Privatization of the Nouakchott Port in Mauritania

International Trade in Services Negotiation Simulation

INTRODUCTION

The purpose of this exercise is to simulate an international trade negotiation designed to reduce trade restrictions between two nations.

While the factual scenario is based upon real issues, this case is hypothetical in terms of specific stakeholders identified and certain facts presented.

This case will include country teams, government teams, industry association teams, and various forums including a possible WTO Dispute Resolution Panel.

The goals of this exercise include:

1.) Development of research and investigation skills;
2.) Development of analytical, planning, and negotiation strategy skills;
3.) Development of negotiation, mediation and conflict resolution skills;
4.) Development of durable written agreements; and,
5.) Development of planning and presentations skills to various governmental and WTO panels and bodies.

Parties:

Country Representatives:

Japan

United States

European Union

Government Agencies:

Japanese Ministry of International Trade and Industry (MITI)

Japanese Ministry of Health and Welfare (MHW)

Japanese Pharmaceutical and Medical Devices Safety Bureau (PMSDB)

Japanese Pharmaceutical and Medical Devices Evaluation Center (PMDEC)

U.S. Trade Representative (USTR)

U.S. Department of Commerce (DOC)

Industry Associations:

Japanese Medical Equipment Association (JMEA)

Japan Medical Equipment Industry

Japan Association for the Advancement of Medical Equipment (JAAME)

U.S. Medical Equipment Industry

U.S. Health Industry Manufacturers Association (HIMA)

American Chamber of Commerce in Japan (ACCJ)

European Medical Equipment Industry

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Background, Facts and Issues Common to All Parties

Since its inauguration in 1984, the port of Nouakchott Mauritania has been operated as a publicly owned monopoly. As such, the absence of competition has led to overstaffing of the port. Moreover, labor regulation induced high labor costs. The port has thus become costly and inefficient, losing market share to West African ports such as Dakar (Senegal) and Abidjan (Ivory Coast).

Issue:
The exorbitant cost of the Nouakchott port has crippled Mauritania's trade. Moreover, Mauritania faces a deep public budget deficit and can no longer subsidize the Nouakchott Port Authority. The Mauritanian government views privatization of the Nouakchott Port Authority as a solution to its budgetary problems. In addition, the World Bank and the International Monetary Fund contribute to the pressure to structurally adjust the economy via privatizing the Port Authority of Nouakchott, as well as all other state-owned enterprises. Reasons for mass privatization are: 1) to reduce the public budget deficit, 2) to stimulate the economy, 3) to insulate port activities from political processes, and 4) to introduce competition into the market. Privatization is politically uncertain because it will define a new role for the port authorities, increase foreign direct investment, and introduce labor reform.

There are numerous reasons for privatization. First, privatization would attract new foreign direct investments, which would increase productivity and competitiveness and bring port service up to international efficiency levels. Second, privatization would increase trade at both the national and regional levels which directly or indirectly translate into job creation. Finally, introducing market based labor reform would reduce port labor costs on the public budget.

Why is privatization of the port authority necessary?
There are many reasons for Mauritania's government to privatize the Nouakchott Port Authority. Since 1984, the Nouakchott port has exhibited a disappointing performance. To keep it operational, government bureaucrats have managed the port through public subsidies and preferential access to credit. In 1994, the port was given greater autonomy. However, such reform proved impossible to sustain; after initial improvement, the port deteriorated. It became overstaffed and out of control. The current challenge is to foster sustainable improvements to port performance, and the Mauritanian government views private sector participation as the means to accomplish this improvement. Another important reason for privatization is the government's budget deficits and public finance crisis. Mauritania's government no longer has the financial resources to offset the port's losses, much less provide capital increases for its development. Finally, Mauritania has committed to structural adjustment programs with the World Bank and the International Monetary Fund. In order to receive loans from these institutions for economic and social reform, the country must reform its public sector.

Further Assumptions

1) Efforts are currently underway by the Economic Planning Board to privatize the Nouakchott Port in Mauritania. For this to occur, a privatization bill must be passed in Parliament that dissolves the current publicly owned monopoly on the Nouakchott Port.
2) In order for draft legislation to be written, all stakeholders must agree on a set of both general principles and specific provisions that will be included in the text of the legislation.
3) The majority of foreign goods entering Mauritania come through the Nouakchott port.
4) The Government of Mauritania is trying to increase the volume of goods going through the Nouakchott Port in light of regional instability that is deterring shipping through the port in Dakar, Senegal.
5) It is a goal of the Mauritanian Government to weaken the current dominance that the tribes and several influential business leaders have on port operations, however, these stakeholders are important in the overall political structure and should remain active participants in the privatization process.
6) Mauritania has not committed its port sector to complete liberalization within the GATS, however, this issue is on the agenda of the current Doha Round of multilateral trade negotiations.

OVERVIEW OF THE ISSUE

Mauritania is located at the western extremity of the Saharan desert. The population was estimated at 2.6 million people in 1999, with a growth rate of 2.6 percent per year. During the 1960s Independence movement, Mauritania was essentially nomadic society, with only 5 percent of the population living in urban conglomerations near the Atlantic Ocean. Due to heavy rural-urban migration, particularly over the last two decades, over half of the population now lives in urban centers such as Nouakchott and Nouadhibou, which represent the political and economic capital of the region. The ethnicity of the population is 50 percent Moors and 50 percent black Africans. Social indicators, like nutritional levels, food security, income, and access to water, are poor. Fifty percent of Mauritania's people live below the poverty line of one dollar a day.

Political environment:
Government type: Republic
A new constitution was approved in mid-1991, after which political parties were legalized and voters registered. Presidential elections were held in early 1992 and Colonel Ould Taya was elected. He was re-elected for an additional six-year term in December 1997 with 90 percent of the vote.

Executive Branch:
Chief of State: President Maaouya Ould Taya (since December 12, 1984)
Head of the government: Prime Minister Cheikh El Afia (since January 2, 1996)
Cabinet: Council of Ministers, appointed at the pleasure of the Prime Minister.

Legislative Branch:
Bicameral legislature consists of the Senate, 56 members elected by the municipal leaders to serve six years, and the National Assembly, 79 members elected by popular vote to serve five years. The Senate assembly consists of 55 members from the political party of the government and 1 member of the opposition. The National Assembly includes 71 members from the political party of the government and 8 from the opposition.

Economic Development:
Mauritania's economy has become substantially liberalized since the early 1980s. The economic structure encompasses a relatively small modern sector and traditional subsistence sectors such as agriculture and breeding. Mauritania has a very narrow economic base. Its industrial sector is dominated by mining and fishery activities, which together provide all export earnings. The rural sector employs an estimated 64 percent of the labor force. Despite considerable changes since independence in 1960, Mauritania's economy remains vulnerable to external shocks such as climatic changes or fluctuation in the world price of its principal exports.

Economic indicators:
GDP per capita in Mauritania is about $390. The average GDP per capita in Sub-Saharan Africa is about $500. In 1989, export earnings were approximately $438 million; by 1999 export income declined to about $333 million. At that time, annual iron income had decreased by 30% and the annual fishery earnings had decreased by 50%. In 1989, foreign direct investment was about $4 million, and in 1999 FDI was nearly $0. In neighboring countries, FDI was about $169 million in Senegal and about $16 million in Mali.

These indicators demonstrate Mauritania's need for economic structural reform to improve productivity and competitiveness that will attract new investment in the global market. This structural reform could be entails privatization of the state owned enterprises, including the port authority.

2- Important Facts:
Nationalization:
During the 1960s, many newly independent African countries, including Mauritania, applied socialist models to their economic and political systems that involved large nationalization programs. These new states took control of their productive assets from foreign companies, basing their development on state owned enterprises. In the 1960s Mauritania was one of these countries, nationalizing both a French iron mining company and the national fishing company. With the fall of the Soviet Union, the African socialist model of nationalization lingers more as a habit than a firmly held ideological system.

Over the past thirty years, state owned enterprises have survived through tariff protection against competing imports, preferences in public-procurement, exclusive rights, preferential access to credits, government guarantees, tax exemptions and public subsidies. According to the World Bank, these practices are contributing factors to government budget deficits and public financial crises. Many African nations no longer have the financial resources to support their state owned enterprises or to provide the capital necessary for further development. Moreover, state owned enterprises have become overstaffed, inefficient and less competitive.

Globalization of the economy:
In a world where open economies and globalization are the norm, state owned enterprises such as the Nouakchott port and its port authority continue to operate with outdated models. In practice this means that development has proceeded in accordance with sociopolitical criteria rather than commercial criteria. The following trends should be noted:

- Accelerated technological innovation and growing integration of markets have forced private enterprises to form foreign alliances in technology, investment, and trade.
- State owned enterprises are ill-placed to forge such alliances.

- The growing globalization of the economy and the end of the Cold War has pushed many states toward privatization and other economic reforms.

Nouakchott Port Authority:

The Nouakchott Port opened for service in 1984. The port was a gift from the Republic of China, built at no cost to the government of Mauritania. In the past, China financed many of Mauritania's infrastructure projects to assist the newly socialist independent African country. As a consequence, Mauritania does not recognize Taiwan as an independent nation and supports China's policies in the United Nations.

The port of Nouakchott consists of two quays, one for small vessels (Whart Quay) with a draft of less than 5 m and the second for larger vessels with a max draft of 10.5 m.

The second quay is known as the "Port of Friendship Quay" stretching 585 m and split into four berths, three for cargo handling and one for serving vessels.

	Length	Draft
Berth No 1	148.5 m	9 m
Berth No 2	169.5 m	9.5 m
Berth No 3	190 m	10.0–10.3 m

Draft at Harbor Mouth	11 m from channel to port
No of deepwater Quays	1
Length of Quay	585 m
Terminal Area cbm	2 yards approx 1000 cbm
Craneage	3 cranes with 10 tons capacity
Rail/Road Connections Available	Rail: none Road: Potholed

Source: Port Focus.

The elements of port activities:
There are three essential elements of port activities: port operations, port land, and port regulations. Port operations are concerned with the physical transfer of goods and passengers between sea and land, but may also include warehousing, storage, and packaging. In addition, manufacturing or product assembly activities that take place within the port estate are also considered port operations.

Port land jurisdiction involves any activity under the management and development of the port estate. Therefore, Port Land is responsible for articulating its development strategy, conceiving and implementing port policies that maintain a consistent strategic direction. On the practical level, the Port Land Authority supervises major civil engineering works and maintains the berths, piers, and road access to the port complex. According to the *Journal of Maritime Policy & Management*, besides municipal authorities, ports are often the largest landowners within a city. For example, Antwerp port authority controls some 125 km of berth length and occupies a land area of 14,000 hectares. The Los Angeles port has 45 km of waterfront covering an area of 3,000 hectares.

The third essential element of port activities is port regulation. This includes maintaining the conservancy function and maintaining navigable approaches to the port. The port regulation unit also provides piloting services, vessels traffic management, and safe passage of vessels within the defined area of port jurisdiction. The port regulation power enforces laws relating to health and safety and controls pollution levels within the port estate. Finally, the port regulator monitors the performance of the port, coordinates policy making with local and national government bodies, plans future expansion, and markets the entire port and its facilities to potential customers.

<u>Options for port privatization:</u>

A survey of the top 100 ports in the world reveals four dominant port models. The first model is the public port with no private sector involvement. All three elements, operations, regulations, and land, are the responsibilities of the state. Public ports are still found in Singapore, India and most African states.

The second model, henceforth referred to as model II, transfers port operations to the private sector. In this model, port land remains public with regulatory activities also being monitored by the public sector. There are many examples of this type of arrangement in North America and European ports, with terminals leased to the private sector.

The third type of port, model III, is the port where both operations and port property rights rest in the private domain. The public sector via Port Authority still controls regulations matters such as navigable approaches. This type of privatization usually corresponds to single user ports such as oil ports or mineral ports, but is not appropriate to multi-user ports.

The final port model, model IV, is a port where all three functional elements are the responsibility of the private sector. In this model the government has no involvement in port activities other than regulations on sub-standard vessels, pollution or accidents. In model IV, the market determines opportunities for new private sector investments. Not surprisingly, the United Kingdom has the a fully privatized port.

<u>Models of Port Privatization</u>:

Port Models	Operations	Land	Regulations
Model I	Public	Public	Public
Model II	Private	Public	Public
Model III	Private	Private	Public
Model IV	Private	Private	Private

Interestingly, eighty-eight of the top 100 container ports fit Model II, where port operations are carried out by the private sector and the public sector retaining property rights over port land and regulatory functions. Model II is by far the most common arrangement for private sector participation in port activities.

According to a study entitled *Process, Players and Progress*, only seven of the top 100 container ports appear to conform to Model I, where the three elements of the port are under government control. These include several ports in South Africa, Singapore and Israel. South Africa plans to transfer responsibility for cargo-handling operations to the private sector.

<u>Private sector participation in the top 100 ports:</u>

	Public	Model II	Model III	Model IV
Number of Ports	7	88	2	3

According to the same study, only two of the top 100 container ports conform to Model III: Tilbury and Felixstowe in Great Britain. These ports are owned and operated by the private sector, with public sector control over regulatory functions. Finally, only three of the top 100 container ports conform to model IV. These ports also are all located in Great Britain. In each of these three ports the private sector controls operations, land, and regulations. In conclusion, the United Kingdom is the only country with real port privatization; however other countries offer private sector participation in port operations in key aspects of port activities where efficiency is a function of competition for port users.

COMMERCIAL AND ECONOMIC ANALYSIS

Elementary economic theory teaches us that privatizing port operations will increase port efficiency and improve competitiveness. The reason for this efficiency is that the main goal of a private company is to generate profit. In contrast, government operations are less likely to take corrective measures such as labor reduction, even when such a reduction is needed. Consequently, labor is occupied in activities that do not contribute to the health of the economy. In the short-run, re-allocation of labor can be difficult, but it promotes the long-run health of the enterprise. On the public sector level, port privatization will help alleviate the budget deficit, reducing the outflows of monies for unproductive labor. Also, the increased volume of products passing through the port, as expected due to efficiency measures, will raise government revenues via service charges.

For years, the Mauritanian government has paid scant attention to the operational deficits in Nouakchott Port. Their hope was to correct the problem with larger budgetary allocations or higher port service charges. These port deficits were seen simply as internal costs for the country with no major implications on foreign trade.

Interestingly, trade flow decreased in 1999 by 11% in Mauritania from US $747 million to US $662 million. This reduction in trade bears significant consequence on revenues collected on port services since demand for port services depends on the volume of goods handled. It is important to understand that port costs factor into the final price of the end product. Consequently, if port costs are excessive, the competitiveness of the merchandise is reduced and the volume of port services provided declines.

In the following section, an estimate will be supplied for the surplus of dock workers in the Port Authority due to the inefficiency of nationalization. From this information one can infer an estimate of potential job displacement after privatization. Finally, a calculation will be offered for the amount of compensation for laid-off of dock workers. Sources used for these estimates include both the World Bank in Washington, D.C., and the International Maritime Organization in London. The quantitative analytical tools applied are general in nature and the results are intended as a thought provoking method and not as a predictive tool.

Excess Labor before privatization:

Assumptions:

- All goods trade passes through the port.
- No services trade passes through the port.
- Loading and unloading ships requires the same effort per ton of product.
- Labor requirements per ton for different products are similar.
- Mauritania's port uses the same production technology used when it was built in 1984.
- Initially there was no excess labor at the Nouakchott Port.
- The port has 150 dock workers.

Percentage Change in Trade Volume between 1989 and 1999:

	1989	**1999**
Export in M $	**438**	**333**
Import in M $	**382**	**329**
Export Price	**97**	**79**
Import Price	**103**	**91**

1-Trade Volume in 1989:

Export Volume in 1989: Export/ Export Price= 438/97= 4.52
Import Volume in 1989: Import/ Import Volume= 382/103=3.71
Trade Volume in 1989: Export Volume + Import Volume= 4.52 + 3.71 = 8.22

<u>2- Trade Volume in 1999</u>:
Export Volume in 1999: Export/ Export Price= 333/79= 4.22
Import Volume in 1999: Import/ Import Price: 329/91= 3.62
Trade Volume in 1999: Export Volume + Import Volume= 4.22 + 3.62 = 7.84

The percentage change in trade volume between 1989 and 1999 is calculated thus:
(Trade Volume 1999 – Trade Volume 1989)/ Trade Volume 1989= -4.8%

<u>Conclusion:</u>
The volume of trade in Nouakchott between 1989 and 1999 decreased by almost 5%. We can thus tenuously estimate the excess labor in the port of Nouakchott at 5%. With a number of Dock workers at 150, there are at least 7 to 8 unnecessary workers. This is assuming that the only source of inefficiency is due to labor costs and that the technological change associated with privatization will not result in the reduction of labor.

Before estimating the surplus dock workers at Nouakchott Port Authority after privatization, it is necessary to estimate the percentage change of trade volume in Dakar Port Authority, Senegal, between 1989 and 1999. Since the Dakar Port Authority is considered a direct competitor, the following analysis will serve as a gauge to for the performance of the Nouakchott port.

<u>Percentage change in trade volume in Dakar Port Authority</u>:

	1989	**1999**
Export in M $	**759**	**985**
Import in M $	**1134**	**1493**
Export Price	**104**	**118**
Import Price	**83**	**102**

Export Volume in 1989= Export/ Export Price = 7.3
Import Volume in 1989= Import/ Import Price = 13.7
Export Volume in 1999 = Export/ Export Price = 8.35
Import Volume in 1999 = Export/ Export Price = 14.35
Trade Volume in 1989 = Export Volume + Import Volume = 21
Trade Volume in 1999 = Export Volume + Import Volume = 23

Percentage change in trade volume between 1989 and 1999 in Dakar Port:
(Trade Volume 1999 – Trade Volume 1989)/ Trade Volume 1989 = 10%
The volume of trade in Dakar between 1989 and 1999 increased by 10%.

Conclusion: Between 1989 and 1999, the trade volume through the Nouakchott Port Authority decreased by 5%, while the trade volume through Dakar Port Authority increased by 10%. A contributing factor is that landlocked Mali formally imported through both the Nouakchott Port and Dakar Port. However, since the Port of Nouakchott had become inefficient and very costly, Mali shifted its business to the much cheaper Port in Mali.

Surplus Labor after Privatization:

Global Cargo Handling Productivity:

Year	Man-Hours Worked in Million	Cargo ton Handled Million	Productivity (Ton/Man-hour)
1960	29.1	28.5	.98
1980	18.5	113.7	6.23
1987	17.1	157.8	11.69
1993	17	198.8	11.97
1996	17.9	220.2	12.30

If the new private port operator uses 1996 technology, productivity per worker will be increased to 12.30 tons/ man-hour. Since the current port facilities use technology from the 1980s, actual productivity is 6.25 tons/man-hour. As such, actual productivity is approximately one-half of the currently available technology.

Conclusion:

From the following one can conclude that after privatization, port operations will use half as many workers as before. The actual number of dock workers is 150. We already know that between seven and eight dock workers are unnecessary. Therefore, the number of dock workers needed to efficiently operate the port is: (150-8)/2= 71. All other things equal, approximately 79 dock workers (150-71) are likely to be laid off.

Compensation Plan:

The section will attempt to provide a rough estimate the funds needed to compensate the laid off dock workers. For an objective study, it would have been interesting to look at compensation plans for other African dock workers; unfortunately, no such data exists because not a single port in Africa has been privatized. As an alternative, this study will look at representative ports from Less Developed Countries in Latin America that have been privatized. The study will use their compensation plans as a measure for compensation in Mauritania. The following three Latin American Countries were selected: Chile, Colombia and Venezuela.

Country	Year	Amount/ worker
Chile	**1981**	**US $14,300**
Colombia	**1982**	**US $6,250**
Venezuela	**1991**	**US $14, 800**

These figures have been converted to 2001 dollars:
Chile : US $14,300 X 1.71 = US $24,500 in the year 2001.
Colombia >: US $6250 X 1.613 = US $ 10,100 in the year 2001.
Venezuela : US $ 14,800 X 1.19 = US $ 17,650 in the year 2001.

To compare these figures in Mauritania, it is necessary to use the Purchasing Power Parity (PPP) factor.
Mauritania: PPP X GDP/per Capita= $832
Chile: $ 24,500/ GDP per capita = $ 24,500/ 4,890 = 5
Colombia : $ 10,100/ GDP per Capita = $ 10,100/ 3380 = 3
Venezuela : $ 17,650/ GDP per capita = $ 17,650/ 7082 = 2.5

Conclusion:
The range of compensation should be between $2,100 to $4,200 (2.5 X 837 to 5 X 837) per dock worker. Therefore, the range for all surplus workers is $165,900 to $331,800.

Comments:
The results show that the estimated range for the compensation for a Mauritanian dock worker is between $2,100 and $4,200. This amount is 5.25 to 10.5 times greater than GDP per capita. If one considers purchasing power parity factor, this amounts to a great deal of money. However, laying off workers also saves money since state employees are provided housing, electricity, water, health insurance, and alimentation coupons for necessity products from the government. After being laid off, the worker will lose all these social benefits.

How will the Nouakchott Port Authority increase its activities via privatization?

Better Services – The demand for port services is quantified by the volume of handled goods. Since port services are an integral part of the manufacturing and distribution system an exporting firm, the cost associated with these services are directly transferable to the customer. With the introduction of technological innovation, port services will be of higher quality and more efficient, thus opening up the Mauritanian market to firms who previously deemed the market unattractive.

International Competitiveness – About 50% of Mauritania's exports are concentrated in the fishing industry, with its two primary markets concentrated in Europe and Japan. These two markets have access to comparable products from both Senegal and Morocco. One can easily presume that excessive port costs in Mauritania serve to negatively impact the attractiveness of Mauritanian goods. Assuming that the privatization effort would help cut the cost of handling fish exports, Mauritania will become more internationally competitive in its key industries. The growth in demand for Mauritanian fish would also serve to stimulate its complementary industries. The long-term impact of privatization will increase demands for workers, fish packing services, land and ocean transport services, and cargo handling services. Thus, the entire Mauritanian economy will benefit.

INSTITUTIONAL ANALYSIS

The World Bank/ IMF:

The World Bank and the International Monetary Fund are pressuring the Mauritanian government to privatize their state owned enterprises as part of their overall structural adjustment reform. This mass privatization aims to reduce the public budget deficit, and create a market based economy. According to World Bank analysis, Mauritania's state owned enterprises account for one half of all outstanding domestic debt and for a substantial portion of foreign borrowing. Government borrowing normally has two effects on investment. First, it decreases private investment because government borrowing drives up interest rates. Second, it decreases the effectiveness of investment since government ventures are unduly favored over private ones. Moreover, the lack of competition and the monopoly position of government run organizations promote inefficient labor cost and institutionalizes corruption among managers of these state owned enterprises and government offices.

In order to compete on the global market, Mauritania must increase private sector participation within the economy. Deregulating will facilitate this transition, fostering competition with state the owned enterprises (SOEs). The goal of the World Bank policy for Mauritania is for the government to reallocate public resources via SOE subsidies toward investment in infrastructures and social programs that create favorable competitive market conditions.

The World Bank and the International Monetary Fund see privatizing state enterprises as essential for introducing a free market system because privatization increases both the size and dynamics of emerging markets. The hope is that the distribution of ownership will promote both foreign and domestic investment which in turn will reduce volatility in the capital market which causes inflation. The international institutions see privatization of SOEs as a means to reduce public expenditure, pay off foreign debt, and increase government revenues.

The Word Trade Organization:

Mauritania, as a member of the World Trade Organization since January 1995, is committed to the National Treatment Principle and the Most-Favored Nation Principle. The National Treatment Principle applies automatically to all goods imported and domestically sold in Mauritania. In terms of services, National Treatment applies only in those sectors and with those countries that have voluntarily made commitments. In this case, the Mauritanian government offered National Treatment of services only in the tourism sector, which is unrelated to port privatization. The Doha Round of trade negotiations is currently underway and maritime services (which includes ports) are on the agenda. While Mauritania is not obligated to make commitments in this area there is growing momentum to do so as other WTO members will likely make their own commitments in this sector.

With regards to transparency, the GATS states that the government must publish all laws and regulations. The purpose of this arrangement is to allow foreign companies and governments to use these inquiry points to obtain information about regulations in any service sector. The end goal of the WTO is to create an open system of operations that is not influenced by corruption. Also, the World Trade Organization encourages members to enhance labor and environmental standards to increase safety for workers and reduce trade impacts on the environment.

World Maritime Organization:
Mauritania, as a member of the International Maritime Organization, must comply with international maritime rules and standards that ensure safe and effective shipping services. It also must protect the coast from environmental degradation due to shipping related activities. In order to improve the safety and efficiency of maritime transport, the International Maritime Organization recommends the use of modern equipment. This will help ports be more efficient and reduce operational cost. The Port of Abidjan (Ivory Coast) and the Port of Dakar (Senegal) have invested in cargo handling equipment which permits loading and dispatching operations on both sides of vessels. Moreover, the IMO suggests the use of basic standard equipment such as computers and the internet which trained people can operate. Finally, ports exchange large amounts of information with other members of the distribution chain. The IMO encourages ports to use the Electronic Data Interchange system (EDI) to better integrate port operations, manufacturing, transport and warehousing. The rules of EDI are set by the United Nations Rules for Electronic Data Interchange for Administration, Commerce and Transport. A UN/ EDIFACT study demonstrated that the use of EDI in ports could improve resource savings and customer services.

LEGAL ANALYSIS

Mauritania's public port regulations state that as a government entity, the Nouakchott Port Authority should be owned and operated by the government. However, the law provides that in the instances when the government commences a privatization program; private sector participation in state-owned enterprises is possible. In this manner, the government should initiate a competition policy that allows the private sector to compete with the public sector on equal terms. This competition policy should include removal of subsidies, public loan guarantees and harmonization of tax systems applied to the state owned enterprises and private enterprises. Investment rules must protect foreign investors, recognize foreign participation in private ownership, determine to what extent foreigners can participate in the privatization of SOEs, and guarantee repatriation of profits and capital. With regards to labor, law reform is needed to determine the extent to which private investors can set employee salaries and benefits and hire and lay off workers. Generally, labor for state owned enterprise personnel do not favor privatization because public sector employees enjoy special civil service benefits and the public labor regime is established more in accordance with sociopolitical than commercial criteria.

Concerning legislation, Ordinance no. 97 of April 1996 states that the decision to transfer ownership assets from the public sector to the private sector of any state owned enterprise should be made in the Council of Ministers. Moreover, the ministers should debate the passage of the bill in the bicameral, Mauritanian parliament. In order for the bill to become law, more than 50% of the votes in both chambers must be acquired.

POLITICAL ANALYSIS

Privatization is a political process that can disrupt various interest groups. Since ports are sources of public employment, they are vulnerable to political pressure. Governments are sociopolitical institutions, and it is difficult, if not impossible, to resist pressures from port labor for protectionist measures and subsidies. Such pressure is usually justified in terms of (a) the preservation of national sovereignty; (b) the desire to retain national autonomy over certain activities; (c) the notion that state ownership is needed to safeguard the public interest; and (d) the fear that wealth might become concentrated in the hands of a few private parties.

In Mauritania, labor organizations and government branches use collective bargaining more as a means of redistributing the nation's wealth (role taxes) and satisfying political aspirations, than as a means of increasing national wealth or protecting workers from unhealthy working conditions. This practice has led to over-staffing, low productivity, high costs and corrupt practices. If the Nouakchott Port is privatized, the short-term effects on these interest groups will certainly dominate the political discussion. The potential social impact of privatization is often calculated in terms of lost jobs, but excess labor is a problem in itself, caused by poor public management. It is a problem that would need remedying even in the absence of privatization. According to Pierre Guislain, social factors are usually taken into consideration more in the short term than in the long term job creation generated by a more dynamic system.

LABOR REFORM

Background:
In public ports with no private sector participation, state subsidies have made port workers immune from market mechanisms. Moreover, the government has established a labor regime that supports port workers' desire for jobs and income security. The same regime has given them a monopoly over port services. As a result, port workers have little commercial incentive to work efficiently.

After introducing market based port labor reform, port workers are exposed to the brutality of market efficiency where one's job and income is tied to a worker's value to the firm. Since ports are a crucial part of Mauritania's distribution system, efficiency is important. Consumers (i.e. the brutal market) purchase goods and services where total costs, including port costs, are lowest. Only by responding to the needs of these customers can port workers guarantee their jobs and incomes. Therefore, the goal of port labor reform should be to help workers recognize that their value in the future will be contingent on their ability to integrate technical skills into their range of activities. In the long run, technical sophistication will reverse the affects of initial job insecurity.

The Needs for Commercially Oriented Port Labor Reform:

<u>1- Modern Technology:</u>
Investments in new technology are necessary to make ports efficient and attractive to shipping companies. For many years, governments in developing countries have supported labor in the name of job security and sought to hold back technological innovation.

According to the Pacific Maritime Association, loading and dispatching, containerization, computerization, and telecommunication have revolutionized port operations. These technological advances have intensified competition between ports. As a result, port customers have increased commercial pressure on ports to improve productivity and bring down labor costs.

For example, in the 1950s the handling of dry-bulk cargoes required 20 men for each vessel's cargo holds. Twenty years later these cargoes were handled at specialized terminals and much larger cargo could be dispatched using three men for the entire vessel.

Implementation of these technological innovations will satisfy each group of the port community. Unions seek to maintain high levels of employment and benefits, carriers seek to reduce vessel time in port, port managers seek to achieve a reasonable return on investments, and port customer groups seek to reduce charges and eliminate unnecessary delays.

Corporatization Reform:
Corporatization is needed to convert public enterprise organized under public law into companies organized under private law. The University of Brussels privatization expert Pierre Guislain has done a fascinating study entitled "A Strategic, Legal and Institutional Analysis of International Experience'' explaining that corporatization law will not become effective until the status of public enterprises are amended under the law.

The objectives of corporatization are to improve economic performance and enhance port accountability. Other objectives are: 1) free the port of social and non-commercial obligations, 2) clearly separate ownership and management of the port, and 3) empower management to run the port as a commercial entity.

As written in the Privatization Challenge, corporatization or transformation into a commercial economy should not be viewed as merely a legal distinction. Instead, It requires a broad range of restructuring measures, such as deregulation and financial restructuring.

Deregulation:
The objective of deregulation is to attract investors into port operation activities. For this reason Mauritania's government should eliminate rules, regulations, subsidies and sociopolitical obligations that obstruct participation of the private sector in port activities. The removal of such obstacles will give private port operators more freedom to respond to the market mechanism (supply/demand) of the global economy. However, some regulations are necessary to hedge against anti-competitive behavior. If deregulation is not accompanied by antimonopoly laws, private terminal operators may attempt to obtain monopoly control over port operations. In this case, privatization has failed to serve its purpose.

Antimonopoly Commission:
The role of the antimonopoly commission is to protect customers from monopoly practices by private terminal operators, exporters/importers associations, and unions. Moreover, the antimonopoly commission will enhance competition and will enforce property rights over port zone activity. This commission will prevent the public sector monopoly from being handed over to private interests because ports tend to facilitate natural monopolies. Moreover, the antimonopoly commission will investigate claims of abuses by dominant firms. Finally, this commission will adopt antimonopoly laws that are applied to terminal operators and dock labor alike, ensuring that market mechanisms are used to compete, and not to create cartels.

Financial Restructuring Measures:
According to Pierre Guislain, financial restructuring measures require abolishing discriminatory practices. Discriminatory practices include such financial privileges as subsidies, tax and customs exemptions, and state guarantees on borrowing. Financial restructuring also includes abolishing social services such as health insurance, education, and housing for employee families. Financial measures will clean up the balance sheet by removing debt, evaluating assets and liabilities, and arranging new agreements with financial institutions, especially creditor banks. Generally, the supervisory group that selects recruits for the new port management team must be selected from an outside party because former managers may not possess the required skills or they may not adequately support the restructure.

The objectives of Market Based Port Labor Reform:
The first aim of market-based reform should be to preserve competition while avoiding monopoly control of port services whether by private terminal operators or labor unions. In the absence of private sector participation, unions have little incentive to accept market-based reform. Without market oriented reform, no commercial basis for private sector participation can be established.

The second aim of market-based reform is to expose dock workers to the market mechanism of the global economy. Dock worker wages and benefits will become tied to the interests of port customers and private terminal operators. Dock workers will adapt to new technology through retraining programs, which will cut costs and improve productivity. Another objective of labor reform is to enhance the collaboration between unions and the private sector on operational problems. With globalization, the commercial goals of the private sector and social goals of dock workers have become interdependent. Dock workers are the employees of private terminal operators, and work with them to solve productivity and cost problems. Terminal operators seek to motivate dock workers by offering market wages and benefits. This will enhance the competitiveness of exports on international markets.

Market based reform commission:
The government should set up a commission to develop a market-based labor regime. This commission should be composed of officials from the Ministries of Finance, Trade, Transport and Labor. From the private sector side private terminal operators, unions, port administrations, and exporters/importers should also be included. To achieve port labor reform based on consensus, the commission must listen not only to unions but also to customers and private terminal operators. The commission should organize seminars and use the media to convince the union that market-based reform is inevitable, compensations will be substantial, and that the country will benefit. Moreover, the committee must encourage a joint committee between unions and private terminal operators, resolving operational problems and disputes without government intervention. Finally, the commission must designate the government as a regulatory body. The market labor reform commission should also set up training programs, placement services for laid off dock workers, and early retirement plans. Placement services should be linked to a worker's successful completion of training programs leading to jobs either in the port sector or other industries.

Examples of results of port labor reforms:
Chile: Compensation paid to workers laid off in the Chilean ports as result of the deregulation amounted to a total of US $30 million. Payments per worker averaged US $14,300. By 1982 increased productivity had generated savings of US $40 million. Efficiency benefited port operators, exporters, importers and carriers. In 1995, the economies with public-sector ports in Chile increased earnings to US $140 million.

New-Zealand: The government of New Zealand implemented a similar privatization scheme, paying US $28 million to compensate excess workers. By the end of 1990 the direct savings to port customers amounted to US $56 million. For every job lost in New-Zealand's docks, the Government estimated that 10 were generated in other sectors by eliminating cost and productivity bottlenecks caused by the ports.

Consequences of Market-Based Labor Reform:
1- Political:
The government should not directly participate in relations between port labor and private terminal operators. The collective negotiation will be bipartite (employers-unions) rather than tripartite (unions-government-employers) because the new relationship between employers and workers should arise from market-based labor reform. Consequently, the government should abstain from interfering in port labor relations, except in its capacity as regulators, owners and investment promoters. The regulatory function of the

government should be confined to establishing and protecting competition, and to intervening to resolve regulatory disputes. Finally, the government should no longer yield to the demands of port unions. Port administration should not participate in port activities as either operators or employers. In this context, collaboration and trust between port unions and private terminal operators will be fostered, which will help improve workers wages, benefits and job security while helping private terminal operators achieve commercial goals.

2- Economic:

The adoption of market-oriented port labor reform will expose dock-workers to world-wide competition. The new labor regime, under privatization, will transform the old inefficient ports from an institution where workers' wages dominate competitive considerations into an organization where labor is a factor of production valued based on its contribution to customer needs. In this case, the government should no longer be absorbing the cost of low labor productivity.

In the past, the government reserved the domestic market for national entrepreneurs and guaranteed jobs and benefits for dock workers without acquiring new technology, cutting costs or improving productivity. These policies raised the price of imported products in the national market. Private terminal operators will no longer compensate dock-workers for their political value, but by the market determined value of their labor.

BACKGROUND ON CONDUCT AND ORGANIZATION OF SIMULATION

THE NEGOTIATION PROCESS

The parties to these negotiations will be provided with individual team instructions and facts common to each country team's interests.

Individual interest groups (e.g., associations, government agencies, etc.) will meet first to review facts, develop team negotiating goals and strategies, assign research and negotiating roles, and to document all negotiating sessions.

All interest groups will then meet with their country team members. (Country team members may or may not share common interests, goals, etc.) Lead government agencies will seek to reconcile differences and to advance a unified voice in the bilateral or multilateral sessions.

All teams will seek to advance specific negotiating goals and interests. For example, it can be assumed that China seeks acceptance **in the** international trading community, that it would like to avoid a dispute in the WTO, and that it is committed to an increased level of enforcement in the area of intellectual property rights. Similarly, it can be assumed that the US, EU, and Swiss governments and constituent manufacturing groups seek enforcement of IPR laws in China and greater access to the Chinese market. Interest groups may differ, however, on appropriate timetables, implementation mechanisms, and enforcement.

All parties will want to consider some or all of the following:

- Documentation of the scope of the problem;
- Specific agreements to implement reforms including. but not limited to rules, regulations, monitoring devices, enforcement mechanisms, legal remedies, etc;
- Timetables for implementation of agreements reached;
- Criteria in the field of IPR for Chinese accession to the WTO.

It will also be important to determine the interests of your counterparts including adversaries and allies. You will want to try to build alliances <u>within</u> your country and with other country governments or individual interest groups.

CONFIDENTIAL PARTY INSTRUCTIONS

Each individual team (interest group) will be provided with further confidential instructions issued from the perspective of a superior corporate, governmental, or military officer. You are to design your negotiating strategy in accord with the instructions. Questions regarding instructions or the terms of agreements reached can be reviewed with one of the instructors.

NEGOTIATING SKILLS AND TECHNIQUES

1) Teams should engage in "brainstorming" sessions to identify and articulate your interests and those of your counterparts including the listing of potential OPTIONS for an agreement and the use of OBJECTIVE CRITERIA for the structuring and implementation of agreements;

2) Teams should elect a LEAD NEGOTIATOR for each negotiating session. It is important for team members to defer to a lead negotiator and to SPEAK WITH ONE VOICE. Lead negotiators may invite the participation of team members on specific issues, areas of expertise, etc.

3) Teams should use CAUCUSES (private team meetings) to review proposals, formulate counter-proposals, or to review the status of the negotiations; Remember to LISTEN to your counterparts and ASK QUESTIONS to learn what their needs are. What do they want? Can you fashion an agreement or the provision of an agreement that will meet some if not all of their needs? Are your sessions CONFIDENTIAL or open to the press and public? Craft and utilize SINGLE TEXT DOCUMENTS to introduce proposed language on agreements, to capture agreements on procedure and/or substance that can be added to the text of a final agreement; Obtain SIGNATURES of counterparts on documents reflecting interim or final agreements; Consider future meetings, working groups, investigative teams, etc as means to keep the process moving forward and to avoid stalemates. Remember you are dealing with people. What are their needs within their organization, bureaucracy, company, etc. Can you help them to meet their needs? Establish a personal rapport. Be hard on the problem, be soft on the people. Consider a JOINT MEDIA RELEASE OR CONFERENCE to announce progress or a final agreement. Use the media to help solidify the parties' public commitment to the agreement.

RULES TO ENHANCE THE LEARNING GOALS OF THE SIMULATION

Because time is extremely limited, the instructors request that students abide by the following rules which have proven effective in other negotiation simulations:

1) Limit caucus sessions and breaks during negotiations to no more than five (5) minutes;
2) Country teams will have to negotiate an internal consensus among all interest groups BEFORE the commencement of official bilateral negotiations with national counterparts.
3) The parties will not be authorized to "walk-out" or otherwise boycott a negotiation session;
4) If negotiating teams reach an "impasse" (stalemate, dead-end, end point) they should work on another issue and/or seek the instructors' intervention;
5) No name calling, personal attacks, or insults will be permitted. (This is not good style in real world negotiations and is usually the result of ego, loss of emotional control.)
6) Make use of charts, note-taking, printed exhibits, and printed documents to facilitate the recording of interim and/or final agreements.

LOCATION OF THE NEGOTIATIONS

As negotiating sessions are established, a home country will be identified. The home country should serve as the host of the negotiations. Hosts should welcome guests to their country and to the negotiation session. Introductions should be made before the parties proceed to substantive matters