

Brazil's new port law



Constantino Salivaras
Manager

+55 21 3736 3653
constantino.salivaras@ctplc.com

The new Brazilian port law (Law 12.815/13 – Nova Lei de Portos) was enacted to try and tackle one of Brazil's most noticeable infrastructural challenges: ports and terminals. The infrastructure of ports and terminals in Brazil needs to be updated to suit modern sizes of vessels and trade demands. Brazilian ports and terminals are in need of substantial investment and a major upgrade.

The Nova Lei de Portos came into force on 5 June 2013. It aims, amongst other things:

- to increase private and governmental investment;
- to upgrade the current port and terminal facilities;
- to reduce bureaucracy, costs and taxes;
- to increase competitiveness of Brazilian trade; and
- to provide a significant update to the ports' and terminals' regulatory/legal framework.

Whilst, economically, Brazil is consistently growing, it faces serious infrastructural challenges. Lack of adequate infrastructure is a common problem faced in Latin America, which can be a deterrent to carrying out business in the region.

The problem

Many Brazilian ports such as Santos are suffering congestion problems as well as a lack of infrastructure. Ports are in need of modernisation and deepening, which presently is preventing modern container ships from docking at certain terminals. This results in cargo ships leaving either partly full or having to wait until high tide to sail to avoid any potential grounding.

Many terminals also struggle to efficiently manage the volume of vessels calling at Brazilian ports. This, together with the dredging problems, undoubtedly contributes to port congestion.

Effects of the port law

Both public and private terminal regulations have encountered significant changes as a result of the Nova Lei de Portos.

Public terminals in Brazil belong to the federal government and are leased to private operators under long-term contracts (as per the constitutional principle: 'Ports are public, service is private'). The Nova Lei de Portos aims to reduce handling charges and increase the efficiency of port operations. Private operators are chosen by public bid and the new law modifies the selection criteria, granting the handling of the port to the most efficient port operator.

The bids are now organised by the **National Agency for Waterway Transportation (ANTAQ)** instead of the individual port authorities. ANTAQ aims to standardise procedures and implement such procedures, but as Brazil is such an extensive country, performing this task could be cumbersome.

For instance, the enactment of the Nova Lei de Portos has interrupted the automatic renewal of the terminal leases and many of the existing leases have expired. These now have to be renewed through ANTAQ bids.

The Nova Lei de Portos also settles one of the main legal disputes regarding the handling of third-party cargoes by private terminals. This has now been authorised and hence competition has increased, instigating development and generating investment.

Conclusion

In practice, it still remains to be seen whether this law will have any substantial impact on the efficiency of Brazilian ports and terminals, and how long will be needed for that impact to be noticeable. So far the ambitious objectives of the Nova Lei de Portos are not being accomplished at the speed initially envisaged.