementation of public policies, should be linked to effective management and competence, so that the complexity of the port sector, functioning as an economic agent can be understood, analyzed and finally, with concrete actions, allowing adaptation and overcoming in diverse economic moments. Therefore, we believe that the contribution of this study lies in the fact of presenting an interdisciplinary approach and discussion about policies for a sector of great magnitude and vital for the development of Brazil, as the port universe. It is also worth mentioning, as a contribution, the compilation of documentary study, which covers regulations for the period 1990-2015, enabling further discussion and analysis. Finally, at the regional level, the work can contribute to an understanding about the role and participation of the Port of Imbituba in the development of the Southern region of Santa Catarina, presenting new possibilities for its “relocation” as economic agent and inducer of regional development.

Characterizing as a case study, we understand that the research presented as a limiting factor, the approach taken in a single port unit, not allowing a comparison between other ports of Santa Catarina, with models of municipal management (Port of Itajaí), autarchy of the Government of the State of Santa Catarina, (*São Francisco do Sul*), private (Port of Navegantes and Itapoá) and the Port of Laguna, administered by *Companhia Docas* of the State São Paulo (CODESP). Thus, in view of the above contributions and limitations, we suggest the realization of new studies, with the intention to understand, for example, the impact of the policies for the other ports of Santa Catarina, making a multicase study, or perhaps a comparative study between a public and private unit, with different management models. There is also the possibility of promoting a study covering the southern business community of Santa Catarina, composed of export and import companies, aiming to understand how the Port of Imbituba can be a catalyst for business development, from its logistic complex. Alternatively, a study encompassing the Export Processing Zone (EPZ) of Imbituba and its potential for reducing regional imbalances.

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