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COMITTEE ON CIVIL RIGHTS, CITIZEN PARTICIPATION  
AND SOCIAL ECONOMY

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**FINAL REPORT**  
**Senate Resolution No. 237**

**ROSSANA LÓPEZ LEÓN**  
**CHAIR**

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Lecture given by profesor Stiglitz

which was based on his most recent book, *The Price of Inequality: How Today's Divided Society Endangers Our Future*, 2012.

Jeffrey Valentín-Mari, PhD. and José I. Alameda-Lozada, PhD. of the Department of Economics in the University of Puerto Rico, Mayagüez Campus, submitted to the consideration of the GAO the study entitled Economic Impact of Jones Act on Puerto Rico's Economy.

The Jones Act: Lost at Sea

Terry Miller, United States Ambassador to the United Nations Economic and Social Council in 2006 and current Director of the Center for Trade and Economics (CTE) of the Heritage Foundation; and James Jay Carafano, Ph. D., Vice President of the Heritage Foundation and Director of the Center for Foreign and National Security Policy, and of the The Kathryn and Shelby Cullom Davis Institute for International Studies of said Foundation. The Heritage Foundation 2010.

## **TO THE SENATE OF PUERTO RICO:**

After studying and evaluating Senate Resolution No. 237 (hereinafter the “**Resolution**”), the Committee on Civil Rights, Civil Participation, and Social Economy (hereinafter the “**Committee**”) recommends that this Legislative Body accept this Final Report and the recommendations included herein for Puerto Rico’s partial, and eventually, full exemption from Federal cabotage laws.

### **SCOPE OF THE MEASURE**

Senate Resolution No. 237 directs the Committee on Civil Rights, Citizen Participation, and Social Economy of the Senate of Puerto Rico to carry out an exhaustive study of the Report issued by the Government Accountability Office (hereinafter “GAO”) on March 14, 2013, with regard to the economic impact of ocean freight shipping costs between Puerto Rico and the United States, as a result of the application of Federal Cabotage Laws.

### **ANALYSIS OF THE MEASURE**

In order to discuss exhaustively and responsibly the context within which Federal Cabotage Laws were implemented in Puerto Rico, this Committee deems it necessary to analyze their historical background and emergence.

Federal cabotage laws were originally enacted to protect the national security and economic welfare of the United States. When the United States Constitution was created in 1789, the 1<sup>st</sup> Congress immediately began hindering the use of foreign-flag vessels for domestic commerce. What started with the imposition of a tariff on their use, by 1817 had turned into a categorical ban on the use of foreign-flag vessels to transport merchandise between United States ports.



This legislation sought to shield the interests of American shippers from foreign, more experienced shippers competition. It further limited transportation by water between points in the United States, including territories and possessions, either directly or via a foreign point, in any other vessel than a vessel built in and documented under the laws of the United States.

On April 12, 1900, the United States Congress enacted Public Law 56-191, known as the Foraker Act, two years after acquiring Puerto Rico as a war trophy in accordance with the provisions of the Treaty of Paris which ended hostilities between the United States and Spain during the Spanish-American War. The aforementioned Act, later known as the First Organic Act of Puerto Rico, established a civil government in the Island and provided that cabotage between Puerto Rico and the United States *shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States.*<sup>1</sup>

Moreover, Puerto Rico is, in accordance with the aforementioned federal cabotage laws, one of the “great coasting districts” of the United States. Therefore, when the Jones-Shafroth Act was enacted on March 2, 1917,<sup>2</sup> it provided that *the laws relating to tariffs, customs, and duties on importations into Porto Rico prescribed by the (Foraker) Act are hereby continued in effect.*<sup>3</sup> This provision upheld the effectiveness of all that pertains to cabotage legislation, which is still in effect.

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<sup>1</sup> Ch. 191, Section 9, 31 Stat. 79 (1900).

<sup>2</sup> This Act granted U.S. citizenship to the people of Puerto Rico; separated the executive, judicial, and legislative branches of the Government of Puerto Rico; recognized civil rights; and created a locally elected bicameral legislature; among other things.

<sup>3</sup> Ch. 145, Section 58, 39 Stat. 968 (1917).

Subsequently, the United States Congress enacted Public Law 66-261, as amended, known as the Merchant Marine Act of 1920 (hereinafter the “Jones Act of 1920”). To this day, said Act regulates maritime transport between the United States and our Island.<sup>4</sup> It is worth noting that both the spirit and effectiveness of the Jones Act of 1920, limit maritime transportation between the United States and/or its possessions and/or territories. This entails that any cargo transported between our Island and any other ports in the United States must be shipped on vessels built and registered in the U.S. The essence is that all goods carried by water between the United States, its territories, and possessions must be shipped in vessels of the U.S. Merchant Marine Fleet documented under the laws of the United States or to which the privilege of engaging in coastwise trade was extended; and crewed by U.S. citizens.

Jones Act of 1920, reasserted what was originally provided in the Foraker Act of 1900, that the Federal Cabotage Laws shall apply to Puerto Rico as if it were any other port in the continental United States. Section 27 specifically provides that:

[...] no merchandise transported by water, or by land and water, on penalty of forfeiture of the merchandise [...], between points in the

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<sup>4</sup> Specifically, the amendment to Section 20 of said Act, which applies to possessions, territories, and states, is popularly known as the Jones Act of 1920, because it was introduced and sponsored from 1909 to 1933 by Senator Wesley Livsey Jones, from the state of Washington. This legislation, which is extremely protectionist, as we have mentioned before, was based on the ideas and writings of United States Navy service member Alfred Thayer Mahan who, at the end of the 19<sup>th</sup> Century argued, that the national defense of the United States was dependent on having and maintaining a strong merchant marine fleet. Moreover, with this legislative measure, Senator Jones ensured that citizens from and companies based in the territory of Alaska (before it became the 49<sup>th</sup> State) would continue to depend on the economic interests, and shippers of their fellow citizens in Seattle, and therefore dependent on Washington. This means that the original purpose was to protect the interests of his state by ensuring that an incorporated territory still depends on them.

United States, including Districts, territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States, and owned by persons who are citizens of the United States [...].

Later, Congress enacted Public Law 600 of 1950 which, in short, granted Puerto Rico the right to self-government based on a constitution to be drafted and approved by the people. Also, Law 600 directed that a referendum be held to determine whether the people of Puerto Rico accepted or rejected the provisions of Law 600. Once the results of the referendum were obtained and the provisions of said Law accepted, a Constitution could be drafted and submitted to the consideration and final approval of the President and the United States Congress. This Act maintained the effectiveness of Section V of the Jones Act of 1917, and kept the economic relationship between Puerto Rico and the United States intact. In this regard, the prohibitions maintained pursuant to the cabotage laws and the tax impositions on goods exported from Puerto Rico to the United States were reasserted in 1950.

In light of the foregoing, the impact of the application of cabotage laws to Puerto Rico has been discussed and recorded both in our social and political history. For example, in Concurrent Resolution No. 35, approved on October 30, 1995, the Legislative Assembly made a unanimous request to the United States Congress for Puerto Rico's full exemption from cabotage laws. Subsequently, other measures to express the collective parliamentary opinion and conduct investigations regarding this important subject which concerns us all, have been

approved by both Houses. In addition, over a dozen national and international studies have been conducted on the economic impact the imposition of such cabotage laws has on the maritime trade between the United States, and its territories and possessions.

Finally, on March 14, 2013, the Government Accountability Office (hereinafter “GAO”), filed a report entitled: “**PUERTO RICO Characteristics of the Island’s Maritime Trade and Potential Effects of Modifying the Jones Act.**” Said report discusses the effects a possible modification to current laws might have on the maritime trade between Puerto Rico and the United States. The report mentions the United States jurisdictions subject to federal cabotage in a list of insular areas, to wit the Commonwealth of Puerto Rico; American Samoa; the Commonwealth of the Northern Mariana Islands; Guam; the U.S. Virgin Islands; the Federated States of Micronesia; the Republic of the Marshall Islands; and the Republic of Palau.<sup>5</sup>

The following are the Jones Act waivers, which are currently in effect: the U.S. Virgin Islands have been exempt from coastwise laws since World War I (1914-1918), as part of the agreement entered into when they were purchased from the government of Denmark;<sup>6</sup> American Samoa is exempt from coastwise laws as a result of the Tripartite Convention of 1899 between the United States, Germany, and the United Kingdom (England); the Commonwealth of the Northern Mariana Islands was exempt from federal cabotage laws in the Covenant to establish a

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<sup>5</sup> These are the insular areas (territories and possessions) of the United States, but it should be noted that the Jones Act of 1920 applies to the states of Hawaii and Alaska which are not part of the contiguous United States.

<sup>6</sup> To be specific, Congress exempted the U.S. Virgin Islands in 1936 to stimulate the economy of said territory, as established in the purchase agreement. See also, *American Maritime Association v. Blumenthal*, 590 F. 2d 1156, 1166-69 (D.C. Cir. 1978).

Commonwealth in political union with the United States; meanwhile, Guam was exempt from the requirement to use U.S.-built vessels when shipping goods from the United States.

**The information above shows that the Commonwealth of Puerto Rico is the only jurisdiction where the restrictions imposed by cabotage laws, regarding the shipping of goods, are fully implemented.** It is worth noting that in 1980, cruise ships arriving in Puerto Rico's ports were exempt from the Passenger Vessel Services Act of 1886 due to the economic crisis the Island was facing at that time. This means a precedent was established to amend United States freight and passenger preference laws for Puerto Rico. This resulted in an increase in the number of cruise ships, and other types of vessels, arriving in the Island, and, in turn, an increase in the economic activity of the Island.

Also, GAO acknowledged in its 2013 report that the vessels used to transport merchandise to and from our ports often double their expected useful life.<sup>7</sup> The report mentions that the vessels burn fuel faster and less efficiently, and points out they are lacking in bulk cargo, petroleum, and natural gas transportation capacity, among other factors that affect the economic activity in maritime trade. The aforementioned factors are inherent to Puerto Rico's current fragile economic state.

Undoubtedly, the elevated costs of goods traded in the Island, both in local and in megastores is questionable, when compared to the costs in foreign markets.

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<sup>7</sup> As shown in the table, nearly all of the containerships and several of the barges used by these carriers are operating beyond their average expected useful life, which is about 30 years for a containership and about 27 years for a barge, according to Office of Management and Budget guidance. United States Government Accountability Office, "PUERTO RICO: Characteristics of the Island's Maritime Trade and Potential Effects of Modifying the Jones Act", p. 6.

Likewise, it is known that international trade is moving towards liberalization when it comes to rules and regulations governing the entry of merchandise into countries, until the complete elimination of any trade barriers is achieved. Also, the purpose of eliminating all protectionist regulations is to promote the competitiveness and economic development of a country and, ultimately enable consumers to benefit from a wider variety of goods at better prices. For instance, the People's Republic of China was one of the world's most restrictive countries in terms of maritime trade and shipping. However, they have waived the requirement that the transportation of goods into the country shall be carried out only in vessels built in China. This waiver has proven greatly beneficial to the economy of the people of China.

In light of the foregoing, Senate Resolution No. 237 was introduced for consideration by the Senate for the purpose of having the legislative body conduct an in-depth study on GAO's report. Every aspect discussed in this report regarding how cabotage laws affect the socio-economic welfare of our citizens must be analyzed both scientifically and empirically. We want to conduct a comprehensive study that includes an analysis of every GAO determination, and the state of the impact of cabotage laws in the Island.

## **DEPONENTS BEFORE THE COMMITTEE**

The Committee on Civil Rights, Citizen Participation, and Social Economy of the Senate of the Commonwealth of Puerto Rico, as part of the investigation directed under Senate Resolution No. 237, held a series of public hearings from January 27 to 31; February 3, 5, and 6, and June 9, 2014; and January 14, 2015. Over forty (40) position statements were heard, and the following thirty-two (32) deponents attended the referred public hearings:

- Puerto Rico Bar Association (hereinafter the “PRBA”);
- College of Certified Public Accountants of Puerto Rico (hereinafter the “CCPA,” Spanish acronym);
- Department of Consumer Affairs (hereinafter “DACO,” Spanish acronym);
- Department of Agriculture;
- Department of Transportation and Public Works (hereinafter “DTOP,” Spanish acronym);
- Puerto Rico Chamber of Food Marketing, Industry and Distribution (hereinafter “MIDA,” Spanish acronym);
- Dr. Jeffry Valentín-Mari (economist);
- Puerto Rico Chamber of Commerce (hereinafter the “CCPR,” Spanish acronym);
- Puerto Rico United Retailers Association (hereinafter the “Retailers Association”);
- Puerto Rico Products Association (hereinafter the “Products Association);

- Puerto Rico Manufacturers Association (hereinafter the “Manufacturers Association”);
- Hawaii Shippers Council;
- Dr. Nelson Rochet-Santoro (economist);
- Dr. José Villamil-Fernández (economist);
- Puerto Rico Shipping Association consisting of the Caribbean Shipping Association; the Puerto Rico Chamber of Commerce; the Puerto Rico Manufacturers Association; the Private Sector Coalition; the National Maritime Safety Association and their respective members (hereinafter the “Shipping Association”);
- Rafael Cox-Alomar, Esq.;
- Pan American Grain, represented by its President, Mr. José González-Freyre;
- Dr. Martha Quiñones-Domínguez (economist);
- Seafarers International Union (hereinafter the “Seafarers”);
- Juan M. Dalmau-Ramírez, Esq.;
- Puerto Rico Economists Association (hereinafter “Economists”);
- San Juan Municipality (hereinafter the “Municipality”);
- Dr. Francisco R. Zayas-Seijo;
- José Ortiz-Dalio, Esq.;
- Puerto Rico National Guard (hereinafter the “National Guard”);
- Ports Authority (hereinafter the “Authority”);



- Puerto Rico Community Pharmacy Association (hereinafter the “AFCPR,” Spanish acronym); and
- Puerto Rico Trade and Export Company (hereinafter “COMEX,” Spanish acronym);
- Mr. Ramón González-Cordero, President of Empire Gas Company, Inc.;
- Mr. Víctor Domínguez, General Manager of Puma Energy Caribe, L.L.C. (hereinafter “PUMA”);
- Southern Puerto Rico Chamber of Commerce (hereinafter the “CCSPR,” Spanish acronym);
- Mr. Ian Carlo-Serna, Executive Director of the Port of Ponce.

Likewise, this Committee analyzed position papers in connection with this Act, which were submitted by the following entities:

- Department of Labor and Human Resources (hereinafter the “DLHR”);
- Department of Economic Development and Commerce (hereinafter the “DEDC”);
- Economic Development Bank (hereinafter the “EDB”);
- Department of State;
- Industrial Development Company (hereinafter “PRIDCO”);
- International Organization of Masters, Mates, and Pilots (hereinafter the “M.M.P.”);
- Department of the Treasury;
- Puerto Rico Federal Affairs Administration (hereinafter “PRFAA”); and

- Comisión para la Defensa de los Derechos a los Ciudadanos [Committee for the Defense of Citizen's Rights].

### **EXECUTIVE SUMMARY OF THE POSITION STATEMENTS**

The **PRBA**, which *endorsed* Senate Resolution No. 237, was represented in the public hearing by its President, Ana Irma Rivera-Lassén Esq., and by Héctor Collazo Esq., who is the Chair of the International Law and Relations Committee of the PRBA. This Committee of the PRBA drafted a report on June 2012, regarding the economic impact of maritime shipping rates between Puerto Rico and the United States as a result of federal cabotage laws. Also, Mr. Héctor Collazo included a historical analysis in the aforementioned report on all the steps taken to exempt Puerto Rico from federal cabotage laws. The study concluded that:

1. Cabotage laws impair the economic development of Puerto Rico and the possibility of increasing its international trade... they cost Puerto Rico, at least, \$537 million annually; **AND THE POSSIBILITY OF DEVELOPING ITS NATIONAL ECONOMY BY ENTERING THE GLOBAL MARKET;**

2. The people of Puerto Rico have resorted to the U.S. Government on many occasions before and after the creation of the Commonwealth of Puerto Rico, to be exempt from the application of the cabotage laws. None of the efforts have been successful;

3. The legal relationship between Puerto Rico and the United States constitutes a violation of international law and, by virtue of said relationship, the imposition of cabotage laws on the people of Puerto Rico, in turn, constitutes a

**HUMAN RIGHTS VIOLATION** by the United States. This is very similar to the Vieques situation although in a different context;

4. The examples discussed in the Report, regarding United States jurisdictions exempt from Cabotage Laws, are not necessarily relevant to the Puerto Rican reality. This is due to the fact that Puerto Rico is one of the most important markets in the United States for the merchant marine, and one of the main buyers/consumers of United States goods. The United States Department of Commerce informed that, according to data gathered from 2011 and 2012, Puerto Rico imported 90% of its goods from the U.S. and exported 55% of its goods to the U.S. Likewise, it is estimated that the island imported \$44 billion and exported \$64 billion during the same period; and

5. We do not believe we can move forward with the cabotage laws issue if we keep comparing the problems these laws cause in our Island with those they cause in Alaska and Hawaii, just to argue that if they are exempt we should be exempt as well. The imposition of cabotage laws on these states is merely an economic issue. In Puerto Rico, it is a violation of international law and, specifically, a violation of the human rights of the people of Puerto Rico.<sup>8</sup>

In their appearance at the public hearing held by the Committee, the PRBA stated that when discussing the cabotage laws issue we are also discussing the political relationship between Puerto Rico and the United States. Regarding the

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<sup>8</sup> Héctor Collazo Esq. *Informe sobre la Ley de Cabotaje*, Comisión de Derecho y Relaciones Internacionales, Colegio de Abogados de Puerto Rico, pp. 4-5 (21 de julio de 2012)

above, they also expressed that it is up to Congress to amend cabotage laws since we lack the sovereignty to do so.

Senator López-León inquired them about page 37 of GAO's study which states that, on November 2012, due to the effects of hurricanes Sandy and Katrina, the United States Secretary of Homeland Security issued a temporary waiver to allow tankers from the Gulf of Mexico to transport petroleum products. Senator López-León emphasized that, at that time, the United States accepted that their tankers lacked in petroleum product carrying capacity. She also said that, according to the report, such waiver was issued in accordance with 46 USC 501b (2012), which provides that compliance with these laws shall be waived in the interest of national defense or in case of a financial crisis. This may be done without the need for Congress to amend the Act therefor.

Regarding the foregoing, Senator López-León asked deponents whether there is a possibility that the cabotage law requirements imposed on Puerto Rico could be waived under the economic crisis clause. In response, Mr. Héctor Collazo quoted the PRBA's Report which, in turn, quoted Luis Muñoz-Marín's book from 1941-1942 entitled, *La Historia del Partido Popular Democrático por Luis Muñoz Marín*.<sup>9</sup> The book discusses cabotage laws and the security and economic controversy surrounding the imposition of this legislation on the Island. Let us see:

The Island's unemployment rate is very high. Thousands, hundreds of thousands, cannot find permanent means to employ their productive

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<sup>9</sup> Luis Muñoz Marín, *La Historia del Partido Popular Democrático por Luis Muñoz Marín*, Editorial Batey (1984) in Héctor Collazo Esq., *Informe sobre la Ley de Cabotaje*, Comisión de Derecho y Relaciones Internacionales, Colegio de Abogados de Puerto Rico, pp. 5-6 (21 de julio de 2012).

energy, what is, wrongfully, called to “earn a living,” to find a job. Unable to find a job, the community loses the productivity of their effort; the unemployed lose their livelihoods.

However, Puerto Rico’s purchasing power generates jobs, high wage jobs, for thousands of workers outside of Puerto Rico. In producing what Puerto Rico buys, and might produce, thousands of workers find jobs, earn a living, and contribute to their communities in New England, New York, the southern United States, the west, the Pacific coast, and even Spain.

**SHIPPING COMPANIES, AN EFFECTIVE MONOPOLY UNDER THESE CABOTAGE LAWS, BLOCK AND CONTROL THIS WHOLE ECONOMY WHICH IS BASED ON TRANSPORTING THINGS TO AND FROM PUERTO RICO. THESE COMPANIES HAVE COME TO REPLACE, BUT ARE EVEN WORSE THAN MEDIEVAL TOLL ROADS, WHICH CLOSED THE WAY TO ANYONE WHO DID NOT PAY WHAT THE OWNER OF THE BRIDGE DEMANDED.**

Emphasis supplied

In addition, Collazo pointed out that the PRBA’s report quotes an article from *El Nuevo Día* newspaper which states that a temporary waiver of the Jones Act was among the recommendations made by the Federal Reserve Bank of New York to lower the cost of doing business in Puerto Rico.<sup>10</sup> However, he emphasized that the cabotage laws issue in Puerto Rico “goes beyond our borders”

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<sup>10</sup> Federal Reserve Bank of New York, “The Competitiveness of Puerto Rico’s Economy”(2012)

and, consequently, we must resort to not only the United States Congress, but also the United Nations. According to the PRBA, said imposition and the Island's colonial status are clear violations of the human rights of Puerto Ricans.

Moreover, attorney Rivera-Lassén added that Puerto Rico's right to do business is also being violated. When Senator Lopez-León asked about possible violations of the Interstate Commerce Clause, Rivera-Lassén explained that interstate clauses were created to protect interstate business. Puerto Rico is not included under said provisions, thus the commercial interests of the Island are not protected. She added that, in fact, these laws are aimed at protecting the shipping industry. Rivera-Lassén also pointed out that: "... we must ask ourselves how Puerto Rico is considered under the Commerce Clause; whether Puerto Rico is included or not." According to Rivera-Lassén, sometimes Puerto Rico is seen as a factor that affects interstate commerce.

According to the President of the PRBA, this question is linked to Puerto Rico's need to be exempt from cabotage laws because the Island cannot contribute anything to the U.S. economic progress, since it lacks the power and sovereignty to do so. Rivera-Lassén stated that: "If we cannot make decisions regarding the economic policies of the Island, we have a serious human rights violation issue, specifically, a violation of the right to development." Collazo added that this goes beyond the Commerce Clause. According to him, it is an issue of trade between nations.

Senator López-León asked deponents who was responsible for paying the abysmal construction costs of the U.S.-flag vessels used to trade with Puerto Rico under these cabotage laws. Rivera-Lassén firmly replied that consumers bear such

costs. Senator López-León also asked whether Puerto Rico has legal standing to file a lawsuit for damages caused by the imposition of cabotage laws on the Island. Rivera-Lassén explained that all state remedies must be exhausted before resorting to international forums. She also pointed out that one of the most interesting aspects about Senate Resolution No. 237 is that the results of the investigation to be conducted will be delivered to the United Nations. This would be the first time that the Government of the Commonwealth of Puerto Rico sends information, and makes a claim to the United Nations. She further explained that there are ways to make such a claim, and that nations have the right to independently express their stance. Nevertheless, she said she would take this matter to the PRBA Board, so they can analyze the possibilities and look into the procedures to be followed. However, Rivera-Lassén asked the Committee whether the Government of the Commonwealth of Puerto Rico would be willing to file such a claim. Collazo added that we do have legal standing, “there is no way we do not have it.” He says there is a clear violation the human rights of Puerto Ricans.

Senator López-León mentioned that the Hawaii State Legislature introduced legislative measures in 2013 to eliminate the imposition of cabotage laws on their islands and on Puerto Rico, and that Senator John McCain introduced legislation, in the U.S. Senate, aimed at eliminating the cabotage laws (SB 3525). After hearing those statements, Rivera-Lassén explained that cabotage laws rule out our possibility of exploring other avenues of economic growth. She further stated that **“the PRBA supports the elimination of cabotage laws,”** and recognizes that their elimination would be a giant step towards the economic development of

Puerto Rico. She added that said situation must be discussed within the context of the political relationship between Puerto Rico and the United States.

When asked about the existing link between the imposition of cabotage laws and a proper diet, Rivera-Lassén answered that the right to food is a corollary to the right to development. She pointed out that, undoubtedly, there is a violation of this right because efficient methods for bringing fresh food to the people of Puerto Rico do exist, but this legislation prevents us from employing them. When asked about the federal charges filed against 6 of the shipping companies that control maritime transport to and from Puerto Rico, Rivera-Lassén replied that it is a good example of the negative impact cabotage laws have on the Island. Said shipping companies operate Jones Act vessels and have been accused of violating antitrust laws.

Finally, Senator López-León asked about the possibility of requesting a partial waiver of the cabotage law requirements imposed on the Island. Rivera-Lassén expressed that these alternatives can be considered; however, said alternatives are just partial measures and cannot be accepted as a permanent solution. Any alternative considered must be aimed at permanently solving this issue.

Rivera-Lassén also commented on the importance of the people of Puerto Rico having their sovereignty. However, she explained that in order for the people to support the elimination of the cabotage laws they must first understand them. She stated that, without a doubt, the PRBA is more than willing to join efforts with various sectors to raise the people's awareness of this subject. Rivera-Lassén also pointed out that the PRBA's report mentions the development of the Port of Ponce.



She expressed that, if we fail to do something about it, the Island will lag behind, because it is an area that moves quickly. Rivera-Lassén concluded her position statement by saying that Puerto Rico has to move quickly if it does not want those institutions, which have cost us millions of dollars and are critical for the Island's development, to become obsolete.

The **CCPA** supported Senate Resolution No. 237. For years, it has supported the repeal of cabotage laws or the exemption of Puerto Rico from their application. It stated that, in a General Assembly held on September 2, 2006, CCPA members unanimously approved Resolution No. 4, which addressed this issue. Likewise, on June 6, 2011, it informed GAO of its support to Congressman Pedro Pierluisi's request that a study be conducted on the impact of the Jones Act on the economy of Puerto Rico and the United States.

It also stated that, faced with this economic situation, it is imperative that Puerto Rico unites under one voice in support of any effort to make the Island an attractive business destination, thereby promoting the Island's economic development. For this reason, the CCPA supports that Puerto Rico be exempt from cabotage laws. Also, it noted that one of the recommendations made by the Federal Reserve Bank of New York in the aforementioned study, entitled *The Competitiveness of Puerto Rico's Economy*, stated the following:

One option could be to seek a temporary exemption from the Jones Act, for instance for five years, in order both to evaluate whether or not these restrictions really are a substantial cause of elevated shipping costs and to allow for assessment of the costs and benefits of a permanent exemption.

During his statement, Aníbal Jover-Pagés, CPA, who represented the CCPA, said that GAO's Report was too general since it lacks empirical or relevant data. He also stated that: **“while reading the report, it appeared to me as if they ordered the study be conducted on the impact they have on Puerto Rico.”** Jover-Pagés mentioned there is a lack of public knowledge, among Puerto Ricans, about cabotage laws and the domino effect they have on Puerto Rican goods. In addition, he emphasized that **“the fact that our market is not open to free competition is incredible.”** Furthermore, he indicated that the CCPA supported the PRBA's statements. Jover-Pagés expressed that if cabotage laws were fully repealed, it would greatly help our economic development, yet their elimination can also be achieved gradually.

When Senator López-León asked about the limited amount of food supplies currently available in Puerto Rico and what would happen if a natural disaster were to strike us. The CCPA stated that it is aware of the situation and of the fact that we only have one week's worth of food supplies. It informed that it has a Committee on Economic Development, organized by the former President of the CCPA, and it will entrust said Committee with the task of finding a solution to this problem.

**DACO** also *supported* Senate Resolution No. 237. In its position statement, DACO says the main question we should ask ourselves when dealing with this issue is: **Why shouldn't we allow open competition determine which shipping companies should offer services between Puerto Rico and the United States?** Cabotage laws directly impair open competition which eliminates the possibility of increasing the number of shipping companies in the market.

Regarding GAO's Report, DACO had hopes it would actually reveal whether goods sold to Puerto Ricans were more expensive because businesses in Puerto Rico were forced to use the U.S. merchant fleet as provided in the cabotage laws. According to DACO, GAO's report provided no answers other than confirming that: "[t]he impact of rates to ship between the United States and Puerto Rico on prices of goods in Puerto Rico is difficult to determine with any precision and likely varies by type of good."

Likewise, DACO stated that GAO's report minimized the impact cabotage laws have on Puerto Rico. However, the "World Economic Report" of 2012-2013,<sup>11</sup> which examined the cabotage laws of various countries, stated that cabotage requirements in the United States, as established by the Jones Act, are some of the most restrictive when compared to those of all the countries analyzed in the report. They are so restrictive they have been called a "super cabotage." In its position statement, it also pointed out that GAO's report states that Jones Act requirements have resulted in a discrete shipping market represented by four Jones Act shipping companies that comply with its provisions. According to DACO, this "discreet shipping market" is nothing more than a euphemism used to avoid stating the fact that the Jones Act is an impediment to open competition and has allowed four shipping companies full control of the ocean freight market between Puerto Rico and the United States.

DACO stressed that in the section entitled "Characteristics of Maritime Transportation to and from Puerto Rico," the report states that most of the vessels

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<sup>11</sup> World Economic Forum, "Enabling Trade Valuing Growth Opportunities" (2012-2013).

used by the four Jones Act shipping companies are operating beyond their average expected useful life. Moreover, the report indicates that the military would have very limited uses for these vessels. Therefore, DACO asked, what is the rational explanation that justifies perpetuating the monopoly created by enforcing the Jones Act in Puerto Rico? Regarding the average expected useful life of the vessels, DACO indicated that by 2011, sixty-seven percent (67%) of the vessels operating out of the Port of San Juan were foreign flagged and averaged eleven (11) to twelve (12) years of use, while the vessels of Jones Act shipping companies averaged thirty-nine (39) years. Even GAO's report states that old vessels burn fuel faster and less efficiently compared to newer vessels, which result in higher operating costs. The report also explains that older vessels require more maintenance and repair expenses than newer vessels, and that the crewing costs for U.S. flag operators complying with the Jones Act of 1920 are up to five (5) times higher than those of foreign-flag carriers.

DACO stated that cabotage laws work against the best interests of U.S. companies because Puerto Rican businesses rather purchase the goods they need from foreign countries, which are farther away, and later import them with foreign-flag vessels that offer better rates. They do this despite the fact that goods may be acquired in the United States at equal or better price. DACO stated further that, according to GAO's report, Puerto Rico business representatives that import perishable food items claim that Jones Act shipping companies have a limited amount of refrigerated containers. It also said that the cost and reliability of shipping companies transporting perishables is important when taking into consideration that the Island has, at its most, less than a week's supply of

perishables. Moreover, DACO mentioned that the lack of vessels available to transport certain goods, such as gasoline or natural gas, limits our options when trying to purchase fuel at better prices. All of this has been reasserted by Puerto Rico businesses that import natural gas and, according to DACO, even GAO's report mentions the challenges faced by the Puerto Rico Electric Power Authority when trying to import gas from the United States due to the same issue.

DACO also reaffirmed that GAO's report fails to address the issue about the conviction of various Jones Act carriers' senior executives for price fixing. DACO stressed that this matter should have been dealt with more rigorously because cabotage laws did not change even after the commission of criminal acts against the people of Puerto Rico was proven in court. What GAO's report did include were the positive traits of the Jones Act carriers, to wit, the size of the containers used by Jones Act carriers are bigger in comparison to foreign-flag carriers; their service is reliable; and that they are secure. Regarding these points, DACO stated that if Jones Act carriers provide the most efficient and reliable service, businesses will continue to contract with them even if the current cabotage law restrictions were eliminated.

Lastly, DACO expressed dissatisfaction with GAO's report because it failed to make a greater effort to obtain information from foreign carriers, which is an important factor. Even more so, when multiple Puerto Rico businesses stated, in the report itself, that they rather use foreign-flag carriers. According to DACO, the true purpose of these cabotage laws is to keep the U.S. merchant fleet alive, even if it is at the expense of Puerto Rico's businesses. DACO believes that Puerto Rico should focus on trying to obtain a waiver that allows us to use foreign-built vessels.

The **Department of Agriculture** also *supported* Senate Resolution No. 237. Before we continue, it is imperative to point out that this is the first time that the Department of Agriculture has been included in a study conducted on the imposition of the cabotage laws to Puerto Rico. In its position statement, the Department of Agriculture explained that, in order to meet local food demand, Puerto Rico needs to import food products which travel thousands of miles from their place of origin to the consumer. Therefore, the costs of ocean freight, which is the principal means of transport in the world, are very important. According to the Department of Agriculture, the food needs of Puerto Ricans compel us to establish public policy by legislation to ensure the continuous supply of local and imported food items. Given the serious food issues worldwide and Puerto Rico's dependence on imported goods, the Department of Agriculture started an agricultural program which uses the lands available in the agricultural reserves created by law to implement a sowing plan. However, it pointed out that it is important to recognize that eliminating one hundred percent (100%) of our dependence on imports is impossible given our limited resources and the fact that Puerto Rico imports nearly 85% of its food products; such situation has hindered the Island's agricultural development. The Department of Agriculture indicated that it is important to analyze ocean freight costs, which are ultimately paid by consumers on the final price.

Lastly, it stated that it will lobby in favor of exempting Puerto Rico from the cabotage law requirement because they increase the price of transporting goods to and from the Island. The Department of Agriculture also said this exemption will allow us to reduce the money spent on fuels such as natural gas. Regarding the

foregoing, it is worth noting that Dr. Myrna Comas, in her PhD dissertation, entitled “Vulnerabilidad de las cadenas de suministros, el cambio climático y el desarrollo de estrategias de adaptación: El caso de las cadenas de suministros de alimentos de Puerto Rico,” stated the following:

Throughout the years, the import of agricultural products has been promoted as a way to benefit from the competitive advantages offered by international markets (Graph 1). As a result, Puerto Rico imported more than 80% percent of the food products consumed in 2007. (Oficina de Estadísticas Agrícolas, 2008). Low agricultural production and a high dependence on imported products makes the Island more vulnerable to unexpected global events (Peck, 2005).

All or most cereals, edible fats and oils, sugar, and legumes are imported (Graph 2). Most food products produced locally are: milk, eggs, legumes, and coffee.

Agricultural, silviculture, hunting, and fishing products represented only 1% of all of the Islands’ imports. We experience a trade deficit because we import more goods than we export. (Table 10). In 2006, many of the Caribbean islands had trade deficits regarding their agricultural products. (FAO, 2006a).

Puerto Rico’s main agricultural exports are fruits, sugar, and vegetables. (Appendix 2). Specifically, the most exported products are mangoes, coffee, and tomatoes.<sup>12</sup>

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<sup>12</sup> Dr. Myrna Comas, “Vulnerabilidad de las cadenas de suministros, el cambio climático y el desarrollo de estrategias de adaptación: El caso de las cadenas de suministros de alimento de Puerto Rico”, pp. 39-41 (2009)

When Senator López-León asked about how the quality of the food products would change if cabotage laws were eliminated, the Secretary of Agriculture gave the following example:

The most direct route from China to Puerto Rico is from the city of Shanghai, which is a twenty-nine (29)-day trip. Food products travel from China to Los Angeles, then to Jacksonville, and finally to Puerto Rico. That is a forty-seven (47)-day trip which covers eleven thousand (11,000) nautical miles, without counting ground transportation in China and Puerto Rico. This affects product freshness. There are agencies that guarantee product quality, therefore, I cannot say they are not good. But, without a doubt, they are not fresh. Of this I am certain.

Likewise, the Secretary of Agriculture also explained that U.S. carrier labor union strikes in any of the contiguous coastal states also affect food transportation to Puerto Rico. Strikes in the United States also halt port operations in Puerto Rico; even when the claims made by the labor union in the U.S. have nothing to do with the labor conditions on the Island.

The **DTOP** *supported* Senate Resolution No. 237. In its position statement presented at one of the public hearings held by the Committee, the DTOP expressed that, after evaluating GAO's report, it believes the report's conclusions are somewhat ambivalent. Likewise, it indicated that, in 2013, the prestigious firm



Drewry Shipping Consultants Ltd. published a study whereby it concluded that shipbuilding costs in the U.S. are four or five times more expensive than in Asia.<sup>13</sup>

The DTOP stated that Jones Act waivers have been issued before, mainly to allow the use of foreign-flag vessels to transport oil and natural gas. Examples of these waivers are: (1) President George W. Bush issued a waiver for a nineteen (19)-day period in 2005 after Hurricane Katrina's disaster; (2) President Barack Obama also issued waivers in 2011 to facilitate the transportation of oil from the Strategic Petroleum Reserve and, once again, in 2012 after the passing of Hurricane Sandy and Hurricane Katrina[sic]; and (3) pursuant to the provisions of the America's Cup Act of 2011, three (3) tanker vessels used to carry natural gas, to wit: LNG Gemini, LNG Leo, and LNG Virgo, obtained a coastwise endorsement. This waiver was granted because, even though the United States has one of the largest natural gas deposits, its shipyard infrastructure is not ready and lacks the modern technology necessary to build and operate vessels of such a large size with the capacity to transport liquefied natural gas.

**MIDA** supports Senate Resolution No. 237 and recommended that Puerto Rico should consider requesting the federal Government to change our regulatory system to exempt us from the U.S.-built vessel requirement, to oversee rate fixing, and to create an expert commission to evaluate the supply chain in its entirety and make recommendations that go beyond the cabotage laws issue. As to GAO's

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<sup>13</sup> "The respected authority Drewry Shipping Consultants Ltd., in their Container Insight Weekly (WK-49) published November 17, 2013; called the Jones Act 'an increasingly expensive luxury' and validated Hawaii Shippers Council (HCS)'s estimates that U.S. shipbuilding costs are 4 to 5 times that for building a comparable ship in South Korea or Japan Which was published on November 7, 2012." <http://new.grassrootinstitute.org/2013/11.respected-maritime-authority-calls-jones-act-an-expensive-luxury>.

report, MIDA stated that “lack of analysis and data is evident and disappointing, especially when MIDA partners took the time to provide a comparative evidence of the cost of transportation between different destinations.” Furthermore, it pointed out that, the fact that Puerto Rico is paying more, in relation to the other continental jurisdictions that benefit from the merchant fleet, is evident, since the continental U.S. have alternative ways of transporting goods. According to MIDA, under this premise, we would be approaching the issue as one of justice and proportion because, even when considering Hawaii and Alaska, Puerto Rico is the poorest United States jurisdiction and depends more on cabotage than the others.

MIDA expressed that the U.S. flag fleet is over thirty-five (35) years old and could not serve efficiently in case of an emergency because it is obsolete. Nonetheless, MIDA deems that shipbuilding cost are a more pressing factor. According to some experts, shipbuilding costs in the United States can be three (3) times as expensive as in the international market. There are two ways this can be avoided. First, to allow shipping companies to acquire ships other than U.S.-built ships, for which a precedent was set regarding for cruise ships. Second, to have the United States subsidize the cost thereof, so that our economy does not have to pay the difference.

MIDA also stated that we must also evaluate the additional difficulties caused by the fact that cabotage laws prohibit open competition. MIDA explained that we are being subjected to what is known as an oligopoly. Cabotage laws impose an oligopoly, then legislation is enacted to ensure open competition, such as local and federal antitrust laws. There is an inherent contradiction to this market’s regulation and it clearly does not work.

**Dr. Jeffrey Valentín**, Professor of Economics at the University of Puerto Rico, Mayagüez Campus, stated that the issue of the effects of the Jones Act is still a relevant matter in light of Puerto Rico's current economic juncture due to five (5) reasons, to wit, free trade; the Panama Canal and the Colón Free Trade Zone; non-contestable markets; the Great Recession; and the waiver granted to cruise ships. Regarding free trade, Valentín expressed that multilateral organizations such as the World Trade Organization (WTO) and the Organization for Economic Co-operation and Development (OECD) have maintained a firm stance in favor of opening service sector markets, which requires the full or partial repeal of cabotage laws that apply to maritime transportation services. Dr. Valentín quoted the OECD's report entitled "Regulatory Issues in International Maritime Transport," which establishes that: "...taking into consideration the benefits that ensued after the internal liberalization of other economic sectors, it is suggested that countries that restrict cabotage should consider repealing such provisions."<sup>14</sup> Likewise, he stated that the WTO has exerted pressure on its members so they relax such regulations.

Dr. Valentín also explained that the Jones Act of 1920 violates the terms of the General Agreement on Tariffs and Trade (GATT) because said Act discriminates on the basis of a vessel's flag. In his position statement, he quoted paragraph 2 of Article V of the GATT of 1947 which establishes that:

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<sup>14</sup> OCDE (2001), Organization for Economic Cooperation and Development (2001), *Regulatory Issues in International Maritime Transport*, Paris: OECD, Directorate for Science, Technology and Industry, 12 August, [www.oecd.org](http://www.oecd.org), p.11.

There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.<sup>15</sup>

However, he also explained that the Jones Act of 1920 is exempt from the aforementioned provision because, as provided in subsection 3(a) of the GATT 1994, it is a specific mandatory legislation that was enacted before the United States became a contracting party to GATT 1947. Nonetheless, subsection 3(b) establishes that said exemption shall be reviewed every two years for the purpose of examining whether the conditions which created the need for the exemption still prevail.<sup>16</sup>

The Panama Canal and the Colón Free Trade Zone are important because Panama is trying to become a world-class multimodal logistic center within the next few years. Thus, Puerto Rico could be seen as an air and sea transshipment center that supports the Canal Zone, but it would have to be exempt from the Jones Act in order to achieve this. Also, he indicated that the protection of the four Jones

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<sup>15</sup> “General Agreement on Tariffs and Trade”, Oct. 30, 1947, 61 Stat A-11, 55 U.N.T.S. 194, Art. V. Available in [http://www.wto.org/spanish/docs\\_s/legal\\_s/gatt47.pdf](http://www.wto.org/spanish/docs_s/legal_s/gatt47.pdf) quoted on page 2 of Dr. Jeffrey Valentín’s Position Statement regarding Senate Resolution No. 237.

<sup>16</sup> Subsection 3(b) of the GATT 1994 establishes that: “The Ministerial Conference shall review this exemption not later than five years after the date of entry into force of the WTO Agreement and thereafter every two years for as long as the exemption is in force for the purpose of examining whether the conditions which created the need for the exemption still prevail. Available in [http://www.wto.org/spahish/docs\\_s/legal\\_s/06-gatt.pdf](http://www.wto.org/spahish/docs_s/legal_s/06-gatt.pdf) Cited on page 3 of Dr. Jeffrey Valentín’s Position Statement regarding Senate Resolution No. 237.

Act shipping companies has transformed the maritime transport market between Puerto Rico and the United States into a non-contestable market. According to professor Valentín, the fact that we have a non-contestable market shows the problems that arise when you create a market environment that facilitates collaboration agreements and collusion between the existing companies. Under these conditions, companies can agree on a common purpose and coordinate to maximize profitability in their respective markets. These actions are illegal under United States and Puerto Rico antitrust laws. When Senator López-León asked about the actions of the companies that were sued for fixing prices, Valentín insisted on the need to evaluate these transactions because they affect the final sales price of transported goods, and also because maritime transportation is an essential element for the economic development of Puerto Rico.

When dealing with a recession, as Professor Valentín explained, it is necessary to identify nontraditional economic sectors that can help restart the economy. Puerto Rico's current economic situation represents the greatest decline in the aggregate economic activity of the Island since the 1930s Great Depression. With regard to cruise ships, he added that passenger traffic increased, on average, by three percent (3%) annually from 1990 to 2011 ever since cruise ships were exempt from cabotage laws back in the 1980s.

According to Dr. Valentín, the economic impact that the Jones Act of 1920 has had on Puerto Rico from 1971 to 2012 equals twenty-nine point fifty-two billion dollars (\$29.052). With regard to GAO's report, he said that it lacks conclusions regarding: (1) Jones Act's economic impact on the domestic product, national income and employment, vis-à-vis its elimination; (2) the effect on

wholesale pricing and the price ultimately paid by consumers; or (3) what the savings or spending would be if Puerto Rico were exempt from the Jones Act of 1920.

Dr. Jeffry Valentín made the following recommendations, to wit:

1. We must create a common front between the economic, social, and political sectors of the Island in order to formally request the government of the United States of America to exempt Puerto Rico from the anticompetitive restrictions of the Jones Act, so as to conform the laws of the Commonwealth of Puerto Rico to the international maritime transport policy, of which the United States of America is a consignee.

2. If we fail to fully eliminate the application of cabotage laws to Puerto Rico, the government of Puerto Rico shall negotiate directly with federal authorities in order to obtain from the Department of Homeland Security a waiver of certain provisions of the Jones Act or any other applicable federal law, such as:

- a. Eliminating the U.S.-built vessel requirement; and
- b. Allowing foreign-flag ships from countries or jurisdictions with which the United States has entered into reciprocity agreements to participate in Puerto Rico's maritime transportation market.

If any of the strategies mentioned in paragraphs (1) and (2) is adopted, it will be necessary to clarify that all vessels, including U.S. flag vessels, shall meet every internationally-recognized shipbuilding standards and safety requirements, as well as every international standard in connection with the protection of the environment, natural resources, and labor, among others.

In his statement before the Committee, Dr. Valentín informed that he was invited to appear before GAO to help with the study being conducted. According to him, GAO officials stated that they would not carry out empirical research and that they would only compile the information provided by various interest groups. Professor Valentín said “we were disappointed because we hoped that they would conduct a study; GAO has a five hundred (500) million-dollar budget, something neither I nor Alameda have. I could tell there was little interest in making an effort or trying to conduct a study.” When speaking about the possible waivers that could be issued, he expressed that “on the matter of waivers, clearly a waiver granted for a commodity such as natural gas would be a significant step towards lowering energy costs in Puerto Rico.”

The **CCPR** *supported* the approval of Senate Resolution No. 237. In its Position Statement, CCPR expressed that even GAO’s report states that the merchant fleet has little or no capacity to achieve the two main purposes of the U.S. cabotage laws. CCPR further indicated that the report itself states that no information could be provided due to the lack thereof. According to CCPR, the claim of the people of Puerto Rico for the repeal of cabotage laws or the exclusion of the maritime freight transported between the United States and Puerto Rico from the application thereof could be settled based on the premise that the merchant fleet does not have the capacity to achieve the main objectives of the cabotage laws.

The CCPR also expressed that Puerto Rico’s second claim, which is to exclude fuel transportation and certain types of bulk cargo from cabotage laws, is also a possibility. If this second claim is settled, it could greatly benefit Puerto

Rico once the Electric Power Authority converts most of its oil-based power plants to natural gas power plants, as proposed.

The CCPR informed that, currently, Puerto Rico purchases natural gas from Trinidad and Tobago and transports it on foreign-flag vessels even though the price of natural gas is cheaper in the United States. GAO's report indicates that building new vessels would increase transportation costs, which would, in turn, eliminate any benefit obtained from purchasing natural gas from the United States at a lower price. Regarding this, the CCPR stated that the report fails to analyze the effects of building new vessels after excluding Puerto Rico from cabotage laws, or the effects of transporting fuel from the United States on foreign-flag vessels.

The **Retailers Association** *supported* Senate Resolution No. 237. It expressed that cabotage laws place small local companies at a competitive disadvantage when compared to chain stores. Said businesses fix prices according to the cost associated with the goods. Therefore, transportation costs are a very important factor. Likewise, the transportation costs for perishable goods are higher because they need to be carried on vessels with refrigerated containers, which significantly increase transportation costs, thus affecting the price paid by consumers. The Retailers Association informed that the Puerto Rico Farm Bureau<sup>17</sup> stated that the “costs and reliability of the transportation of perishable goods is of utmost importance, given the fact that Puerto Rico has a week’s worth or less than a week’s worth of perishable food supply. Therefore, the price difference reaches thousands of dollars.”

It also expressed that:

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<sup>17</sup> Asociación de Agricultores de Puerto Rico.



[it]...raises concerns about the subject, not only because of the impact that such fee would have on businesses and consumers, but also because of the risk of having control over one of our principal means of goods transportation to and from the Island at the mercy and will of four private entities. Our concerns grow if we take into account our geographical conditions and the fact that in Puerto Rico about 85% of all goods and food are imported, as shown in GAO's report.

Finally, the Retailers Association added that this situation is an issue of great relevance to Puerto Rico: "The food security of all Puerto Ricans..." It also recommended that the Government should make the pertinent evaluations to find feasible alternatives to reduce shipping costs. During the public hearing held by this Committee, the Retailers Association commented that: "what is clear is that when dealing with this subject the Government must remain strong and the investigation must be clear."

Furthermore, the **Products Association** also *supported* Senate Resolution No. 237. It stated that it is important to promote a reduction in operating costs, as well as in the costs of doing business in Puerto Rico. Said Association also believes that any analysis of the impact of cabotage laws must take into consideration the following:

- Transportation costs should be classified as a "utility" since they are fundamental for the economic activity of the Island, given its geographical location.

- The protection provided by the cabotage laws has resulted in a lack of competition in the maritime transport market, which limits the options for Puerto Rico's market.

- The restrictions imposed by these laws are archaic and have no place within a global economy.

- The shipping companies that transport merchandise between the continental United States and Puerto Rico have engaged in monopolistic practices to fix prices, which resulted in multimillion-dollar fines and even criminal convictions.

- The manufacturing industry's ability to compete is limited by the high rates for transporting goods to the continental United States, which is the main market for local producers, specifically for consumer goods.

- Puerto Rico needs to identify savings, add value, and reduce costs to recover its investment appeal.

The Products Association recommended the following, to wit:

- Forming a public-private partnership to lobby in Washington, D.C. in favor of Puerto Rico's full or partial exemption from cabotage laws.

- Emulate and support the actions taken by Hawaii and Alaska to amend or repeal the most restrictive provisions of these laws.

- Exclude the transportation of raw materials and fuel from the provisions of cabotage laws.

At the public hearing held by the Committee, the Products Association stated that: "this is a crucial time for Puerto Rico's economy; an economy that must find

a way to become competitive and grow; therefore, the restrictions of cabotage laws have an important effect.”

The **Manufacturers Association** supported Senate Resolution No. 237. They explained that according to a study conducted by economist and planner José Alameda, the various studies conducted to assess the impact of the Jones Act on Puerto Rico’s economy show inconsistent results. The first study ever conducted on the impact of these laws on Puerto Rico was carried out by Paquita Pesquera in 1965. Said study concluded that tariffs paid in Puerto Rico are almost double the tariffs paid in foreign countries. This amounted to a difference of \$48.3 million in 1964.

Likewise, the Manufacturers Association pointed out that Puerto Ricans are not the only ones that have brought up the possibility of being exempt from these laws. U.S. farmers and the people of Hawaii have done the same. Both parties have approached the situation by establishing that the Jones Act is a type of tax because they have to pay for the most expensive transportation services. Additionally, the Manufacturers Association indicated that on April 2013, the Hawaii State Legislature introduced two (2) bills which they plan on sending to Congress requesting a cabotage law reform. The aforementioned measures encourage the Legislatures of Puerto Rico, Alaska, and Guam to do the same. Thus, the Legislative Assembly of Puerto Rico has introduced over eight (8) legislative measures with similar purposes.

As to GAO’s report, the Manufacturers Association expressed that it contains deficiencies in the data presented because on many occasions it emphasizes that there is a lack of estimated, verifiable, and precise data. Moreover,

said report lacked information on product pricing, trade diversion, legal complexities, and the reason that prevents assessing the economic impact of the Jones Act on Puerto Rico. Since the report offers no conclusions regarding the impact of cabotage laws on the Island, the Manufacturers Association endorse the study proposed by Senate Resolution No. 237.

**Hawaii Shippers Council** participated in the public hearing through Skype represented by Mr. Michael Hansen. The Council also *supported* Senate Resolution No. 237.

Hawaii Shippers Council is an organization that represents Hawaii Shipper's interests. It is worth noting that this is the first time a deponent uses the videoconference system to participate in a public hearing held by the Senate of Puerto Rico. It is also important to state that, on March 13, 2014, Senator López-León participated, virtually, in a press conference together with legislators from Hawaii, Alaska, and Guam to publicly support the steps taken by various United States states and territories seeking waivers of the cabotage laws.

Hawaii Shippers Council explained that seeking relevant and reliable information regarding the effects of the U.S. cabotage laws on Puerto Rico, Alaska, Guam, and Hawaii is necessary and important. This is the only way to understand the issues and identify what might be done to most effectively reform the cabotage laws and alleviate their economic impact.

Furthermore, it expressed that any Jones Act reform should include a single and coherent regulatory regime for the jurisdictions of Alaska, Hawaii, Puerto Rico, and Guam. Together, the four jurisdictions would have greater political effectiveness in seeking reform to federal cabotage. Likewise, it stated that this

type of reform would create a larger market and foster greater competition in ocean shipping.

Hawaii Shippers Council has introduced a Jones Act reform proposal that would exempt noncontiguous states affected by the imposition of these laws (including Puerto Rico). While many coastal countries have maritime cabotage laws, none are as restrictive as the U.S. regime. This has led many critics to call the Jones Act a “super cabotage” and the “mother of all cabotage laws.” According to Hawaii Shippers Council, United States cabotage laws are the only ones that require vessels to be domestically built. In contrast, United States aviation cabotage laws do not require domestically manufactured aircraft.

The restrictions imposed on the beef and pork industry are among the issues, regarding the effects of the imposition of cabotage laws on Hawaii, which are mentioned in the measure introduced by the State in the Senate.<sup>18</sup> Regarding this issue, Hawaii Shippers Council stated that this industry is being affected by the imposition of cabotage laws because there are no U.S.-built vessels that can transport animal feed from the west coast. Hawaii’s livestock industry has resorted to transporting young livestock, so that they can be fed and processed in the West coast. The traditional way of doing this is through the use of specialized vessels made to transport livestock. However, the Jones Act fleet does not have this type of vessel.

Hawaii Shippers Council indicated that the U.S. shipbuilding costs as required by federal cabotage laws, is now four (4) to five (5) times the cost of building a comparable ship in Japan or South Korea. When Senator López-León

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<sup>18</sup> SB-81- Hawaii State Senate

asked about shipbuilding costs, Hawaii Shippers Council explained that the extraordinary shipbuilding costs have been thoroughly investigated by two renowned maritime consulting firms: Alphaliner and Drewry Shipping Consultants. According to Hawaii Shippers Council, two carriers, Sea Star Line and Crowley Maritime, announced that they each plan to build containerships to replace their ageing vessels. According to them, the new ships will have a capacity of approximately 3,000 Twenty-foot Equivalent Units (TEU) and cost approximately U.S. \$200 million apiece. These ships will be built under license to foreign shipyards which created their design.

Had these ships been purchased directly from the companies who designed them, the cost would have been ranged between 40 to 50 million USD, which is a much lower price than what they are paying. Hawaii Shippers Council explained that the people of Puerto Rico will pay for the difference between the domestic and foreign building costs of these ships for at least twelve (12) years. For this reason, Hawaii Shippers Council recommended that the Committee should investigate the impact of domestic shipbuilding costs. It is also more expensive to operate a U.S. flag ship when compared to a ship that is registered to a flag of convenience (FOC). Ships with a flag of convenience, more often than not, employ persons from third world countries.

Periodically, the United States Maritime Administration (MARAD) distinguishes the operational costs of U.S. flag ships from those registered to a flag of convenience to be able to make its Maritime Security Program (MSP) retainer payments. The United States government pays the MSP \$3.5 million dollars annually for each of the sixty (60) ships in the U.S. flag fleet. The last MARAD

report that offered a comparison between U.S. flag and FOC operating costs was submitted in 2011. Said report stated that in 2010, the operating costs of a U.S. flag vessel was 2.7% [sic] higher than those of a vessel with a flag of convenience. Likewise, the operating costs of a U.S. flag vessel with a capacity of two thousand five hundred (2,500) TEU is twenty-one thousand dollars (\$21,000) per day, while the operating costs of a comparable vessel under a flag of convenience is nine thousand five hundred dollars (\$9,500) per day.

Regarding GAO's report, Hawaii Shippers Council stated that it arrived at no conclusions regarding the impact of federal cabotage laws on the economy of Puerto Rico. This is because GAO could not obtain freight rates from foreign carriers to compare them to those of domestic carriers. Nonetheless, the report presented by the Federal Reserve Bank of New York<sup>19</sup> concluded that the requirements imposed by federal cabotage laws definitely have a negative impact on Puerto Rico's economic development.

Hawaii Shippers Council stated that said entity has studied the effects of these laws on Hawaii and concluded that the extraordinary costs of building ships domestically has a big effect on the economy because it increases the price of products. Moreover, the high price of shipbuilding has limited the amount of vessels approved by the Jones Act of 1920. This has hindered freight transportation between Hawaii and the United States west coast and, consequently, affected the state's agricultural and manufacturing industries. Hawaii Shippers Council believes the costs associated with the Jones Act are equal to 2.5% of the gross state product

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<sup>19</sup> Federal Reserve Bank of New York, "The Competitiveness of Puerto Rico's Economy" (2012)

and 3% of the state personal income. Fifteen (15) years ago, when added, these percentages represented two thousand five hundred dollars (\$2,500) per household.

When Senator López-Leon asked whether jobs could be lost as a result of a cabotage law exemption, Hawaii Shippers Council indicated that it was very unlikely. They explained that it is a mistake to think that international carriers would have to abide by federal regulations, especially those regarding salary, if the market were opened, and that this would increase prices and affect consumers negatively. On the contrary, using foreign carriers would be cheaper, even if they decide to employ U.S. crews to enter our market. This is due to the high cost of building ships in the United States.

**Nelson Rochet-Santoro, Esq.** also *supported* Senate Resolution No. 237. During the hearing, Rochet-Santoro summarized the history of the application of cabotage laws to Puerto Rico. According to him, cabotage laws are a group of provisions that have been slowly grouped together since 1799, and were eventually incorporated in the United States Customs Law. Rochet-Santoro pointed out that, since 1856, United States Consul George Latimer would send information to the United States Secretary of State regarding the refusal of Puerto Rican businesses to use U.S. flag ships because their rates were too high. Puerto Rican businesses owned by Puerto Ricans of Spanish descent would use Spanish, French, and English flag vessels to transport their goods.

In the minutes of the congressional debate that took place on February 22, 1900, there is record of the San Juan Chamber of Commerce writing a memorandum in which they complain about the application of cabotage laws to Puerto Rico. Said memorandum explained that the imposition of these laws would



condemn Puerto Rican business because it would force them to contract with the world's most expensive ships. Therefore, in 1900, the Chamber of Commerce became the first entity in Puerto Rico to complain about the imposition of these laws.

During the 1930s, the first person to complaint was Dr. Ernest Gruening who eventually became the governor of Alaska. Gruening wrote to the Secretary of the Interior to inform him that Puerto Rico's tourism was being hindered by the requirement to use U.S. flag ships. This allowed the United States to establish high ticket prices, even higher than those of European companies. A person could go on a summer trip in a luxury European ship for fifteen (15) days for the price of a ticket to Puerto Rico. Consequently, people chose to visit other countries.

During the 1940s, Teodoro Moscoso informed that Operation Bootstrap was facing difficulties because whenever the Government would build, for example, a glass factory, U.S. carriers would raise freight costs overnight for any materials needed for glass production. For that reason, factories in Puerto Rico were unable to pay for the necessary materials and were forced to leave the market. According to Rochet-Santoro, another witness to the harm caused by these laws is former governor Carlos Romero-Barceló. In 1985, Romero-Barceló signed a letter together with delegates from the territories of Guam and Samoa, and with Congresswoman Patsy Mink. In said letter, which was addressed to the President of the United States, they expressed their concern over the imposition of these laws and the requirement to use the most expensive carriers in the world.

Lastly, Rochet-Santoro stated that transporting a container from Oakland to Honolulu is three (3) to four (4) times as expensive as transporting said container

from Oakland to Japan when using a U.S. carrier rather than a foreign-flag carrier. He concluded his statement by saying that “even Americans do not want to use their own vessels.”

**Dr. José Villamil** summarized GAO report’s findings and the study he conducted for Alianza Marítima [Maritime Alliance] while working for Estudios Técnicos, Inc.<sup>20</sup> It is worth noting that during the public hearing held by the Committee, Dr. Villamil compared GAO’s report to the study conducted by Estudios Técnicos, Inc., and stated that:

GAO’s report tends to American interests. In other words, it is protecting the United States Merchant Marine. The report is very vague and, although they did interview people from different sectors, they did not examine any further. The study conducted by Estudios Técnicos was commissioned by Alianza Marítima which is composed of four (4) carriers.

Also, he stated that GAO’s report “did not say anything about the legislation’s impact on Puerto Rico. This is very typical of GAO’s reports. They do not arrive at any conclusions or obtain any information.” José Villamil expressed that, according to the aforementioned report, the impact of cabotage laws on Puerto Rico’s economy is minimal, possibly less than one hundred (100) million dollars. Nonetheless, the Committee found that, in 2002, the Department of Economic Development and Commerce of the Commonwealth of Puerto Rico estimated that eliminating the application of the Jones Act to our archipelago would entail a considerable reduction in the cost of imported goods (approximately 20%) and

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<sup>20</sup> Dr. José Villamil, “The Maritime Industry in Puerto Rico” (Estudios Técnicos, Inc., 2013).

would represent an economic injection of nearly two hundred (200) million dollars annually.

Villamil also stated that it is impossible to determine what will occur once these laws are eliminated, for various reasons:

- The international maritime shipping market is not a competitive one as was demonstrated recently by the legal action taken by the European Commission against 14 carriers for violations of antitrust laws in a case similar to that of the four U.S. carriers accused by the federal government. We should not believe that we would be moving from a market controlled by an oligopoly to a competitive one. That would not be the case. It is essential that we study the structure of the international maritime shipping market, so we can arrive at accurate conclusions regarding the implications of eliminating the Jones Act.

- The shipping market is volatile and has periods of excessive capacity and lack thereof. This affects the services offered and the costs thereof. During the past three years, international freight rates have increased significantly, much more than those of United States-Puerto Rico routes.

Recently, this Committee conducted a study on the Jones Act of 1920 and found that said legislation forces Florida to bring coal from Colombia rather than from American mines. Also, it forces Maryland and Virginia to bring road salt, used for icy roads, from Chile rather than from Ohio; and makes it cheaper for livestock farmers to buy feed from grain farmers in Argentina and Canada than from Americans as a result of having to use qualified U.S.-flag vessels.<sup>21</sup>

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<sup>21</sup> Capital Research Center, “The Sinking Ship of Cabotage: How the Jones Act lets unions and a few companies hold the economy hostage” (April 7, 2013).

In 2000, the U.S. Department of State conducted a study entitled the “ROLE OF THE MARITIME INDUSTRY IN THE UNITED STATES,” which compared world merchant fleets to the U.S. merchant fleet according to cargo and passenger capacity. The aforementioned study includes the following table which compares the tonnage of U.S. flag vessels to foreign-flag vessels. Let us see:

**World and U.S. Merchant Fleets in Thousands of  
Deadweight Tons, April 1, 2000**

	<b>U.S. Flag</b>	<b>All Flags</b>
<b>Container Ships</b>	<b>2,990</b>	<b>63,967</b>
<b>Dry Bulk</b>	<b>579</b>	<b>276,196</b>
<b>Tanker</b>	<b>8,515</b>	<b>324,503</b>
<b>Roll-on/Roll-off</b>	<b>554</b>	<b>14,542</b>
<b>Cruise/Passenger</b>	<b>7</b>	<b>1,205</b>
<b>Other</b>	<b>696</b>	<b>82,875</b>
<b>Total</b>	<b>13,341</b>	<b>763,288</b>

Note that on the date this study was published by the Department of State, the U.S. merchant fleet was not on a par with foreign merchant fleets in any of the categories. The U.S. merchant fleet could hold 13,341 tons of cargo, while foreign merchant fleets could hold 763,288 tons of cargo. That is a 750,000 tons of extra cargo and passenger space compared to the U.S. merchant fleet.

Furthermore, a 2013 report on global trade and its barriers from the World Economic Forum, in collaboration with Bain & Co.<sup>22</sup> and the World Bank, described the Jones Act as “the most restrictive of global cabotage laws and an anomaly in an otherwise open market like the United States.”

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<sup>22</sup> Private consulting firm that provides services to the majority of the largest, richest, and most important companies in the world, as well as to non-governmental organizations, nonprofit organizations, and governments, among others. Bain & Co. has over 50 offices in 32 countries around the world and a workforce of over 6,000 employees. Currently, it is ranked as one of the world’s top consulting firms.

Professor Villamil continued his analysis of the Jones Act of 1920 and stated the following:

- The global trend is to move towards increasing the volume of maritime freight that is transported in containers, but in certain routes such as those that link Asia to the United States and Europe. This reality will affect the policies of the different companies within the industry regarding the services they will offer and the rates to be charged in less busy routes. Everything indicates that if the Jones Act is eliminated, Puerto Rico will have difficulties finding ocean freight services NB<sup>23</sup> having the same level of accuracy, in terms of travel times, offered by our current services.

- Even if the Act is repealed, most of our cargo would probably still be transported by the same companies that currently offer services to Puerto Rico, but we would probably lose the dedicated service, among other things.

- Even if eliminating the U.S.-built vessel requirement may lower costs, this difference would be seen in the annual depreciation, between 30 and 40 years. Also, international market rates depend on market conditions, and agreements entered into by and between carriers and companies, not just incurred costs. Depreciation is, in any case, a small part of the total cost.

Regarding the foregoing, the Committee believes that the elimination of bunker C to propel U.S. merchant fleet tankers should be included when evaluating

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<sup>23</sup> Northbound.

ship costs. It is known that this fuel source is expensive, a pollutant, and falling into disuse.<sup>24</sup>

Likewise, Villamil indicated that the conclusion that cabotage laws have a limited effect on the economy is supported by the fact that as the economy moves towards the production of intangible goods or high value-added products, ocean freight loses its importance. However, he expressed that Puerto Rico still has a very important manufacturing sector to which ocean freight is still crucial. He also explained that cabotage laws can have benefits for the economy, such as dedicated services between the United States and Puerto Rico, as stated in GAO's report. Dedicated service reduces the need for companies in Puerto Rico to maintain high inventory levels. It provides a sense of reliability that contrasts with the uncertainty and volatility of the international market.

At the public hearing, he said: "I have no doubt there are many reasons to request the repeal or amendment of cabotage laws. However, it is important that we do not create the expectation that repealing the Jones Act will make a big difference in the economic development pattern of Puerto Rico." Nonetheless, these laws could be amended to allow for the use of new ships other than U.S.-built ships, and we could request waivers for trade between Puerto Rico and the municipalities of Vieques and Culebra. Regarding this issue, he stated:

My conclusion does not mean that making changes to the law is unnecessary. For example, waivers or amendments are needed for the transportation of liquefied natural gas. Also, shipbuilding costs must

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<sup>24</sup> **Bunker C/Number 6 Fuel Oil:** A high viscosity oil used mostly by ships, industry, and large-scale heating installations. This heavy fuel requires preheating in the storage tank to permit pumping and additional preheating to permit atomizing at the burners. <http://www.rita.dot.gov/bts/dictionary/list.xml?search=&letter=B&page=1>

be amended and, in our case, a waiver must be requested to allow transportation between Puerto Rico and the municipalities of Vieques and Culebra, which use ships that are perhaps more expensive.

This Committee does not agree with Dr. Villamil's suggestion that we should request waivers for trade between Puerto Rico and the municipalities of Vieques and Culebra, since it is a short route and, therefore, there are no economic incentives to attract investment by ocean freight companies. Said route is not commercially feasible, and Congress would not enact legislation for the sole purpose of exempting these island-municipalities.

Furthermore, Dr. Villamil believes public policy decisions should be made after a careful analysis of empirical evidence, rather than based solely on perceptions and opinions. If it is proven that the numbers presented in the study conducted by Estudios Técnicos, Inc. are incorrect, its conclusions will have to be amended. Regarding this, he stated that:

The repeal of the Jones Act must to be based on real numbers. Public policy in Puerto Rico must be formulated on an evidence-based decision-making process. If it is proven that our numbers are wrong, our conclusions must be changed.

Lastly, it is worth noting that the study commissioned by shipping companies to Dr. Villamil and Estudios Técnicos is the only one, of over a dozen studies that have been conducted about the impact of federal cabotage laws on Puerto Rico, which concludes that these laws do not have a tangible negative impact on Puerto Rico's economic development.



The **Shipping Association** did *not support* Senate Resolution No. 237, but expressed themselves in favor of GAO's report and with the findings and conclusions of the study conducted by Estudios Técnicos, Inc. In their position statement, they presented a study on the number of containers transporting motor vehicles and other types of loose cargo that arrives in Puerto Rico every year. According to the Shipping Association, about two hundred sixty thousand (260,000) containers arrive in the Island, out of which fifty-eight thousand (58,000) transport motor vehicles, and two hundred two thousand (202,000) contain loose cargo. This represents seventy percent (70%) of all freight transported to Puerto Rico. The remaining thirty percent (30%) arrives in foreign-flag ships.

Likewise, the Shipping Association indicated that Puerto Rico exports approximately sixty thousand (60,000) containers to the United States. They also pointed out that domestic freight rate costs are approximately seven hundred million dollars (\$700,000,000) annually. According to the data presented, the Shipping Association stated that:

...those who claim that cabotage laws impose a burden on Puerto Rico of hundreds of millions and even billions of dollars, are totally wrong. If these allegations were true, it would mean that the transportation services offered by domestic carriers are free and, in some cases, the customer would receive a credit for the services rendered.

Regarding the previous statement, the Committee learned that studies conducted since the 1930s analyzed the negative impact the imposition of cabotaje

laws has on Puerto Rico. Specifically, in 1931, the Brookings Institution, in the study entitled “Porto Rico and its Problems,” pointed out that:

**American coastwise shipping laws are a handicap to Porto Rican trade... It increases the cost of Porto Rican goods...** requirement that American ships shall be used tends to offset somewhat the advantage which the tariff gives to Porto Rico in selling in American markets... **if Porto Rico were free to use foreign shipping whenever it found an advantage in so doing, it is quite probable that it would be able to build up a larger trade with foreign countries than it now has.** [Emphasis supplied]

Likewise, most of the evidence gathered from independent studies shows that the Jones Act of 1920 is harmful to the United States economy and even worse for its territories and its possessions. Also, such studies affirm that the Jones Act has created extremely costly barriers for commerce. For example, a report from the U.S. International Trade Commission in 1995 found the Jones Act costs the U.S. economy (consumers) at least \$2.8 billion annually. It also found that its repeal could lower domestic shipping prices by up to 26%.

The application of the Jones Act of 1920 causes all parties involved an economic distortion given the high costs of shipping regulated goods between U.S. ports. For instance, it has led to absurd situations, such as the case of Hancock Lumber in Maine, which could not find a U.S. ship to transport its goods from Maine to Puerto Rico, and was forced to truck lumber to Florida and barge it from there. Jones Act drives up the cost of the goods sold here.

Ambassador Terry Miller<sup>25</sup> and Dr. James Carafano<sup>26</sup> stated that:

The real costs of Jones Act protectionism are even higher when you take into account the distortions of trade that cost American firms and workers the ability to compete fairly for American contracts. For example, U.S. scrap iron, a vital ingredient for American steel plants, is shipped from U.S. coastal areas to Turkey, or to Taiwan, or to China, rather than to other U.S. ports, **because the Jones Act makes such U.S.-to-U.S. shipping prohibitively expensive.** [Emphasis supplied]

Moreover, a series of studies conducted by GAO during the 1980s and 90s found that the Jones Act costs residents of Hawaii, Puerto Rico, and Alaska between \$2.8 billion and \$9.8 billion a year over what the freight rates would be without the Jones Act for the cost of transportation alone.

Also, the Federal Reserve Bank of New York<sup>27</sup> indicated in 2012 that the high cost of shipping in Puerto Rico is widely attributed to the Jones Act. Likewise, to support such statement, it reported that Puerto Rican ports have lagged behind other regional ports in activity level. Specifically, the Bank reported:

It costs an estimated **\$3,063** to ship a twenty-foot container of household and commercial goods from the **East Coast of the United States to Puerto Rico**; the same shipment costs **\$1,504** to nearby **Santo Domingo** (Dominican Republic) and **\$1,687** to **Kingston**

<sup>25</sup> U.S. Ambassador to the United Nations Economic and Social Council in 2006. He is currently the Director of the Centre for International Trade and Economics (CITE) at the Heritage Foundation.

<sup>26</sup> Vice President of the Heritage Foundation and Director of the Center for Foreign and Defense Policy Studies, and Director of the Kathryn and Shelby Cullom Davis Institute for International Studies.

<sup>27</sup> Report on the Competitiveness of Puerto Rico's Economy (January 29, 2012.)

**(Jamaica)-destinations that are not subject to Jones Act restrictions.**

Emphasis supplied

It is worth mentioning that the Bank's reference to Jamaica's shipping port is not an accident; Let us see. Over the last decade, the port of Kingston,<sup>28</sup> Jamaica has overtaken Puerto Rico's port, San Juan, in total container volume, even though Puerto Rico has a larger economy and its population exceeds that of Jamaica by nearly 1.5 million people.<sup>29</sup>

The Shipping Association believes that the studies published by different economists, such as Jeffrey Valentín-Mari and Mr. José Alameda, are questionable because they have flaws in their methodology, and their conclusions are based on the analysis of price of the goods rather than the volume of cargo, and the total shipping costs paid in Puerto Rico. Another alleged flaw of the aforementioned studies is that said economists used the current foreign carrier rates rather than the rates they would establish if they were to enter the domestic maritime transportation market.

Moreover, they stated that the idea that international freight rates are lower than domestic freight rates is a myth. They pointed out that various renowned economists have stated that the average rates for domestic northbound and southbound freight services are lower than international freight rates. However, it is worth noting that they did not mention the names of the economists or of the studies conducted by them.

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<sup>28</sup> Main shipping port in Jamaica.

<sup>29</sup> The volume of containers more than doubled in Jamaica, while it fell more than 20 percent in San Juan.

Another argument that debunks the myth that international freight rates are lower, is that GAO's report states that freight rates for imports subject to the Jones Act have decreased ten percent (10%) in recent years, while international freight rates have increased rapidly, sometimes up to one thousand two hundred dollars (\$1,200) per container. However, as mentioned before, the study conducted by the Federal Reserve Bank of New York stated that shipping is more costly to Puerto Rico than to regional peers and that Puerto Rican ports have lagged other regional ports in activity in recent years.

The Shipping Association expressed that importers and exporters in Puerto Rico have the option to enter into what the industry calls a "Time and Volume Agreement." They explained that with such agreements, exporters and importers have the power to contractually ensure a reduction in freight rates, surcharges, fuel surcharges, and detention and demurrage fees, among others. These agreements are valid for an established period of time, and importers and exporters must meet a minimum amount of cargo requirement. Therefore, freight rates and any related charges can be negotiated. Nonetheless, at the public hearing held on February 5, 2014, Mr. José González-Freyre, President of Pan American Grain, stated that Puerto Rican producers do not benefit from these agreements:

Sometimes it takes sixty (60) or ninety (90) days to find a ship that is available to receive the cargo. When you finally find one, usually there are no other ships available to negotiate a better price. The prices of all those ships are based on the whole ship, and not on shipment rates. This is due to the fact that, unlike container ships, these ships do not travel on a fixed route. There comes a time when

you simply have to accept the price set by the U.S. carrier because if you don't, you could spend another three months searching for a ship that can transport your cargo.

Undoubtedly, there is room for Puerto Rican traders to grow in the export market. According to *El Nuevo Día* newspaper, Mr. Adrián Rivera, Vice President of Sales and Marketing for CC1 Co., the company that handles the distribution for Coffee Roasters (Café Yaucono and Café Alto Grande), Carmela Foods (Salchichas Carmela), and the Club Caribe Distillery (Ron Club Caribe), among others, stated that:

Puerto Rico's market is shrinking and many Puerto Ricans are moving to the United States. The export market is where the Island's companies can grow. Our focus, and perhaps the focus of many food companies on the Island, is to start a distribution in United States markets that have a high concentration of Puerto Ricans, such as Florida, New York, and Chicago.<sup>30</sup>

During the public hearing, the Shipping Association pointed out that freight rates for United States imports could be lowered even more if Puerto Rico would restart its manufacturing and agriculture industries to export its products to the United States. Also, in view that southbound vessels are about eighty percent (80%) full for their total container capacity, and only twenty percent (20%) full for total container capacity moving northbound, the Shipping Association expressed that: "Both the Government of Puerto Rico and the private sector have the power to reduce freight rates for imports by exporting products made in Puerto Rico to

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<sup>30</sup> El Nuevo Día newspaper, "Oportunidad de crecimiento en el Mercado de la exportación (11 de julio de 2014).

the United States.” According to the Shipping Association, the responsibility falls on the Government and the private sector because shippers do not have any control over what is exported from the Island. Nonetheless, the Committee respectfully disagrees with the Shipping Associations’ statements. The decrease in Puerto Rican exports is due, in part, to the imposition of the cabotage laws. As mentioned earlier, the Committee received statements from various Puerto Rican traders like Mr. José González-Freyre, President of Pan American Grain, who expressed that negotiating with carriers to export his product has become an obstacle.

Another fact they used to justify the imposition of these laws is that foreign carriers did not provide GAO with the necessary information to validate that there is a difference between the freight rates of domestic and foreign carriers. They also argued that the number of barges available to transport loose cargo is limited because there is little demand for this service in the Island. They said natural gas is a perfect example of this. Once the demand for natural gas increases, companies with tankers will arrive in Puerto Rico willing to transport it. This Committee added that Puerto Rico acquires natural gas from Trinidad and Tobago, which is more expensive than purchasing it from the United States, because of a lack of tanker ships in the U.S. merchant marine.

With regard to the complaints that U.S. ships are old, the Shipping Association stated that, even though the fleet is old, all ships are compliant with U.S. Coast Guard requirements and regulations. They also stated that vessels are repaired and restored periodically to mitigate wear and tear. Regarding this issue, in 2001, the U.S. Department of Commerce informed in a study entitled “National Security Assessment of the U.S. Shipbuilding and Repair Industry” that American

shipyards only build close to 1% of the big commercial ships in the world and the amount of contracts they receive to build ships is constantly diminishing.<sup>31</sup> The study found that Jones Act vessel operators receive government incentives to keep using old vessels (some are up to 40 years-old) rather than replacing them with new ships due to the high cost of building new ships.

The Shipping Association also stated that foreign carriers visit various ports within their fixed routes; for such reason, they believe it is very unlikely that these companies would be willing to make a big investment in Puerto Rico's market, even if we were to obtain a waiver of the U.S.-built vessel requirement.

The Shipping Association stated that they were in no position to comment on whether U.S.-built ships were more expensive than those built in China and Korea because they do not know the prices or estimates of foreign shipyards. For example, Dr. Elías Gutierrez stated the following in a position statement that will be presented before Congress by Rafael Cebollero, who is the President of the Private Sector Coalition to Exclude Puerto Rico from the Jones Act:

In 1950 American-owned merchant ships made up nearly a quarter of the world's fleet. Today their share is less than 3%. American shipbuilding, despite the Jones Act, is all but moribund thanks to the much lower prices of ships made in East Asia.<sup>32</sup>

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<sup>31</sup> During the 1950s, nearly 25% of all ships in the world's merchant fleet were owned by the United States. At present, the United States owns less than 3%.

<sup>32</sup> Impact of the Coastwise Trade Laws on the Transportation System of the United States of America Statement In Support of the Coastal Shipping Competition Act" (By Elías R. Gutiérrez, Ph.D. To be presented by Rafael Cebollero, President of the Private by the Comisión de Derecho y Relaciones Internacionales del Colegio de Abogados de Puerto Rico (July 21, 2012).



They also expressed that there is a general belief that foreign-flag ships do not arrive in Puerto Rico, which is a mistake. According to the Shipping Association there are multiple foreign carriers that offer their services in Puerto Rico's market, such as: CMA-CGM, Mediterranean Shipping Co., American Presidents Lines, Compañía Chilena de Navegación, Evergreen, Maersk, NYK Lines, and Hpaag Lloyd, among others.

It is worth mentioning that as part of their Position Statement they presented the positive effects of the Jones Act on Puerto Rico's economy:

- Jones Act vessels are dedicated exclusively to the transportation of goods in containers, and the transportation of motor vehicles between Puerto Rico and the United States. This allows them to offer fixed, planned, and weekly services to and from Puerto Rico. They offer 12 weekly trips with transit times ranging from three (3) to seven (7) days. This provides certainty for importers and exporters when they want to move goods between Puerto Rico and the United States.
- International shippers cannot offer such guarantees. According to GAO, punctuality among domestic carriers is at 98% vs. 80% for foreign carriers.
- It is also very common for foreign carriers to transship cargo in various countries before it arrives to its destination. In some cases this adds days and even weeks to a trip. This is particularly important for foods or other perishables that could be spoiled or lost completely if there is a delay in transit. Construction materials are another example. A construction project could be completely halted if the materials were delayed during transshipment or due to a lack of space in a reserved vessel. This would prevent contractors and subcontractors from meeting

their obligations within schedule, and having to send workers home, among other things.

- A benefit of using U.S. carriers is that they offer 45-foot, 48-foot, and 53-foot containers, which can house much more cargo. This maximizes the efficiency of each trip.

- Another benefit is that many Puerto Ricans work aboard these vessels as merchant mariners or officers. They earn highly competitive salaries and they contribute to the Island's economy by purchasing real property, paying for their children's education, buying vehicles, etc.

- Also, due to the number of trips available from the United States to Puerto Rico, and the reliability provided by their punctuality, Puerto Rican importers enjoy the benefit of needing less space to store their inventory. This translates into cost savings when renting, purchasing new facilities, or paying property taxes to CRIM.

The Shipping Association also expressed that the effects of repealing the Jones Act, or obtaining an exemption from the U.S.-built ship requirement are uncertain. They agree with GAO's report in that it is difficult to know precisely what effects federal laws might have on foreign carriers that enter the domestic market. If foreign carriers enter the domestic market, even without the cabotage laws, their rates, which are currently lower, would be the same or even higher than those of domestic carriers.

Finally, they stated that if the Jones Act is repealed, there are no guarantees that foreign carriers would change their multiple port routes to provide dedicated services between Puerto Rico and the United States. If they continue using their

transportation model, which consists of transshipment and multiple port stops per route, domestic carriers might not be able to offer Puerto Rican businesses the same certainty, speed, and timetables offered by domestic carriers. The Shipping Association also believes that the entry of foreign carriers in the domestic market will not necessarily lead to lower rates. If Puerto Rico fails to export its products, import rates will remain high, regardless of whether it is a domestic or foreign carrier. The Shipping Association supported the idea of a potential waiver of the U.S.-built vessel requirement for the transportation of natural gas.

It is important to emphasize the power of those that support the Jones Act. Vessel owners and operators, as well as shipping industry workers have great political and economic power. The Jones Act of 1920 is a protectionist law, and those who benefit therefrom protect it as well. Between 1995 and 2010, ten legislative measures have been introduced to the House of Representatives and the United States Senate, some seeking the partial and some seeking the full repeal of the Jones Act. Unfortunately, none of them made it out of the legislative Committees that were evaluating them.

Rafael Cox-Alomar, Esq. *supported* Senate Resolution No. 237. Because of the uncertainty surrounding Puerto Rico after its credit-rating downgrading, the issue of the imposition of federal cabotage laws must be one of the main topics when discussing the reconstruction of the Island. According to Cox-Alomar, the cabotage laws issue is an entirely economic issue, because these laws perpetuate a monopoly based on the expensive premise that all goods transported by sea between Puerto Rico (the port of San Juan basically) and United States ports has to

be carried on U.S. flag ships, built in the United States, as well as owned and crewed by U.S. citizens.

Cox-Alomar stated that: “we can all work towards obtaining a waiver of the cabotage laws while we win certain battles for smaller waivers.” If we can start fighting for a waiver of the U.S.-built vessel requirement for the transportation of natural gas, it could have excellent results in reducing energy costs in Puerto Rico. He said that:

...if we are allowed to transport fuel, such as natural gas, on ships that are not necessarily U.S.-built and, at the same time, we persuade Congress that we are not looking for more welfare help, but rather searching for self-sustainability, I believe we can win this fight.

What is ironic about the natural gas controversy is that, for the first time in recent memory, natural gas in the U.S. is cheaper than in neighboring jurisdictions. However, it must be transported on U.S. tankers, which are no longer being built. Thus, a waiver that would allow us to use foreign-flag tankers to transport natural gas would be great. According to Cox-Alomar, these are “small battles and strategies that we must consider in order to win this battle.”

He stated that the credibility of the study conducted by Estudios Técnicos, Inc., “is fundamentally questionable” because it was conducted for and commissioned by shipping companies. Also, the aforementioned study contains no empirical or mathematical study of the economic effect the repeal of these laws would have on Puerto Rico. Nevertheless, on June 2012, the Federal Reserve Bank of New York conducted a study on the impact these laws have on Puerto Rico and arrived at the conclusion that such laws are an economic obstacle for the Island.

Likewise, the World Economic Forum, which met in Switzerland in 2013, published a report on January 23, 2013, concluding that the obstacles posed by cabotage laws throughout the world are in fact worse than tariff barriers.

Moreover, he indicates that GAO's report is a compilation of opinions that were repeated without arriving at any mathematical or statistical conclusions. He expressed that "thinking like some in the shipping industry, that GAO agrees with them, is to really not understand what is stated in GAO's report." This is the appropriate time to tackle this issue. It should be the public policy of the government of Puerto Rico to start an open dialog about the reconstruction of the Island, but also to include the cabotage law issue, and begin to exert pressure on Barack Obama's Administration to take action toward exempting Puerto Rico from cabotage laws.

Cox-Alomar added:

...our historical mistake is that we have politicized the subject of cabotage laws. From the stand point of the supporters of the Commonwealth, we have made statements in Washington, D.C. regarding this subject when dealing with the issue of our political status. When you deal with this issue simultaneously with the status issue, politicians from other parties shy away. Our strategy has to change. I believe the efforts of this Committee, the fact that senator Seilhamer introduced this resolution, and that GAO itself conducted an investigation, helps to change the perception about this issue from a fundamentally political issue to an economic one. People's

perceptions are changing because the strategy is changing, and because it is a different time in our history.

**Pan American Grain** also *supported* Senate Resolution No. 237. Pan American grain is a shipping and trading company that has been in the maritime business since 1977 and has operated both U.S flag and foreign-flag vessels. During the public hearing, they stated that they agreed with Cox-Alomar's legal, theoretical, and historical statements. They expressed that their opinion has more to do with the operational effects of the law.

It is important to note that Pan American Grain said the following about the study conducted by Estudios Técnicos, Inc.:

...we can't validate anything that has to do with operational aspects; it has significant shortcomings. Their operational analysis is far from reality; therefore, we ask you not to pay much attention to it.

The company also explained that they had suffered two ocean freight accidents and in both instances an American captain was at fault. In light of the foregoing, Pan American Grain said:

...we have more respect for foreign captains than for American captains...foreign captains know that they have to be efficient every day. American captains know they are protected by the Jones Act, which regulates operations and consequences related to the operation of a ship.

They also emphasized that by imposing these laws, they eliminate ninety-eight percent (98%) of all raw material suppliers. Regarding the foregoing, they explained that only two percent (2%) of all shippers in the world are American and

the remaining ninety-eight percent (98%) are foreign. Consequently, they explained that in some instances:

many days go by before you can find a ship that is available to transport your cargo. When you finally find one, there are no other ships available to compete on price. Prices are fixed and not by rate; you simply have to accept the price established by the American carrier.

In regards to transportation prices, they stated:

Strictly speaking of what the owner of the ship charges, and not considering fees for loading and unloading the cargo which are additional costs, a U.S. flag ship charges a well-known player in the industry eight hundred thousand dollars (\$800,000) to transport cargo from Puerto Rico to the Gulf. If a person has zero influence, the price doubles. Now, for cargo coming in from the Dominican Republic, they charge three hundred thousand dollars (\$300,000) regardless of whether the person has a lot of influence or not. That is a five hundred thousand dollar (\$500,000) difference that the consumer has to pay.

Lastly, Pan American Grain expressed that Puerto Ricans pay a premium for their products in order to maintain the U.S. merchant marine: “we pay more than Americans so they can maintain their merchant marine.”

Likewise, Dr. Martha Quiñones, who wrote her master’s thesis on the economic impact of cabotage laws, *supported* Senate Resolution No. 237. According to Quiñones: “The cabotage laws issue is complex and has many variables; therefore, it must be evaluated from multiple perspectives.” She

recommended that we should “study all possible benefits and costs to make a proper evaluation.” Quiñones expressed that GAO’s study was “conducted just to please the United States.”

According to Dr. Quiñones, it is important to recognize that one of Puerto Rico’s main problems is its dependence on the foreign sector to meet the Island’s demand for products. This is critical because all goods arrive and depart by sea. Also, we must recognize that Puerto Rico is one of the most important markets for the United States. The Island holds the ninth place for United States imports and the first place at population level. However, Dr. Quiñones stated that Puerto Rico and the United States do not have a bilateral relationship, since Puerto Rico does not sell much to the United States. All goods consumed in Puerto Rico come from the United States and we buy exclusively from them, thus ensuring American producers that their surpluses will be sold. Regarding this issue, Dr. Quiñones emphasized that GAO’s report states that Puerto Rico is an important market for the United States, but it failed to present it as a market imperfection problem. However, according to Dr. Quiñones, it is in fact a market imperfection, because this exclusive trade with the United States is almost a monopoly.

Dr. Quiñones added that: “Puerto Rico’s maritime shipping market constitutes imperfect competition issues represented by an oligopoly.” An oligopoly is a market dominated by a small number of providers of the same service. In this market, every provider knows the actions of its competitors and its decisions are influenced by such actions. There is a balance between the parties, but there is no competition. When delivering her statement, Dr. Quiñones stated that: “If we believe in free competition and in free enterprise capitalism, we cannot



promote oligopolies.” Moreover, she explained that the lack of competition affects consumers because it leads to higher prices, lower production, and less quality. Also, the parties agree to act coordinately, fixing prices to achieve greater benefits.

Regarding free competition and the four companies that control maritime shipping between Puerto Rico and the United States, Dr. Quiñones expressed that: “If the four (4) companies operate efficiently they should compete on equal market conditions and break up this oligopoly.” With regard to trade between Puerto Rico and the United States and the imposition of cabotage laws she added: “U.S. protectionism is inconsistent with free enterprise and free competition. We must recognize that these are protectionist laws, and that the United States should promote economic freedom and capitalism based on perfect competition.”

Dr. Quiñones also explained that Puerto Rico’s trade and economy are affected by “the mere fact that it can only do business with the United States and by being a slave market.” She pointed out that eliminating these laws without requesting the necessary economic autonomy to enter the global market and look for better prices will not solve the problem. She added:

The economic freedom to choose where to buy (is not in the United States’ interest because it wants to maintain a captive market) at reasonable prices would be beneficial. Without cabotage laws we could find good prices in Panama, Colombia, and other places. Freight would be transported on the vessels used by such countries to distribute goods in the Caribbean and the United States. We could also use those vessels to export our own goods. However, this is an economic sovereignty issue.

The **Seafarers** *did not support* Senate Resolution No. 237. According to Seafarers, and contrary to the statements of all other deponents, GAO's report is a complete and comprehensive review of the Jones Act's impact on Puerto Rico. They stated that:

It is unnecessary for the Senate to make a duplicate review of the Jones Act, or to investigate whether GAO's report is comprehensive enough. Regardless of whether one agrees or disagrees with the report's conclusions, the findings are unbiased and based on thorough research.

Moreover, Seafarers questioned how much time the Committee would devote to Senate Resolution No. 237's study versus the amount of time GAO dedicated to theirs.

According to Seafarers, GAO's report states exactly what they and other Jones Act supporters claim: that the Jones Act is critical for the United States' maritime policy, and that the original purpose thereof, which is to create and maintain a domestic merchant marine that can serve as a naval and military auxiliary in times of war, as well as to promote the domestic shipbuilding industry, is still an important matter for the nation. Nonetheless, GAO's report states that:

While the Jones Act vessels operating between the United States and Puerto Rico are all enrolled in MARAD and DOD's VISA program, these vessels would have limited contribution to military sealift capabilities, according to DOD officials. According to DOD, the containerships -particularly lift-on/lift-off vessels- in this trade are less useful for military purposes compared to vessels with roll-on/roll-off

capability; and the tugs and barges in this trade are generally considered of lesser military value because of their slow speed relative to self-propelled vessels.<sup>33</sup>

Regarding the foregoing, it is worth noting that Seafarers agreed to furnish the Committee information on how merchant mariners contributed to “Operation Iraqi Freedom” and other military operations currently underway in the Middle East. However, this Committee has not received any documentation regarding said matter as of the date of this report.

Lastly, they expressed their concerns about the impact that a waiver of these laws would have on the labor market. Seafarers explained that the Jones Act protects the jobs of U.S. citizens who work in the ships that transport goods to and from Puerto Rico. They also stated that: “It is vital to recognize that having U.S. citizens, who are subject to background checks and training on their vessels, reduces the risks related to terrorism, smuggling, and illegal immigration.”

**Juan Dalmau-Ramírez, Esq.**, Secretary General of the Puerto Rican Independence Party *supported* Senate Resolution No. 237. He expressed that the U.S. merchant marine is considerably more expensive than foreign merchant marines. He also stated that the “requirement to use the U.S. merchant marine limits our development potential.” According to Dalmau-Ramírez, our geographical location is the main reason why we have been a colony of two big empires. We are a bridge for the transportation of goods and services. An exemption from these laws would be a giant step in the right direction. The triple

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<sup>33</sup> United States Government Accountability Office, “PUERTO RICO: Characteristics of the Island’s Maritime Trade and Potential Effects of Modifying the Jones Act” (March 2013).

restriction imposed by cabotage laws “...increases the price of the goods we sell to and purchase from the United States.” He added that “if we increase the price of what we sell it would be harder for us to compete. If the price of what we buy increases, it hurts the pockets of Puerto Rican consumers. Both scenarios affect Puerto Rico’s economy.

He also said:

“...the difficulty in tracing efficient commercial routes is added. For instance, a foreign-flag vessel transporting cargo from Europe to Puerto Rico could not load cargo here and continue to a U.S. port. This difficulty when tracing routes hinders our ability to increase our business options, which are, in part, available due to our geographical location. Cabotage laws and customs regulations can cause even more difficulties when integrating U.S.-flag vessels into international trade.

It is worth noting that Dalmau-Ramírez made a reference to the Report on the Competitiveness of Puerto Rico’s Economy published by the Federal Reserve Bank of New York on June 29, 2012. He cited the third recommendation, which establishes that:

... the high cost of shipping is a substantial burden on the Island’s productivity. Puerto Rico is in a distinctive situation with respect to the Jones Act because of its status as an island economy. One option could be to seek a temporary exemption from the Jones Act, for instance for five years, in order to both evaluate whether or not these

restrictions really are a substantial cause of elevated shipping costs...<sup>34</sup>

According to Dalmau-Ramírez, the foregoing is a recommendation made by the Federal Bank, yet he believes that we should be fully exempt from the application of these laws. Likewise, consultant Ernest Frankl's Report on the future of transshipment, i.e. the mega port, establishes that even though we are developing a transshipment port in Ponce, Puerto Rico is severely limited when trying to maximize the advantages of its geographical location due to the imposition of these laws.

Dalmau-Ramírez also countered the arguments presented by Shippers Association at the public hearings held by this Committee, stating:

Our goal is not to exclude the use of the U.S. merchant marine, this is about having the power to choose which one we want to use based on prices, competition, quality of services, and efficiency. It seems to us that private companies that are constantly championing the ideals of free enterprise, and the free market are contradicting themselves, in a way that almost makes them seem dishonest, when they support the idea that Puerto Rico should not be able to decide whether or not we want to use the services of the U.S. merchant marine to transport goods to the United States.

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<sup>34</sup> Federal Reserve Bank of New York, "The Competitiveness of Puerto Rico's Economy" (2012) cited in the position statement by Juan Dalmau-Ramírez, Esq.

Lastly, to Senator López-León's questions about which strategies should be employed when taking this issue to the United States Congress, Dalmau-Ramírez stated that:

We must acknowledge how convenient it is for the United States to have Puerto Rico subsidize its Merchant Marine. The Government must exert political pressure by using the powerful argument of the economic crisis. We must exert political pressure, that is, to form a common front in a country where consensus cannot be reached. We must reach consensus on this issue to demand the United States to take action.

**Economists** *supported* Senate Resolution No. 237. They expressed that GAO's report does not contain empirical data that helps elucidate the impact these laws have on Puerto Rico. Also, they reassert that a comprehensive study on the economic impact of cabotage laws must be conducted. None of the previous studies have evaluated or made projections of what the results would be if cabotage laws were repealed. In other words, there is no empirical evidence that shows that foreign carriers have a commercial interest, or a potential interest, in Puerto Rico's maritime shipping market if a waiver is granted to Puerto Rico or if the Island is fully exempt from these laws.

The **Municipality** *supports* Senate Resolution No. 237. It stated that the social and economic costs of cabotage laws are higher in Puerto Rico because maritime transport is our principal means of transportation when exporting or importing the goods produced or consumed by Puerto Ricans. According to the Municipality: "Data published on how much these cabotage laws cost Puerto Rico

is enough to advocate for their repeal.” However, it added that the numbers that have been used to calculate how these laws affect Puerto Rico are only taking into consideration the costs of imports and those associated with exports. Therefore, to import costs we must add approximately seven hundred million dollars (\$700,000,000) to what Puerto Ricans pay to the most expensive merchant marine in the world. Likewise, another aspect that has not been taken into consideration when calculating the cost of the imposition of these laws is the implications of redrawing shipping routes. This is so, because we are required to use U.S.-built ships or ships whose owners are mostly Americans. In order to explain why shipping routes must be redrawn, the Municipality gave the following example:

[A] cargo vessel departs from Europe to the United States and Puerto Rico. When it arrives at a U.S. port, all the cargo that will remain in U.S. territory must be unloaded, while the cargo bound for Puerto Rico must be transshipped to U.S. flag vessels. This entails an additional cost that must be added to the aforementioned seven hundred million dollars (\$700,000,000). That is the reason why some analysts estimate that Puerto Ricans pay approximately one million dollars (\$1,000,000)[sic] due to the imposition of these laws.

The Municipality also pointed out that the claim for the repeal of cabotage laws is about giving the people of Puerto Rico the option and freedom to access and contract with the carrier that benefits the Island the most. Moreover, the Municipality stated: “This is important because we are in a global economy that is trying to eliminate protectionist measures between countries.” Also, it explained that to request the repeal of these laws, “it is not necessary to modify the political

relationship between Puerto Rico and the United States.” However, “our society must make an unwavering, unrelenting, and strong demand.” The Municipality agrees with filing a petition with the U.S. Congress for a waiver of the U.S.-built requirement for the transportation of natural gas. It indicates that: “If there are no ships that can transport this type of fuel, it would be terrible. This must be done immediately.”

Dr. **Francisco Zayas-Seijo** and **José Ortiz-Daliot Esq.**, *supported* Senate Resolution No. 237. Dr. Zayas-Seijo appeared before this Committee as the former mayor of the Municipality of Ponce and as a citizen interested in the development of the Rafael Cordero-Santiago Port of Ponce. Ortiz-Daliot is a former Senator who presided over the works carried out in connection with Senate Resolution No. 100 of 2001, related to the impact of cabotage laws on the Rafael Cordero Transshipment Port (Port of Ponce). Dr. Zayas-Seijo stated that cabotage laws “affect us all,” because there is no way that small and obsolete vessels, with crews that earn more than other world-crews and administered by an oligopoly, could compete without laws such as these.” He continued by saying that “this is not a matter of national security, it is about maintaining the unions and perpetuating the monopoly these companies have in Puerto Rico.” He also pointed out that Puerto Rico is key to maintain such system because we import eighty percent (80%) of our goods.

Dr. Zayas-Seijo explained that, together with Ortiz-Daliot and Congresswoman Corine Brown, they took on the task of amending the Act in 2001 in benefit of the mega port being built in Ponce. They met with then-Resident Commissioner, the Honorable Luis Fortuño, labor unions in Washington, D.C., and



various Congressmen and Senators. According to Zayas-Seijo, they all agreed that it was not an easy task, but what was most impressive is that it had not been done before.

Likewise, Dr. Zayas-Seijo said that, the steps taken by this Committee to quantify the financial burden of these laws on our economy is of great importance. However, he also indicated that any conclusions arrived at in this investigation will have no meaning unless steps are taken to amend the Jones Act. He continued by saying that “if the Jones Act is not amended, the Island’s exports shall be affected because the volume of containers between Puerto Rico and the contiguous United States will decrease dramatically.”

Ortiz-Dalio stated that:

I wanted to highlight that, in 1999, the U.S. International Trade Commission pointed out three things from a study they conducted from 1995 to 1999. First, the average cost of operating a U.S. flag ship is 40% higher than operating a foreign-flag ship. Second, when comparing a U.S. tanker to a foreign-flag tanker, the operation costs are 99% higher and the crew cost is twice as expensive as those of foreign- flag ships. Finally, the top ten best carriers in the world are foreign.

He added:

Our arguments are based on the principle of free trade. Why are other U.S. territories exempt, yet Puerto Rico has to bear the burden of supporting the U.S. merchant marine when it is the poorest jurisdiction in the nation? No one has been able to explain to me why

the poorest jurisdiction in the United States has to support the most expensive merchant marine in the world. Not Congress, not the White House. We represent 25% of the American fleet's income. Why don't they abide by the same principles? Crowley and Sea Star compete in the Virgin Islands, why can't they compete here if that is the fundamental principle of the United States.

The **National Guard** talked about its recent work in conjunction with the Department of the Treasury to inspect containers during Operation Frontier Shield. It explained that, on January 3, 2013, the Governor of the Commonwealth of Puerto Rico, the Honorable Alejandro García-Padilla, signed Executive Order No. OE-2013-001, which authorized the strategic activation of the Puerto Rico National Guard to support surveillance efforts in ports and airports, for the purpose of preventing the smuggling of drugs and weapons to the Island. Nonetheless, the National Guard stressed that they did not operate the x-ray scanning equipment because the task of scanning the containers is performed by RapiScan Systems, Inc., and the Department of the Treasury.

The National Guard provided personnel to conduct physical inspections of these containers during Operation Frontier Shield. This was done to support the Department of the Treasury, which is the entity responsible for inspecting the containers that arrive in the Island. During the 2013 Operation, two thousand one hundred twenty-one (2,121) containers were inspected which showed a two hundred per cent (200%) increase over previous years.

The National Guard claims these inspections generated four million seventy thousand eight-hundred twenty-four dollars (\$4,070,824). This amount is broken

down as follows: (1) Three million five hundred ninety thousand eight hundred ninety-six dollars and sixty-one cents (\$3,590,896.61) on account of excise taxes; (2) One hundred four thousand nine hundred thirty-one dollars and fifteen cents (\$104,931.15) on account of fines; (3) Three hundred seventy-four thousand nine hundred ninety-six dollars and forty-six cents (\$374,996.46) on account of the Sales and Use Tax (IVU, Spanish acronym). Also, one thousand two hundred (1,200) ammunitions and six (6) firearms of various types and calibers were seized during these inspections. The inspections also found many goods that were not included in the manifests produced by the carriers before their vessels left the port of origin. Slot machines, and motor vehicles that were not appraised for excise tax purposes were among the goods seized.

Lastly, the National Guard stated that including its service members in such container inspections is an effective mechanism to prevent tax and excise tax evasion, thus guaranteeing that the government will collect tax revenues.

It is worth noting that the National Guard furnished the Committee additional information requested by Senator López-León during the public hearing. The information states that Operation Frontier Shield lasted for a year at a cost of approximately twelve million dollars (\$12,000,000). The National Guard performed the following tasks as part of said Operation: (1) Coastal patrol together with the Puerto Rico Police; (2) Airport surveillance; (3) Supported the Department of the Treasury during the inspection of containers arriving in the Island; (4) Used the radar systems of the Air National Guard in Aguadilla to detect and identify aircraft and vessels that could be involved in illegal activities related to drug smuggling.

Likewise, coastal patrols had excellent results which included the seizure of drugs and firearms, as well as the arrests of illegal immigrants. The National Guard also expressed that the support they provided to the Puerto Rico Police Department allowed them to reach remote locations all around the island, and helped in the prompt arrest of criminals.

They also provided information regarding the use of the U.S. Merchant Marine in times of war. They stated that the U.S. Merchant Marine has been used constantly during the past seventy (70) years in national emergencies and in military operations. They added that the U.S. Department of Transportation’s Maritime Administration works with two programs: the National Defense Reserve Fleet (NDRF) and the Voluntary Intermodal Sealift Agreement (VISA). The NDRF was created by the Merchant Ship Sales Act of 1946 for the purpose creating a reserve of ships ready to respond to emergencies and national defense situations. The Ready Reserve Force (RFF) was added to the NDRF in 1976, and its mission is to provide rapid transportation for military equipment.

According to the National Guard, the vessels that belong to the NDRF and the RFF have been used in the following conflicts, military operations, and national emergencies:

<b>SITUATION</b>	<b>YEAR</b>	<b>SHIPS</b>
Korean War	1950 - 1953	540
Vietnam War	1965 - 1973	172
Operations Desert Storm and Desert Shield	1990 - 1991	78

“Operation Enduring Freedom”/ “Operation Iraqi Freedom”	2001 - present	0
Hurricane Katrina and Hurricane Rita	2005	5 from the RFF and 4 from the NDRF
Haiti’s Earthquake	2010	6

The VISA program is a partnership between the U.S. Government and the maritime industry to provide the Department of Defense with “assured access” to commercial sealift to support the emergency deployment and sustainment of U.S. military forces. However, the National Guard stressed that according to GAO’s report, the Department of Defense accepted that the vessels that travel to Puerto Rico have limited military use. Nonetheless, when Senator López-León asked about the vessels owned by the National Guard and the capacity thereof, the National Guard stated that they own four (4) Landing Craft Mechanized (LCM-8) vessels. These landing craft are designed to carry cargo, vehicles, and personnel to the beach during military operations. Moreover, they can move fifty-three (53) tons of cargo and they operate with a crew of six (6) men.

Furthermore, the National Guard also presented evidence on how they can provide support services to law enforcement agencies. It indicated that, currently, the National Guard has a “Counterdrug” program in the National Guard Bureau. It is an alliance between the U.S. Government, represented by the National Guard Bureau and the Commonwealth of Puerto Rico, to use National Guard assets to support federal and local law enforcement agencies. The federal government defrays all the costs of said project.

Lastly, the National Guard stated that it has worked with the Puerto Rico Ports Authority for the purpose of detecting smuggling in pier areas. From 1990 to 2003, the Counterdrug Program led to Operation Guardian whereby members of the National Guard, together with the U.S. Customs and the Department of the Treasury of Puerto Rico, inspected containers. Operation Guardian was discontinued by the U.S. Government.

The **Authority** stated that, by virtue of its enabling Act, it is empowered to impose and charge fees for the use of its port and airport facilities. In accordance with these provisions, the agency has adopted the necessary resolutions and regulations to enforce said Act. However, it explained that even though federal cabotage restrictions govern maritime trade in Puerto Rico, the Authority has not been required to impose, change, or modify rental fees or any other fees as a result of the application thereof. The requirements imposed on the merchant marine by cabotage laws do not affect the fees charged by the Authority for the use of its ports or any other facilities.

During the public hearing, the Authority explained that each barge that arrives in Puerto Rico has a manifest that has to be handed over to the Puerto Rico's port authorities twenty-four (24) hours before the barge arrives in the Island. Likewise, every company is required to furnish documents about the cargo they carry, so the Authority can calculate the docking fee to be collected. Regarding the manifests, the Authority expressed that:

...it is the inventory of the goods that shipping companies intend to bring into the Island, and obviously, the Authority, as provided in its fee regulations requires a copy of such manifest. Over the years, we

have learned that these manifests tend to have errors, in other words, information is omitted or incorrect. With that in mind, we have taken certain steps and we are currently evaluating our fee regulations, although they are quite recent, to identify ways to make them more stringent to prevent such situations. We are also evaluating how we can impose sanctions. Since we have them, and they are quite high, we can basically prohibit any ship from leaving if we believe that it has violated our regulations. We are in the middle of said process.

The Authority also indicated that it does not inspect 100% of containers, but they are establishing the infrastructure needed to do so. As an interesting fact, the Authority noted that the United States inspects 100% of the containers that arrive in their coasts.

It is worth noting that when Senator López-León inquired about information included in the manifests, the Authority explained the following:

...they have to report us what is inside the container and the quantity because we obviously charge by tonnage, by draft. We need to know what is inside each container, or in the ship in general, to be able to determine the fees. Therefore, we need to know what they bring...

Every time a ship arrives and docks in our ports, we need to charge them for using our facilities. The charge depends on the tonnage hauled by the ship. We use the manifest they send us to create the invoice and send it back to them so they pay.

When Senator López-León asked what the Authority's position was with regard to federal cabotage laws, the Authority answered the following:

What happens is that the way we evaluated this resolution is taking into consideration how these laws would affect the fees we charge to individuals and the different carriers that arrive in the Island. From our point of view, we would charge the same fees whether or not cabotage laws exist, and regardless of its port of origin, and its flag. That is why we did not include our position regarding this issue. We looked at this issue from the standpoint of the costs it entails for our facilities.

**COMEX** supported Senate Resolution No. 237. They stated that “Puerto Rico needs a strategy to enter the transshipment market. Having the power to compete on equal footing with our neighbors would be a great start.” According to COMEX, the goal is to allow Puerto Rican businesses to purchase goods from other countries at better prices and more efficiently, rather than forcing them to purchase goods from foreign countries through the U.S. merchant marine. Also, it explained that cabotage laws are thirty percent (30%) or forty percent (40%) more expensive here when compared to other states. COMEX also stated that amending the Jones Act would benefit consumers in Puerto Rico because it would result in accessible prices. In the public hearing, COMEX stated that we should be: “Looking for alternatives that increase our competitiveness at a time when communication is important for development.”

Senator López-León asked about what the restrictions imposed on Puerto Rican exports are. COMEX stated that the Island has the necessary infrastructure, and that Puerto Rican businessmen have the education needed to affect the economy in two ways. First, with help from the Department of Agriculture, we can



substitute imports by encouraging land and coffee cultivation, revitalizing the sugar cane industry, and growing more fresh produce. That way we can identify Puerto Rican products that can substitute imports. Secondly, we can increase the number of goods and services we export. COMEX stated that the barriers imposed by cabotage laws cause a dislocation because they have perpetuated a system that requires us to use the U.S. merchant marine.

COMEX pointed out that, a year ago, Puerto Rico's export supply curve was decreasing. We need to analyze the Planning Board statistics carefully, because according to them, in 2012, our exports generated fifty-five billion dollars (\$55,000,000,000), out of which, forty-four billion dollars (\$44,000,000,000) were generated from pharmaceutical products whose economic injection does not remain in the Island. According to COMEX, Puerto Rico's balance of trade is negative.

COMEX explained that, in 2013, there were signs that the balance could change. It argued that the public policy of this government administration is directed towards the reconceptualization of trade missions. Through these missions, which have been carried out in various South American countries, Puerto Rican businesses can trade their products and services. Also, they stated that the Government of Puerto Rico has revitalized its overseas office, especially in the Dominican Republic where a new Director has been appointed and exports have increased by twenty-four percent (24%). In the office located in Spain, they have implemented new approaches to promote the Island as an investment destination. Lastly, a new office has been established in Colombia for the purpose of creating new trade relations in Central and South America.

The **DLHR** *supported* Senate Resolution No. 237. With regard to GAO's report, the DLHR stated that it only covers two areas related to labor, to wit: (1) Crew and personnel costs are affected by American standards of living, agreements with maritime unions, and benefits that are included in the compensation, which contrasts with foreign carriers; (2) U.S. carriers or vessels are subject to government inspections in accordance with workplace safety and health laws, environmental legislation, and shipbuilding standards, all of which affect costs.<sup>35</sup>

The DLHR informed that it has never been required to gather or provide information on how cabotage laws have affected jobs in Puerto Rico. Therefore, they do not have a study, conducted by either the government or a private entity, which can scientifically or empirically prove how these laws have affected the economic development of the Island. The DLHR stated further that: "Certainly, in a global economy that is interdependent, like the one that currently exists, in which there are few or no barriers between countries, Puerto Rico needs more freedom to benefit from the international market."

The **DEDC** *supported* Senate Resolution No. 237. It stated that because of the imposition of these laws, "Puerto Rico has been deprived of the advantages provided by free competition in the ocean freight market." The costs paid by the consumers of the goods imported to Puerto Rico are twenty-five percent (25%) to thirty-five percent (35%) higher than other states. Another important factor to consider is how these laws can affect the operation and future success of the Port

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<sup>35</sup> United States Government Accountability Office, "PUERTO RICO: Characteristics of the Island's Maritime Trade and Potential Effects of Modifying the Jones Act" p. 15 (March 2013).

of Ponce Authority, as well as how they will affect the other mega ports in Puerto Rico.

Additionally, the DEDC indicated that our Latin American competitors are not limited by the restrictions of cabotage laws. However, certain Latin American countries already have the same access we have to the United States market. This situation undoubtedly places Puerto Rico at a disadvantage when trying to enter into free trade agreements such as the North American Free Trade Agreement<sup>36</sup> (NAFTA) and the Dominican Republic-Central American Free Trade Agreement<sup>37</sup> (RD-CAFTA).

The **EDB** *supported* Senate Resolution No. 237. The Bank understands “...the importance of making a scientific, practical, and thorough analysis of all the aspects that affect how these laws influence the socio-economic welfare of Puerto Rico” and praised the DEDC’s statements.

The **AFCPR** also *supported* Senate Resolution No. 237. They expressed that the Jones Act of 1920 has affected the pharmaceutical industry because it increases generic drug prices. Several factors contribute to the aforementioned increase in price such as a shortage of raw material; the purchasing power of big chains; the closure of several manufacturing facilities by the Federal Drug Administration (FDA)<sup>38</sup>; the drug register in the Department of Health; the lack of a firm,

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<sup>36</sup> The North American Free Trade Agreement (NAFTA) is a regional agreement signed by the governments of the United States, Mexico, and Canada. The purpose of this agreement is to create a free trade zone and it was signed by Mexico on December 17, 1992. The agreement took effect on January 1, 1994.

<sup>37</sup> The Dominican Republic-Central American Free Trade Agreement is a free trade regional agreement signed by governments of the United States, Guatemala, El Salvador, Honduras, Costa Rica, and the Dominican Republic. The agreement was adopted by all the parties thereto in 2004 and took effect for each country on different dates as of 2006.

<sup>38</sup> Due to mergers among manufacturers making single-source drugs.

consistent, and strong public policy against monopolies and oligopolies; and, lastly, the impact of the “Obamacare” Healthcare Reform, among other things.

Another factor that affected the price of generic drugs was that the Maximum Allowable Cost (MAC)—which is the maximum amount a medical plan will reimburse pharmacies for generic drugs that are produced by more than one manufacturer—is lower in Puerto Rico than in the United States, this places the Island at a competitive disadvantage.

AFCPR added that cabotage laws affect small businesses because they have to consider the transportation costs when they make purchase decisions. This influences pricing and causes products to be more expensive in Puerto Rico than in the United States. Moreover, they also stated: “We believe that repealing or amending the cabotage laws shall result in a more competitive market and lower transportation costs, which leads to lower prices for goods sold to consumers in Puerto Rico.”

The **Department of State** also *supported* Senate Resolution No. 237. It recommended that the study should be comprehensive and must include, specifically, the economic impact on the average Puerto Rican citizen’s purchasing power. It cannot be limited to the ocean freight rates between Puerto Rico and the United States, it must also include the impact thereof on the Puerto Rican economy at the micro and the macro levels. Also, the factors that led to the creation of these laws and their historical context do not necessarily apply to the current reality of Puerto Rico, the United States, and the world.

The Department of State said “that cabotage laws threaten the principles of free competition that have governed the world’s economic policies for decades,

and that have served as a guide for the World Trade Organization and all bilateral and multilateral free trade agreements.” Additionally, the Department of State explained that any steps Puerto Rico wishes to take as a result of the conclusions of the study to be conducted pursuant to this resolution, must be supported by lobbying efforts in Washington, D.C., and other initiatives that promote the Island’s economic development. For example, a program to exempt citizens from neighboring Caribbean countries, and some Latin American countries, from obtaining a visa to visit Puerto Rico for a determined period of time; or taking our fiscal autonomy to the international level.

**PRIDCO** also *supported* Senate Resolution No. 237. With regard to GAO’s report, it said that it lacks sufficient empirical evidence regarding the effects of using the U.S. merchant marine pursuant to Jones Act requirements. Likewise, the report fails to explain the implications of using foreign-flag ships in the current United States-Puerto Rico ocean freight market conditions or in the international market. According to PRIDCO, this issue is more complicated than simply analyzing freight rates. Therefore, it made the following recommendations:

- Consider not to conduct a further study of GAO’s report. The report contains basic information on the features of the laws that apply to Puerto Rico and the potential implications of obtaining a partial or full exemption of the provisions, and of the law and the effect of such actions on both the U.S. and foreign merchant marines. This study could be used as a basis to conduct a more comprehensive one.
- It will be more efficient and faster to commission a comprehensive study on the effects of the Jones Act on the economy of Puerto Rico.

Regarding the foregoing, PRIDCO believes:

- A budget appropriation shall be made to defray the cost of this study. Approximately \$60 billion dollars' worth in goods are traded between Puerto Rico and the United States annually; therefore, a \$5 million- or \$6 million-dollar appropriation to determine the cost of the Jones Act to Puerto Rico's economy would be reasonable. Even if the cost of the Jones Act ranges between \$600 million and \$1 billion annually, the cost of such a study would be reasonable.
- If the study is conducted, it should be carried out by an institution not related to the U.S. merchant marine or any foreign merchant marine. It should be conducted by a world-renowned company dedicated to working with or studying maritime trade issues.
- Taking into consideration other studies, especially a recent study commissioned by the Maritime Alliance and conducted by Estudios Técnicos, Inc. If this study were found relevant and revealing with regard to the economic impact of the Jones Act on Puerto Rico, it would be useless to direct another entity to conduct a comprehensive study on the matter. An analysis of this study should definitely be considered.
- Joining and concentrating our efforts toward obtaining waivers of some provisions of the Act, such as those related to the transportation of crude oil and, more importantly, liquefied natural gas (LNG). Also, to obtain waivers that allow U.S. carriers to purchase or use foreign-built ships in ocean freight between the U.S. and Puerto Rico.
- Requesting the Department of Defense to grant a subsidy to the jurisdictions affected by the Jones Act for supporting the expensive U.S. merchant

marine. In this manner, all parties are protected, i.e. the U.S. jurisdictions, the maritime industry, and national security.

The **International Organization of Masters, Mates & Pilots**, a union that represents mariners, pilots, and captains who operate all sorts of commercial Jones Act vessels, *did not support* Senate Resolution No. 237. It stated that the mariners represented by the union are U.S. citizens that support the implementation of the Jones Act and believe said Act benefits both Puerto Rico and the United States.

The International Organization of Masters, Mates & Pilots summarized all the economic benefits they believe are provided by the Jones Act's implementation in Puerto Rico:

- The Jones Act ensures that American companies and crews control domestic waterborne trade;
- According to a study conducted in 2009 by Price Waterhouse Coopers, the Jones Act generates approximately one hundred billion dollars (\$100,000,000,000) annually for the domestic economy and eleven billion dollars (\$11,000,000,000) in federal taxes. The Jones Act also creates five hundred thousand (500,000) jobs;
- Maritime transportation between the United States, Puerto Rico, Hawaii, and Alaska moves approximately two hundred million (200,000,000) million tons of goods annually;
- Puerto Rico's estimated unemployment rate is fifteen percent (15%). These jobs are provided by the U.S. maritime industry through the Jones Act. Therefore, repealing the Jones Act of 1920 would result in more Americans and Puerto Ricans becoming unemployed;

- It is worth noting that since 1985, three (3) studies have been conducted. Two of them by the U.S. Department of Transportation, and one (1) by an independent company called Reeve and Associates. This company concluded that transportation between the United States and Puerto Rico has been reliable and efficient. These studies have demonstrated that freight rates between the United States and Puerto Rico are lower than those in Europe and Asia. Regarding the above, the Committee believes that since studies brought by the International Organization of Masters, Mates & Pilots are over thirty (30) years-old, they should not be used to analyze the current maritime transportation market between the U.S. and Puerto Rico. They argue that the information in these studies is archaic and inconsistent with the realities faced by Puerto Rico and the world.

The International Organization of Masters, Mates & Pilots said the following with regard to the national and maritime security:

- The Jones Act ensures the national and maritime security of the United States. Only U.S. flag and crew vessels must meet security requirements and are subjected to investigations.
- If the Jones Act of 1920 were repealed or amended, foreign-flag ships could have full access to Puerto Rico and the nation; and
- During wartime, Jones Act vessels were used to transport military tools.

The **Department of the Treasury** stated that the agency has no jurisdiction over any aspect of the cabotage laws, since such laws regulate marine transportation between United States ports. It further explained that the agency has, on the basis of its tax collection duties, jurisdiction over the collection of taxes and excise taxes on transported cargo once it enters Puerto Rico and not during its



course towards the Island. It also stated that, in fulfilling its tax collection and oversight duties, it does not collect or keep information or data related to economic impact of the Jones Act on businesses and consumers in Puerto Rico.

However, at Senator López-León's request, the Department of the Treasury submitted to the Committee data related to the inspection of containers using the scanners installed in the terminals of the four shipping companies. It indicated that Crowley Company containers were the first ones to be inspected with scanners in 2011, followed by Horizon and Sea Star in 2012. The inspection data submitted by the Department of the Treasury are the following, to wit:

**Sea Star**

<b>Year</b>	<b>Containers inspected</b>
2011	0
2012	44,179
2013	50,591

**Crowley**

<b>Year</b>	<b>Containers inspected</b>
2011	7,455
2012	79,728
2013	83,760

**Horizon**

<b>Year</b>	<b>Containers inspected</b>
2011	0
2012	80,738

2013	115,092
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The **Department of the Treasury** informed that, between January and December of 2013, two thousand seventy-two (2,072) containers were inspected under the Operation Frontier Shield project. Of said containers, four hundred and seven (407) were selected by scanner for inspection. Likewise, from January 1 to 24, 2014, one hundred and fifteen (115) containers were inspected, fifty-three (53) of which were selected by scanner.

The **PRFAA** also *supported* Senate Resolution No. 237. Regarding GAO’s report, it personally recognized that foreign shipping companies offer more competitive rates. It also stated that GAO’s report does not make any recommendation whatsoever, but rather the implicit wish to protect the U.S. merchant marine industry. According to PRFAA, the provisions of the cabotage laws limit or hinder Puerto Rico’s competitiveness. About this, it expressed that: “Confining ourselves to the rates of only four companies may influence the cost of anything that is transported by the U.S. merchant marine.”

It indicated that, in order to prevent or fight costs, we need to improve not only our competitiveness but also our productivity, that is, the manner in which we import and export our goods. It believes that this may be achieved by using the new, greater capacity, and lower cost vessels offered by foreign companies. Furthermore, it stated that a vessel’s age affects productivity, as recognized in GAO’s report. Therefore, opening the market to foreign-flag vessels would not only promote access to more modern ships, but also encourage existing service providers to renew their fleet to be able to compete.

Likewise, PRFAA indicated that even though GAO's report does not include specific recommendations, it may be inferred from it that there is an adverse effect on our competitive position and geographic reality. Thus, it expressed that the report may be seen as a first step toward achieving Puerto Rico's exemption from the application of the cabotage laws in those areas that contribute to improving the Island's competitiveness by reducing freight transportation costs, such as those of natural gas. Finally, PRFAA stated that in order to change the current application of the cabotage laws to Puerto Rico, it is necessary to count on a decisive coalition that includes U.S. business and labor-union interests.

However, it emphasized the existence of administrative waivers that the President of the United States has granted in the past and may serve as an opportunity for Puerto Rico to request something similar. The most recent event in which the President granted such waivers was the withdrawal of crude oil from the Strategic Petroleum Reserve (SPR). PRFAA indicated that in order to obtain a waiver the U.S. Department of Transportation and the U.S. Coast Guard must verify U.S.-flag vessels are available in accordance with SPR distribution requirements. If U.S.-flag vessels are not available, then the Department of Homeland Security (DHS) grants a waiver.

The **Bill of Rights Defense Committee** also *supported* Senate Resolution No. 237. Regarding GAO's report, it expressed that said report fails to present Puerto Rico's current economic situation. Therefore, said Committee recommends that, given the economic crisis the Island is undergoing, it should be allowed to use foreign-flag carriers to import merchandise to the Island.

**Dr. Enrique Vázquez-Quintana** also *supported* Senate Resolution No. 237. He believes, based on the Federal Reserve Bank of New York Study of June 29, 2012, that cabotage laws should be repealed. He made the following recommendations:

- The Legislative Assembly of Puerto Rico should convene all the pharmaceutical companies grouped under the Pharmaceutical Industry Association (PIA) and request them not to export all their production to the United States for packaging and sending it back to Puerto Rico in smaller containers. We should request them to leave in the Island the amount consumed locally. This would lower drug costs in Puerto Rico. He believes that this recommendation should be implemented immediately.

- We should request Congress to exempt us from the Interstate Commerce Act. This would allow for the protection of our agriculture, milk, meat, and egg production without having to compete with United States and other countries' exports.

- We should be allowed to buy crude oil and food from the country with the best offer. This would lower the cost of food, gas, and electricity and would render us more competitive and attractive to foreign investors.

Furthermore, he indicated that we should request the Federal Reserve Bank of New York to rescue the Government Development Bank by offering a \$10 billion-dollar loan at 1-2% rate, as private banks commonly do, in order to jumpstart the Island's weakened economy.

On February 21, 2014, Columbia University's renowned economy professor Joseph Stiglitz<sup>39</sup> delivered a lecture in the theater of the University of Puerto Rico, Río Piedras campus, sponsored by the Center for a New Economy. Professor Stiglitz, who was awarded the Nobel Memorial Prize in Economic Sciences in 2001, spoke about inequality and the costs thereof on society, and talked briefly about the Puerto Rican crisis. During his master lecture, he mentioned that the Island's economic crisis is *probably* the result of the current political and juridical relationship between Puerto Rico and the United States. He stated that is in the best interest of the United States to redefine the framework of this legal, political, and economic relationship.

When closing his lecture, professor Stiglitz stated that Puerto Rico should urge the United States to make serious changes to the Jones Act of 1920 in light of the current economic crisis the Island is facing. He indicated that said Act was an example of a *U.S. policy that inhibits the economic growth of Puerto Rico*.

Moreover, it is necessary to point out in this Committee's Report, a news article published in the business section of *El Nuevo Día* newspaper (ENDI), entitled "Arriba una Nueva Era en la Gasolina"(A New Era of Gasoline Has Begun). In said article, Mr. Philippe Jaurrey, managing director of Total Petroleum Puerto Rico Corp.in the Island, indicated that the Jones Act of 1920 adversely affects the Island's growth. According to Mr. Jaurrey, since cabotage laws do not apply to St. Croix, brand wholesalers used to purchase gasoline from Hovensa refinery in said island and store it in Puerto Rico.

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<sup>39</sup> Professor Stiglitz' lecture was based on his most recent book, *The Prince of Inequality: How Today's Divided Society Endangers Our Future*, 2012

He further explained that, since the closing down of said refinery in 2012, the gas supply transport problem has worsen, because rather than bringing fuel from the Gulf Coast, which takes three to four days, it is brought mainly from Europe, which takes up to fifteen days to arrive. This maritime maneuver consists of crossing the Atlantic to bring crude oil from Europe to Puerto Rico (approximately 3,640 nautical miles) rather than bringing it from the Gulf of Mexico (approximately 1,700 nautical miles), that is, double the nautical miles, for the purpose of avoiding the payment of high transport costs of U.S.-flag vessels or vessels that meet the requirements imposed by the Jones Act of 1920.<sup>40</sup>

On April 15, 2014, Guam's Legislature adopted Resolution No. 138-32, requesting that the Honorable Madeleine Z. Bordallo, Guam's Delegate to the U.S. Congress, introduce legislation aimed at exempting U.S. noncontiguous jurisdictions such as Alaska, Hawaii, and Puerto Rico, from the US.-built provision of the Jones Act of 1920. The request made by Guam's Legislature to its delegate in Washington. D.C. arises from the fact that the natural westbound trade lane from the U.S. West coast to Guam passes through Hawaii, and that Hawaii is subject to the full application of the Jones Act of 1920.

Therefore, the goods that arrive in Guam through Hawaii must be transported in U.S. merchant marine vessels, regardless of Guam's *de jure* exemption from the Jones Act of 1920. Therefore, such protectionist legislation applies *de facto* to Guam, thus hindering its trade and economy.

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<sup>40</sup> El Nuevo Día newspaper, "Arriba una Nueva Era en la Gasolina"(A New Era of Gasoline Has Begun) (March 23, 2014).

**Empire Gas Company, Inc** also *supported* Senate Resolution No. 237. During the Public Hearing, Empire Gas Co. President, Mr. González-Cordero, described the Jones Act of 1920 as a legislation that is not adjusted to the world's current reality and that places Puerto Rico at a “great economic disadvantage.” Regarding gas transport, he stated that:

... it is of the utmost importance that liquefied gas supplies, which are not produced in the Island, be imported into Puerto Rico through specialized vessels. Given the current situation, in which the United States has become a world leader in gas reserve, the possibility of excluding Puerto Rico from the Cabotage Law is of utmost importance and urgency, since at the moment there are no U.S.-flag vessels that can transport the product from the United States to Puerto Rico and we are at the mercy of foreign gas-producing countries that do not have the same supply as the United States therefore, they cannot provide guarantees.

On the other hand, to Senator López-León's questions about the Jones Act of 1920's prohibition to use vessels other than U.S.-built vessels to transport gas to Puerto Rico, Empire Gas explained that the vessel does not need to be U.S.-built, they may be built by foreign countries, insofar as they meet the security and quality requirements established by the United States, which is also known as flag of convenience. He further explained that the cost of a U.S. crew is the reason why transportation prices increase. “If foreign-flag vessels could come here, then the cost of the product could decrease by more or less forty percent (40%).” Thus, both Senator López-León and Mr. González-Cordero agree that a forty percent (40%)

reduction in shipment fees would have a positive chain reaction on the industry, on trade, and tourism, among others, because they depend on gas security to conduct their business in the Island.

Senator López-León stated that the original purposes of the Jones Act of 1920 are currently obsolete. Hence, she explained that the U.S. Merchant Marine fleet is the oldest and most expensive in the world according to GAO's last report. Furthermore, she indicated that said Marine has limited capacity to be used during wartime and has been rarely used for such purposes. Only three percent (3%) of the vessels used by the U.S. Merchant Marine are built in the United States, because building costs are lower in foreign countries such as South Korea, for example. Senator López-León stated that: "A vessel that costs twenty-four million dollars (\$24,000,000) in South Korea, costs one hundred twenty-four million dollars (\$124,000,000) in the United States, which generates additional costs for consumers..." Mr. González-Cordero as well as Senator López-León agreed that it was convenient to request a partial waiver of the Jones Act of 1920 to transport gas in foreign-flag vessels due to the lack U.S.-flag vessels with capacity therefor.

Senator López-León added that even the United States has faced gas transport problems due to the application of the Jones Act of 1920. During the passing of Hurricane Katrina, the United States requested waivers to transport gas in foreign-flag vessels because it was a matter of national security. Likewise, Mr. González-Cordero stated that: "There is no reason that can justify said Act, because it really does not benefit anyone, not even the United States."

**Puma** supported and praised the task directed under Senate Resolution No. 237 regarding the effect of the laws [sic] meet the statutory construction



requirement. Puma correctly expressed that the foregoing situation poses a problem. Even though a contract to import natural gas at a competitive price may be secured, there are no reliable transportation means to bring such product on a timely and consistent manner. Consequently, Puerto Rico will continue to purchase fuel at a higher price, without savings and will be unable to lower energy costs.

For such reasons, Puma recommended that a petition should be made to U.S. Congress requesting a partial waiver of the application of the cabotage laws in connection with crude oil and oil by-products, such as liquefied natural gas. It expressed that a partial waiver in order to exempt crude oil and oil by-products would afford Puerto Rico the opportunity to benefit from a more competitive energy market. In the case of the Puerto Rico Electric Energy Authority, it would allow it to guarantee the best prices on liquefied natural gas in the region, which would entail a more competitive energy market and, in turn, stimulate the economy of the Island.

In the Public Hearing held on January 14, 2015, at the **facilities of the Port of Ponce**, the **PRSCC** (Southern Chamber of Commerce of Puerto Rico) expressed that "...conducting a comprehensive study on the economic impact of marine shipping costs between Puerto Rico and the United States due to the application of Federal Cabotage Laws seems reasonable and advisable." Furthermore, it believes that the partial or full waiver of the cabotage laws would place Puerto Rico at a more competitive arena vis-à-vis other markets. Therefore, the application of said laws limits and complicates the Island's competitiveness at the International level and further increases the cost of living in Puerto Rico.

The **PRSCC** expressed that the requirements imposed by said federal legislation, which forces Puerto Rico to use the U.S. merchant marine fleet in its maritime trade with the United States,

... creates a monopoly whereby the merchant marine has become more onerous and expensive than foreign merchant marines and dissociated from free-market and competition processes, where the selection criteria based on price, service quality, effectiveness, and efficiency, among other factors of great importance for economic activity, prevail.

Moreover, it indicated that the limitations imposed by the cabotage laws make trade between Puerto Rico and the United States more expensive and places the Island at a competitive disadvantage vis-à-vis other jurisdictions. Regarding the federal legislation's effect on the Port of Ponce, it stated that:

...raw material or goods brought to the Island to which value will be added in our southern region, must be subsequently transported to the United States in U.S.-flag vessels, which are more expensive. This requires value-added industries and port operators to consider such costs to determine whether or not it is feasible or profitable to establish operations in Puerto Rico. This means that we are at a competitive disadvantage vis-à-vis other Caribbean ports, because they are not required to transport their goods in U.S.-flag vessels. Such ports are currently experiencing greater economic growth.

According to the **PRSCC**, it is necessary to seek the amendment of the cabotage laws in order to repeal said legislation or request a waiver for a period of

years that would allow for the port's full development. If we fail to carry out such task, the Port of Ponce will be able to engage only in domestic maritime transport; that is, in the transportation of goods between Puerto Rico and the United States, since there will be no operators or companies interested in establishing their business in the Island due to the high operating costs.

Furthermore, the facilities of the port of Mayagüez are also available for the economic development of the region and Puerto Rico.

## FINDINGS AND CONCLUSIONS OF THE COMMITTEE

After holding thirteen (13) Public Hearings in which more than thirty-two deponents were heard and inquired for over sixty (60) hours; after analyzing more than a dozen (12) national and international reports in connection with the Jones Act of 1920, which have been cited throughout this Report, the following is concluded about such a draconian law. Let us see.

### I. COSTS OF THE JONES ACT OF 1920

A study conducted by the U.S. International Trade Commission of 1995,<sup>41</sup> states the following regarding the Jones Act of 1920:

In terms of the effect on the U.S. economy, the barriers to imports of textile and clothing products were the most significant of those examined. Removal of these barriers would result in **a calculated increase in the national welfare equivalent to \$10.4 billion. Liberalization of the maritime cabotage restrictions yields a calculated benefit of \$1.3 billion, and liberalization of trade barriers in sugar and sugar-containing products produces a welfare gain of just under \$1 billion.** Simultaneous elimination of all barriers (other than those on peanuts and pressed and blown glass) yields **a calculated welfare gain of \$12.4 billion.** [Emphasis supplied]

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<sup>41</sup> See footnote 39.

Moreover, with regard to the history of the Jones Act of 1920, Ambassador Terry Miller<sup>42</sup> and Dr. James Carafano<sup>43</sup> stated in “The Jones Act: Lost at Sea” the following:

The history of the U.S. merchant marine since passage of the Jones Act has been a story of decline, interrupted only by a massive shipbuilding boom during World War II. In 1920, U.S.-flagged ships carried 52 percent of the nation’s seaborne trade.

By 1939, U.S.-flagged shipping tonnage had declined by 25 percent and American ships carried only 22 percent of our seaborne trade.

After WWII, the number of U.S.-flagged ships declined rapidly to 1,072 by 1955. By 2005, that number declined to 249. As of December 2007, the U.S. ocean-going merchant fleet consisted of 89 ships engaged in international trade and 100 ships in the ocean-going Jones Act trade.

So much for jobs saved. The last serious review of the Jones Act (from a series of congressional hearings in the 1990s) revealed that more than 40,000 American merchant seamen and 40,000 longshoremen have lost their jobs despite Jones Act protectionism. Over the first 76 years of the act, more than 60

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<sup>42</sup> U.S. Ambassador to the United Nations Economic and Social Council in 2006. He is currently the Director of the Center for International Trade and Economics (CITE) at the Heritage Foundation.

<sup>43</sup> Vice President of the Heritage Foundation and Director of the Center for Foreign and Defense Policy Studies, and Director of the Kathryn and Shelby Cullom Davis Institute for International Studies.

U.S. shipyards had gone out of business, eliminating 200,000 jobs. If the intent of the Jones Act was to save U.S. jobs, it failed.

Likewise, between 1995 and 2010, over ten legislative measures were introduced in the United States House of Representatives and Senate for consideration, some of them seeking the total repeal and others the partial repeal of the Jones Act of 1920; unfortunately, all measures remained in the Legislative Committees to which they were referred for consideration. The arguments of labor unions and shipping companies appealing to a patriotic sentiment in defense of workers are completely wrong; the discourse on the protection of jobs is not right; an open market and competition would certainly attract more companies and consequently, more job opportunities.

With regard to the foregoing, Ambassador Miller and Dr. Carafano stated that the Clinton administration asked the U.S. International Trade Commission to estimate the number of jobs that might be affected by the repeal of the Jones Act. The Commission analyzed the question and concluded that the: “Repeal of the Jones Act would affect about 2,450 workers in the coastwise shipping trade. In the shipbuilding industry? Repeal would cost 36 jobs.”

According to experts in this field, such as Ambassador Miller and Dr. Carafano, the theory supported by some pressure groups –unions and shipping companies– regarding the loss of jobs that will ensue with the repeal of the Jones Act of 1920 is unreal and insignificant compared with the high costs of U.S. cabotage requirements for all of us.

Furthermore, advocates of the Jones Act of 1920 have stated that it is vital to the national defense of the United States and its territories in the theaters of war where the United States has participated and is currently participating. With regard to the foregoing, it was proven that the use given to the U.S. merchant ships to support the military from the Korean War (1950) to the present day have decreased significantly, that is, less than one percent (1%) was used in the last conflicts; it must be pointed out that U.S. merchant ships operating in our jurisdiction were built over 35 years ago; thus, we concur with the GAO that it is an obsolete merchant fleet and it is unfit for armed conflicts.

In order to clarify the above argument, the Puerto Rico National Guard indicated the number of United States-flag vessels that have been used in the following conflicts, military operations, and national emergencies, to wit:

<b>CONFLICT</b>	<b>YEAR</b>	<b>SHIPS</b>
Korean War	1950 – 1953	540
Vietnam Conflict	1965 – 1973	172
Operation Desert Shield and Operation Desert Storm	1990 - 1991	78
Operation Enduring Freedom/ Operation Iraqi Freedom	2001 – to present	0

Note that the number of vessels used for national defense in times of war have declined significantly throughout the years; the fact that U.S. flag ships have not been used in times of war since the last armed conflict to the present proves this. Also, it stated that, in GAO’s report, the U.S. Department of Defense recognized that the U.S. flag vessels providing services to Puerto Rico have limited

capacity for war in the present day. The extent of this limitation is such that it renders said ships useless in times of war given the manner in which armed conflicts develop nowadays.

Lastly, the study conducted by Ambassador Miller and Dr. Carafano revealed that:

The real costs of Jones Act protectionism are even higher when you take into account the distortions of trade that cost American firms and workers the ability to compete fairly for American contracts. For example, U.S. scrap iron, a vital ingredient for American steel plants, is shipped from U.S. coastal areas to Turkey, or to Taiwan, or to China, rather than to other U.S. ports, because the Jones Act makes such U.S.-to-U.S. shipping prohibitively expensive.<sup>44</sup>

Moreover, the Federal Reserve Bank of New York<sup>45</sup> indicated in 2012 that the high cost of shipping in Puerto Rico is widely attributed to the Jones Act. Likewise, to support such statement, it reported that Puerto Rican ports have lagged behind other regional ports in activity level. Specifically, the Bank reported:

It cost an estimated **\$3,063** to ship a twenty-foot container of household and commercial goods from the **East Coast of the United States to Puerto Rico**; the same shipment cost **\$1,504** to nearby **Santo Domingo** (Dominican Republic) and **\$1,687** to **Kingston** (Jamaica)-**destinations that are not subject to Jones Act restrictions.**

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<sup>44</sup> See footnote 10.

<sup>45</sup> Report on the Competitiveness of Puerto Rico's Economy (January 29, 2012.)



[Emphasis supplied.]

It must be noted that the most recent update on the Bank's report on the *Competitiveness of Puerto Rico's Economy* asserts that the application of the Jones Act of 1920 impairs the economic growth of the Island and significantly increases the cost of doing business here.<sup>46</sup>

It is worth mentioning that the Bank's reference to Jamaica's shipping port is not an accident. Let us see. Over the last decade, the port of Kingston<sup>47</sup> Jamaica has overtaken Puerto Rico's port, San Juan, in total container volume, even though Puerto Rico has a larger economy and its population exceeds that of Jamaica by nearly 1.5 million people.<sup>48</sup>

Like in Jamaica, other ports have been built in the Caribbean, even after the construction of the port in the municipality of Ponce, such as those in the Dominican Republic and Cuba. Said ports have experienced a market growth that has enable the economic development of said islands to flourish. Also, with the upcoming opening of the new Panama Canal locks, the active participation of international marines with Post-Panamax-vessel capacity in our market shall contribute to the economically active Caribbean zone and the full economic development of our Island.

Moreover, on April 26, 2012, professors Jeffrey Valentín-Mari, PhD. and José Alameda-Lozada, PhD. of the Department of Economy of the University of Puerto Rico, Mayagüez Campus, submitted the working paper entitled *Economic*

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<sup>46</sup> Update on the report on the *Competitiveness of Puerto Rico's Economy*. (July 31, 2014.)

<sup>47</sup> Main shipping port in Jamaica.

<sup>48</sup> The volume of containers more than doubled in Jamaica, while it fell more than 20 percent in San Juan.

*Impact of Jones Act on Puerto Rico's Economy* for GAO's consideration. Said paper, which was not considered by GAO, concludes, **in brief**, the following:

Several studies have been made in the past about Jones Act impact on Puerto Rico's economy, despite the differences in methodology, **all share the same conclusion: A negative effect;** the Jones Act impact was estimated in **\$537 million for FY 2010;** and the impact reached a peak of **\$1.1 billion in FY 2000;** and **none of the U.S. carriers operating in Puerto Rico is among the top 20 carrier companies in the world;** among others. [Emphasis supplied.]

Furthermore, a 2013 report on global trade and its barriers from the World Economic Forum, in collaboration with Bain & Co.<sup>49</sup> and the World Bank, described the Jones Act as “the most restrictive of global cabotage laws and an anomaly in an otherwise open market like the United States.”

As stated before in this Report, U.S. shipbuilding costs are four to five times that for building a ship in Asia,<sup>50</sup> and there are only a few shipyards left in the U.S.

After an analysis conducted by this Committee and several economists, it was concluded that the average additional cost per four (4)-member family unit in connection with food (one meal a day) exceeds five hundred dollars (\$500)

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<sup>49</sup> Private consulting firm that provides services to the majority of the largest, richest, and most important companies in the world, as well as to non-governmental organizations, nonprofit organizations, and governments, among others. Bain & Co. has over 50 offices in 32 countries around the world and a workforce of over 6,000 employees. Currently, it is ranked as one of the world's top consulting firms.

<sup>50</sup> Drewry Shipping Consultants Ltd., Jones Act “an increasingly expensive luxury,” 2013. “...recent order placed by Matson, Inc. with Aker Philadelphia Shipyard, Inc., for a pair of 3600 twenty-foot equivalent unit (TEU) capacity containerhips for delivery in 2018 for the astounding price of U.S. **\$209 million apiece;** ...**comparable sized vessels could be built in Asia today for less than a fifth of that price.**” [Emphasis supplied]

annually as a result of the transportation costs associated with the Jones Act of 1920.

## II. JONES ACT OF 1920 LITIGATION – PRICE COLLUSION

The Jones Act of 1920 is a legislation that sponsors an oligopoly<sup>51</sup> of three (3) out of which only two (2) companies handle most of the freight and offer maritime transportation between Puerto Rico and the United States. Such companies that have been prosecuted and found guilty of felonies by the United States Court and have been obliged to pay millions of dollars<sup>52</sup> for damages as a result of collusion of prices, from at least May 1<sup>st</sup>, 2002 to April 17, 2008, to the detriment of all Puerto Ricans, including the adverse effects that such unlawful action had on consumers, business, and employment loss in the Island.<sup>53</sup>

It is worth mentioning that the record of the case indicates that “Sea Star generated \$1.1 billion and Horizon Lines generated an additional \$1.4 billion between 2002 and 2008 from freight services to Puerto Rico.”<sup>54</sup> Moreover, “Crowley Liner, which engaged in a conspiracy to fix prices between 2006 and 2008, stated with regard to the contracts affected by its unlawful actions: these contracts represented less than 5 percent of the commercial trade.”<sup>55</sup> However,

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<sup>51</sup> A market situation in which control over the supply of a commodity is held by a small number of producers, according to The Free Dictionary.

<sup>52</sup> Horizon Lines paid \$15 million; Sea Star Lines paid \$14.2 million; and Crowley Liner paid \$17 million.

<sup>53</sup> See, *In Re Puerto Rican Cabotage Antitrust Litigation*.

<sup>54</sup> See, “Pesquisa contra navieros aún no termina” *El Nuevo Día* newspaper (August 7, 2012) <http://www.elnuevodia.com/Xstatic/endi/template/imprimir.aspx?id=1316962&t=3>

<sup>55</sup> *Id.*

according to the documents that Crowley Liner filed with the Securities and Exchange Commission,<sup>56</sup> the said shipping company:

[...] increased its operating income by 3.8% up to \$663.1 million in 2006. This increase in revenues was associated with a nearly 11% increase in the average income per 20-foot container, as a result of the “service and fuel rate increases” and such increase “partially” tackled the 6.4% decrease in the volume of containers “particularly due to Puerto Rico’s market.”<sup>57</sup>

The article entitled “Pesquisa contra navieros aún no termina” published by *El Nuevo Día* newspaper on August 7, 2012, *supra*, reveals that according to the U.S. Department of Justice Antitrust Division “...three freight companies paid criminal fines totaling more than \$46.2 million, three of the top 15 largest fines imposed on U.S. companies from 1996 to July...” 2012. Likewise, the fines imposed on the shipping companies that engaged in a conspiracy to fix prices for services offered in Puerto Rico are the only fines ever imposed for coastal water freight transportation out of the total of 96 fines imposed in the last 16 years.<sup>58</sup>

It should be noted that the revenues reported by the shipping companies involved in the collusion amounted, *allegedly*, to **\$3.163 billion** versus the settlement amount paid to the Federal Government of nearly **\$46.2 million**. Said companies unlawfully generated **\$3.120 billion** in revenues to the detriment of the People of Puerto Rico, in addition to the settlement to end their participation in the

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<sup>56</sup> The Securities and Exchange Commission (SEC) protects investors and maintains security markets integrity. Likewise, it combats fraud in the investment sector to ensure fair security markets.

<sup>57</sup> See, Footnote 20.

<sup>58</sup> *Id.*

litigation with the Government of Puerto Rico that totaled the pitiful amount of **\$4 million.**

### **III. LEGISLATIVE AND ADMINISTRATIVE WAIVERS OF THE JONES ACT (1920)**

In 2006, U.S. Congress authorized the Department of Homeland Security—by means of legislation—<sup>59</sup> through the Coast Guard, to use liquefied gas tankers (that do not meet Jones Act requirements) built before October 19, 1996, to transport liquefied natural gas or liquefied petroleum to Puerto Rico from U.S. ports.

During the environmental disaster caused by the 2010 *Deepwater Horizon*<sup>60</sup> oil spill, which is considered the largest oil spill and worst environmental disaster in history, releasing about 779,000 tons of crude oil, a Jones Act waiver was not granted to address such situation.

Given this unfortunate situation and the effectiveness of the Jones Act of 1920, shipping companies and unions exerted pressure on Washington D.C, so that no vessel other than Jones Act vessels could participate in the oil spill's containing and cleanup efforts. Many attempts were made to request a dispensation from President Barack Obama's Administration to allow foreign-flag vessels to assist in cleaning up; however, such a dispensation was never granted, as in the case of Hurricane Katrina. Even though Canada, Mexico, Norway, and the Netherlands,

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<sup>59</sup> Public Law 109-304 (2006).

<sup>60</sup> Oil platform located in the Gulf of Mexico sunk on April 22, 2010.

among others, offered to help, none was allowed to provide direct help in the spill.<sup>61</sup>

Since the U.S. Executive and Legislative Powers refused assistance from foreign-flag vessels in cleaning up the oil spill, The Washington Post stated in its June 25, 2010 editorial:

**THE JONES ACT is a vestige of the post-World War I years,** when the vulnerability of U.S. shipping to German U-boats was still fresh in the public's mind. To maintain a "dependable" merchant fleet for the next "national emergency," Congress restricted coastal shipping between U.S. ports to U.S.-built vessels owned by U.S. citizens; related laws require U.S. crews. **The Jones Act may or may not have achieved its original purpose, but shipping businesses and labor unions love the way it shields them from foreign competition.** [Emphasis Supplied.]

It is worth noting that the Obama Administration's refusal to grant a temporary Jones Act partial waiver, as well as the refusal of shipping companies and unions associated thereto, prolonged the environmental disaster, which as of today has generated fines in excess of **\$42 billion**.

Moreover, even though President Obama's Administration did not grant a temporary Jones Act partial waiver during the 2010 oil spill, subsequently, on

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<sup>61</sup> In 2010, Senator John McCain (R-AZ) introduced measures to fully repeal the Jones Act of 1920. See page \_\_, before. On January 22, 2015, Senator McCain argued that "U.S. consumers are free to buy a foreign-built car. U.S. trucking companies are free to buy a foreign-built truck. [...] U.S. airlines are free to buy a foreign-built airplane. **Why can't U.S. maritime commercial interests more affordably ship goods on foreign-made vessels? Why do U.S. consumers, particularly those in Hawaii, Alaska, and Puerto Rico, need to pay for ships that are five times more expensive?"** [Emphasis supplied]

November 2012, after Hurricane Sandy's landfall, a temporary Jones Act waiver was granted to allow oil tankers (that do not meet Jones Act requirements) coming from the Gulf of Mexico to enter Northeastern ports in order to provide additional fuel resources to the region. This temporary waiver of the Jones Act of 1920 was issued after MARAD certified that there were no oil tankers that meet the requirements of the Act to alleviate the economic and national security crisis; therefore, Secretary Janet Napolitano of the Department of Homeland Security authorized a partial waiver for two (2) weeks.

#### **IV. JONES ACT (1920) RIGHT TO FOOD**

In our judgment, the Jones Act of 1920 violates our right to food, which is an internationally-recognized basic human right. There is no doubt that there are efficient methods to deliver fresh food to the residents of Puerto Rico. However, such methods cannot be employed due to the Jones Act; for instance, any individual selling and transporting goods to Puerto Rico cannot continue to U.S. ports unless such individual uses Jones Act vessels.

Therefore, it would not be profitable for foreign importers to ship their goods to Puerto Rico only using an international merchant fleet if, in addition to unloading their goods in Puerto Rico they have customers in the United States, since they will not be able to use the cargo carrier of their choice, but those of the United States.

Moreover, three-fourths (3/4) out of 80% of the food imported to the Island are shipped on Jones Act vessels, since our food is imported from the United

States.<sup>62</sup> Therefore, the cost of food in Puerto Rico is significantly higher because food is imported in U.S. flag vessels.

On the other hand, it should be mentioned that 94% of the freight arriving at Puerto Rico from the U.S. comes from the Port of Jacksonville, Florida. This situation places the Island in a very vulnerable position, given the high volume of cargo in said port and the freight rate to transport cargo from it. The geographical location of the port of Jacksonville and of Puerto Rico is also concerning, because both of them are located in an area of high hurricane activity. This situation could worsen given Puerto Rico’s lack of food storage capacity, which is limited to a one-week supply.

Should we have the chance to employ international shipping companies, shipping services and, consequently, food would be less expensive, even if a U.S. crew were required to enter our market.

The table below shows food items frequently incorporated in Puerto Rican meals and transit time before arriving “fresh” at the Island’s markets.

Maritime Routes to Puerto Rico

Country of Origin	Maritime Route	Transit time (days)	Nautical miles	Goods
United States	Average Florida, Texas, and New Jersey	4-7	1310	All items
Brazil	Rio de Janeiro – Colón (Panama) – SJU	17	5329	Fruits
Canada	Vancouver – Panama Canal – SJU – Montreal – Elizabeth (New York) – SJU	16	5190	Potatoes, chicken
		19	2806	

<sup>62</sup> Dr. Myrna Comas, “Vulnerabilidad de las cadenas de suministros, el cambio climático y el desarrollo de estrategias de adaptación: El caso de las cadenas de suministros de alimento de Puerto Rico” p. 76 (2009).



China	Shanghai – Panama Canal – SJU	29	9482	Fish and seafood, cereal
Costa Rica	Limón – Colón (Panama) – SJU	6	1298	Starches (cassava, taro, sweet potato, yam)
	–Limón – SJU	4	1118	
Ecuador	Guayaquil – Cartagena (Colombia) – Colón (Panama) – SJU	4	1118	Plantain
Greece	Pireaus – Livorno (Italy) – Valencia (Spain) – SJU	9	1970	Oil
Dominican Republic	Caucedo – SJU	2	502	Vegetables, grains

Note that some of the food we consume is not as “fresh” as we believe and that, as a result of the application of the Jones Act of 1920, ships from markets other than the U.S. cannot unload part of their goods (fresher food) because they would not have access to the markets of U.S. coastal states to continue unloading, because they departed from a port “protected” under the Jones Act of 1920.

This situation definitely affects the market of the Island and U.S. coastal states. It also worsens even more Puerto Rico’s vulnerability as a result of the well-known Horizon Lines’ decision to terminate its Puerto Rico operations and the lack of capacity to transport all the necessary goods for our consumers on time and at the peak of freshness. This situation is also affecting the medical and hospital equipment, as well as the basic necessities sectors.

Furthermore, the Jones Act of 1920 operates against the best interests of U.S. companies, because Puerto Rican businesspersons, who talked to us confidentially, will rather buy the goods they need from farther countries using foreign-flag vessel shipping services at better rates, even when the same goods are

available in the United States at equal or better prices and closer to Puerto Rico. In addition, representatives of the business sector in Puerto Rico that import foods from the United States have complained about the lack of availability of refrigerated containers in Jones Act vessels.

Also, MIDA confirmed us in a Public Hearing about rate increases in maritime transport of perishables. This practice is becoming more common, since fresh products cannot be shipped with the same frequency as before; therefore, the cost thereof increases.

As a result of the Jones Act of 1920, local small-business are at a competitive disadvantage versus big chains, since their prices depend on the costs associated therewith. For such reason, transportation costs are very important and, in most cases, such costs are ultimately assumed by consumers.

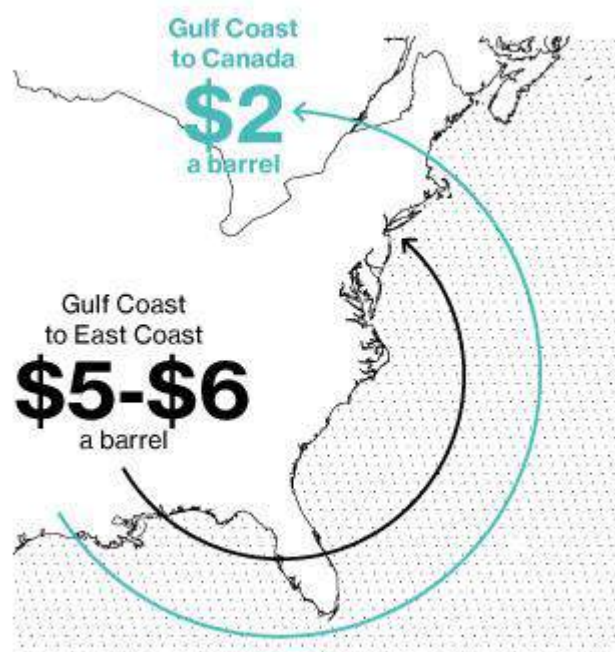
## **V. ISSUE OF THE JONES ACT OF 1920 AND CONTIGUOUS STATES**

It is worth noting that even GAO understood the issue of the lack of ships to transport goods, such as gasoline or natural gas, and it thus stated in its 2013 Report. This situation limits the option to acquire fuel at better prices, not only in our jurisdiction but also in contiguous and non-contiguous states. The United States has one of the largest natural gas fields in the planet, but the infrastructure of its shipyards is not ready and lacks modern technologies for building and operating large ships to transport liquefied natural gas.

Thus, on December 2012, Bloomberg News<sup>63</sup> reported that it costs five (\$5) to six dollars (\$6) to ship a barrel of oil from the U.S. Gulf Coast to the East Coast; while it would cost them two dollars (\$2.00) to send the same barrel to Canada. This is so, because of the requirement to use Jones Act vessels.

The following graphic shows an example of the aforementioned situation.

### The Bizarre Economics of Shipping Oil



DATA: VALERO; GRAPHIC BY BLOOMBERG BUSINESSWEEK 64

Likewise, as recent as in February 2014, Bloomberg News<sup>65</sup> reported that the drastic climate changes experienced by the U.S. East Coast states two years ago

<sup>63</sup> U.S. Law Restricting Foreign Ships Leads to Higher Gas Prices, Bloomberg News at <http://www.businessweek.com/articles/2013-12-12/u-dot-s-dot-law-restricting-foreign-ships-leads-to-higher-gas-prices>

<sup>64</sup> Graphic provided by U.S. Law Restriction Foreign Ships Leads to Higher Gas Prices, Bloomberg News at <http://www.businessweek.com/articles/2013-12-12/u-dot-s-dot-law-restricting-foreign-ships-leads-to-higher-gas-prices>

and the excess demand for propane dramatically reduced propane stockpiles. However, since the Jones Act of 1920 prohibits the transportation of goods, such as propane, in ships other than Jones Act vessels, the states of the North Coast had to pay over one hundred dollars (\$100) per ton of propane, which was transported from Europe to supply the people's demand.

Thus, the study entitled: "The Sinking Ship of Cabotage: How the Jones Act lets unions and a few companies hold the economy hostage,"<sup>66</sup> regarding a recent analysis of the Jones Act of 1920, stated that the application thereof makes it necessary for Jacksonville, Florida, to bring in coal from Colombia rather than from American mines; it requires Maryland and Virginia to bring in road salt from Chile rather than Ohio; and it makes it cheaper for livestock farmers to buy feed from grain farmers in Argentina and Canada than from Americans as a result of having to use qualified U.S. flag vessels. Likewise, U.S. scrap iron is shipped from U.S. coastal areas to Turkey, or to Taiwan, or to China, rather than to other U.S. ports, because the Jones Act makes such U.S.-to-U.S. shipping prohibitively expensive.

For instance, in February 2014, New Jersey was hit by several snow storms that caused public security problems because its low supply of road salt. For such reason, Governor Chris Christie filed a request with the Department of Homeland Security<sup>67</sup> to waive the requirements of the Jones Act and allow a foreign-flag

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<sup>65</sup> Frozen East Coast Pays as Law Blocks Cheaper Fuel Flows, Bloomberg News at <http://www.bloomberg.com/news/2014-02-28/frozen-east-coast-pays-as-law-blocks-cheaper-fuel-flows.htm>

<sup>66</sup> Capital Research Center, The Sinking Ship of Cabotage: How the Jones Act lets unions and a few companies hold the economy hostage (April 7, 2013).

<sup>67</sup> U.S. Senators Robert Menéndez (D-NJ) and Cory Booker (D-NJ) sent a letter to the Department of Homeland Security in support of the waiver requested by Governor Christie, but it was never granted.

vessel to deliver the salt from Maine. This, after having issued at least four (4) states of emergency alerts in the State.

The cargo ship from Chile arrived at Maine to unload salt supplies. According to the Jones Act of 1920, Chile's vessel was not authorized to transport the forty thousand (40,000)-ton load of road salt needed to address the state emergency to another U.S. port because it had already stopped at a U.S. port, thus, the salt supply needed in New Jersey had to be transported in a qualified U.S. flag vessel.

The Department of Homeland Security never granted the waiver arguing that such situation was not a matter of national defense and required New Jersey to lease a barge with the capacity to carry nine thousand five hundred (9,500) tons of salt to transport the same from Maine, which could take several weeks; all of this kept the people of New Jersey uncommunicated because of an outdated law.

In light of the foregoing, the General Assembly of the State of New Jersey passed Assembly Resolution No. 88-2014, urging Congress to modify the Jones Act of 1920; said resolution specifically stated the following:

This House respectfully urges Congress to amend federal law to either clarify that emergent matters imperiling the health and safety of United States citizens qualify for a waiver under the provisions of 46 U.S.C. 501(b) or broaden the scope of what conditions qualify for a waiver under the provisions of 46 U.S.C. 501(b).

The application of the Jones Act of 1920 causes all parties involved an economic distortion given the high costs of shipping regulated goods between U.S. ports. For instance, it has led to absurd situations, such as the case of Hancock

Lumber in Maine, which couldn't find a U.S. ship to transport its product from Maine to Puerto Rico, and so was forced to truck lumber to Florida and barge it from there. The act drives up the cost of the good sold here.<sup>68</sup>

Likewise, it is a well-known fact that, as a result of Hurricane George's onslaught on Puerto Rico in 1998, various ship-to-shore quay cranes were severely damaged by the hurricane. This caused serious issues regarding food safety and the supplies of materials and goods for the Island, since ships could not be unloaded, and labor unions, supported by the protection of the Jones Act of 1920, did not allow others to assist in the unloading of ships.

There is no doubt that the aforementioned situations show a very lucrative business, which is beneficial for a few and detrimental to U.S. and Puerto Rican consumers; oftentimes, actual costs incurred more than doubled the expenses that could be incurred for the same services if the U.S. cabotage requirements did not exist.

## **VI. JONES ACT (1920) AND PUERTO RICO – RELATED STUDIES**

As previously stated in this Report, the Jones Act of 1920 fully applies to our jurisdiction without any waiver whatsoever, as well as to the non-contiguous states of Alaska and Hawaii. *Contrario sensu*, there are other U.S. jurisdictions to which the Jones Act applies in a less restrictive manner, such as the case of Guam, where the Jones Act requirement that all cargo shall travel on U.S.-built vessels does not apply, and the Northern Mariana Islands, where the Jones Act only

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<sup>68</sup> Capital Research Center, *The Sinking Ship of Cabotage: How the Jones Act lets unions and a few companies hold the economy hostage* (April 7, 2013).

applies to activities between the U.S. Government and its contractors in said Islands. Also, the Jones Act does not apply in any way to the U.S. Virgin Islands or American Samoa.

It should be noted that most of the evidence obtained from the independent studies conducted about the Jones Act of 1920, and to which reference has been made in this Report, shows that said legislation is harmful for the U.S. economy and even worse for its territories and possessions. Also, said studies argue that the Jones Act of 1920 has created expensive barriers to trade. Even for certain coastal states, the current “validity” of the Jones Act of 1920 could turn it into a discriminatory law in light of the current geopolitical and socio-economic reality of the United States.

In the specific case of Puerto Rico, the application of said Act has been severely criticized throughout history. Just one decade after its implementation, a 1930 study by the Brookings Institution entitled “Porto Rico and its Problems,” stated that:

**American coastwise shipping laws are a handicap to Porto Rican trade... It increases the cost of Porto Rican goods...** requirement that American ships shall be used tends to offset somewhat the advantage which the tariff gives to Porto Rico in selling in American markets... **if Porto Rico were free to use foreign shipping whenever it found an advantage in so doing, it is quite probable that it would be able to build up a larger trade with foreign countries than it now has.** [Emphasis supplied.]

Moreover, a series of studies from GAO during the 1980s and 90s found that the Act costs residents of Hawaii, Puerto Rico, and Alaska between \$2.8 billion and \$9.8 billion a year over what the freight rates would be without the Jones Act for the cost of transportation alone.

In 1995, a report from the U.S. International Trade Commission found the Jones Act costs the U.S. economy (consumers) at least \$2.8 billion annually. It also found that its removal would lower domestic shipping prices by 26%.<sup>69</sup>

In 2000, the U.S. Department of State conducted a study entitled “ROLE OF THE MARITIME INDUSTRY IN THE UNITED STATES,” which compared world merchant fleets vs. the U.S. merchant fleet according to cargo and passenger, and determined, as shown in the table below, the following:

**World and U.S. Merchant Fleets  
Thousands of Deadweight Tons.  
April 1, 2000**

	U.S. Flag	All Flags
Container Ships	2,990	63,967
Dry Bulk	579	276,196
Tanker	8,515	324,503
Roll-on/Roll-off	554	14,542
Cruise/Passenger	7	1,205
Other	696	82,875
Total	13,341	763,288

<sup>69</sup> United Trades Representative, The Economic Effect of Significant U.S. Import Restraints, Investigation No. 332-235 (1995).



Note that the study conducted by the U.S. Department of State shows that the U.S. merchant fleet was not on a par with foreign merchant fleets, that is, U.S. merchant fleet only controlled 17% of the world's maritime traffic in 2000.

In May 2001, the U.S. Department of Commerce performed a study entitled *National Security Assessment of the US Shipbuilding and Repair Industry*, and stated that U.S. shipyards build only 1% of large commercial ships and are experiencing less demand for ship building.<sup>70</sup> Said study found that ship operators linked to cabotage have government incentives to continue using old ships that were built almost forty years ago (as stated above), rather than replacing them with new ships because the high costs of building them entail higher costs for consumers.

Likewise, in 2002, the Department of Economic Development and Commerce of the Commonwealth of Puerto Rico estimated that eliminating the application of the Jones Act to our archipelago would entail a considerable reduction in the cost of imported goods (approximately 20%) and would represent an economic injection of nearly \$220 million annually.<sup>71</sup>

## **VII. THE PASSENGER VESSEL SERVICES ACT OF 1886 AND THE JONES ACT OF 1920**

Although the "Passenger Vessel Services Act of 1886" was promulgated earlier by Congress, such legislative measure led to the enactment of the Jones Act of 1920 and included similar protections. In brief, the 1886 law, set forth the

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<sup>70</sup> During the 1950s, nearly 25% of world merchant marine ships belonged to the U.S., today it is less than 3%.

<sup>71</sup> On occasion of its statement and discussion in a Public Hearing related to Senate Resolution No. 100 of the 14<sup>th</sup> Legislative Assembly.

following: “No foreign vessels shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of \$300 for each passenger so transported and landed.”

Contrary to the Jones Act of 1920, its twin law, the 1886 law, has been amended several times and, Puerto Rico was temporarily and administratively exempt from the application thereof in the early 1980s. Also, on October 30, 2003, legislation was enacted to allow foreign cruise ships to transport passengers, but not freight, between a port in Puerto Rico and another port in the United States.<sup>72</sup> However, said amendment provides that the exemption will no longer be available if a U.S. passenger vessel is offering the same service offered by foreign vessels between the same ports.

Regarding the benefits brought to the Island by the exemptions under the “Passenger Vessel Services Act of 1886,” the Tourism Company and the Puerto Rico Planning Board indicate that we have experienced a significant increase in the number of passengers and money received by the Island as a result of said amendment. According to studies conducted by the aforementioned entities, 866,090 passengers arrived in Puerto Rico in 1990, and 1,441,114 passengers arrived in the Island in 2011. Likewise, in 1990, the revenues generated by the passengers that entered to Puerto Rico by sea exceeded \$1.0 billion and, in 2010, such revenues amounted to \$3.0 billion, thanks to the amendment.<sup>73</sup>

As previously stated, since the temporary waiver of the “Passenger Vessel Services Act of 1886” was issued to Puerto Rico, the arrival of cruise ships to our

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<sup>72</sup> See, 46 USC Sec. 55104.

<sup>73</sup> Puerto Rico Planning Board Economic Report to the Governor: Number of Expenditures of Visitors in Puerto Rico: FY 1960-2010; Puerto Rico Tourism Company PR Success Story Cruise Ship Passengers: FY 1990-2011.

ports has tripled, to the extent that, over two hundred thousand (200,000) passengers arrived to our tourist ports in 2014, and thus far this year (2015) the record of daily passenger arrival to the port of San Juan has been broken with over seventeen thousand (17,000) tourists entering in one day. This certainly has activated the port as well as its surrounding areas economy, in addition to the economic benefits it brings for all the local companies that offer services to ships once they arrive in our coast. The impact of the foregoing on our economy exceeded two hundred (200) million dollars and generated approximately five thousand five hundred (5,500) indirect jobs in the tourist sector.

Therefore, it is reasonable to conclude that, taking into account and comparing the 1980s events with the exemption of the “Passenger Vessel Services Act of 1886,” the elimination of the Jones Act of 1920 would result in great benefits for all citizens and would bring about economic growth for the Island.

#### **VIII. CONSENSUS - JONES ACT OF 1920**

It is worth mentioning that absolute consensus was reached by all participants of the investigation conducted by this Committee in connection with the Resolution under consideration, that GAO’s Report of March 2013 *fails to make specific recommendations, is inconclusive, is not empirical, and lacks critical information and statistics* about the merchant marine business in the Island and at the international level. Only shipping companies and their previously described unions—who agree to the granting of an exemption to vessels that transport liquefied natural gas (LNG), as established on record—support the Jones Act of 1920; *contrario sensu*, the agencies of the Commonwealth of Puerto Rico, political parties and organizations of the Island, professional associations, the academia,

producers of local goods, economists, and others who appeared before this Committee are in favor of the elimination of the application of cabotage laws to Puerto Rico through staggered mechanisms that would ultimately lead to the full elimination thereof.

All the situations mentioned in GAO's Report must be notified to the United States Congress and the White House Committee on Puerto Rico's Affairs for them to take immediate action on a final and permanent resolution of what many understand to be a clear violation of the human and fundamental rights of the progress of the peoples.

As we mentioned earlier in this Report, at present, the merits of the original purposes of the Jones Act of 1920 are groundless and lack validity. The world's economy, as well as the States' philosophies, are based on the need for economic and commercial interdependence, as well as on mutual collaboration, rather than on the old protectionism of laws such as the Jones Act of 1920.<sup>74</sup> This Act has no place on a global scheme where the economic and political barriers between nations succumb every day.

Lastly, this Committee believes that there should be no doubt that the Jones Act of 1920 is an archaic law that protects some interests that have been perpetuated due to the economic benefits that it provides. Said legislation is not fit for the 21<sup>st</sup> century, since it curtails free trade between nations, particularly our weak economy, and works against supply and demand postulates. We should not fear shipping companies protected by the Jones Act of 1920, because, if they are efficient and reliable, businesses will continue to hire their services even without

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<sup>74</sup> See, section Analysis of the Measure of this Report.

the application of the restrictions in the Island and the subsequent arrival of competition to our market.

Definitely, it would be very convenient for the United States Government to exclude Puerto Rico from the application of the Jones Act of 1920, since it would promote Puerto Rico as a world-class international air and maritime transshipment hub with the protections provided by U.S. laws to the Panama Canal Zone, the Caribbean Basin, and the midpoint between Europe and America. This will not disregard the authority of the United States government to inspect, register, issue entry authorizations, establish safety and quality standards, as well as to compel observance with employee protection laws which will continue to be enforced by said government, and any “foreign” shipping company that comply with the same and is authorized to enter U.S. ports shall abide by the laws, regulations, and rules of the Island.

Furthermore, during a Public Hearing held on March 25, 2015, the Puerto Rico Chamber of Commerce stated that with Horizon Line’s departure from Puerto Rico’s maritime market, it is expected that the approximately one thousand two hundred (1,200) containers that arrived in the island every week will be held at the ports of Jacksonville, Houston, and New Jersey; this places the Island in a precarious situation and causes delivery delays and congestions at the ports of said cities and ours.

Likewise, the Chamber of Commerce shares with this Committee the results of a survey to its affiliates in which they had to answer five (5) questions regarding Horizon Line’s departure from Puerto Rico’s market; the answers to such questions revealed the following:



### QUESTION 1

Has your Company/Business been affected by  
the termination of Horizon Lines operations in Puerto Rico?

Seventy-eight point eighty-five percent (**78.85%**) of survey respondents answered “yes” and twenty-one point fifteen percent (**21.15%**)[sic]. That is, seventy-nine percent (**79%**) of survey respondents said that Horizon Line’s departure has affected their companies/business.

### QUESTION 2

Has the cargo’s transit time between the United States  
and Puerto Rico increased as a result of said departure?

See that eighty-four point thirty-one percent (**84.31%**) of survey respondents answered “yes” to an increase in cargo transit time; fifteen point sixty-nine percent (**15.69%**) said that they did not experience any delays.

### QUESTION 3

If you answered “yes” to Question 2: Have your orders been  
canceled as a result of said increase in transit time or have you lost  
sales as a result of delays in merchandise receipt?

Sixty-two percent (**62%**) of survey respondents answered that orders had been cancelled or that they had lost sales as a result of delays in merchandise receipt. Thirty-eight percent (**38%**) answered that no orders had been canceled as a result of import delays.

### QUESTION 4

Have shipment rates been raised by other shipping companies  
providing such services (Crowley, Sea Star Lines or Trailer Bridge)

after the announcement of Horizon Lines' departure?

To this question, forty-six point fifteen percent (**46.15%**) of survey respondents answered "yes" to rates increase as a result of Horizon Lines' departure and fifty three point eighty-five percent (**53.85%**) answered "no."

### QUESTION 5

Do you believe that the U.S. government should issue a waiver of the Jones Act to authorize the use of foreign-flag vessels while the situation regarding the lack of capacity of ships serving Puerto Rico is addressed?

Eighty-six point fifty-four percent (**86.54%**) of survey respondents and businesses answered that they believe the U.S. government should issue a partial waiver or moratorium; thirteen point forty-six percent (**13.46%**) believes that the U.S. government should not issue a temporary waiver of the Jones Act of 1920 regarding the restriction of goods transported between two U.S. ports, its territories or possessions which may only be carried on US-flag vessels.

That being said, it is imperative to note that a large number of the businesses and companies members of the Puerto Chamber of Commerce that participated in the survey stated that Horizon Lines' departure adversely affected maritime shipment processes and that, today (the survey was conducted between March 25, 2015 and April 6, 2015), it is still adversely affecting Puerto Rican businesses and consumers.

Finally, it must be pointed out that a multinational company with branches in more than one hundred ninety (190) countries, stated that with Horizon's departure from our market, the shipment costs between the United States and Puerto Rico



have increased. It shared with us a comparative analysis (April 2015) related to routes and their costs before and after Horizon’s departure. Let us see.

**COST OF TRANSPORTATION ANALYSIS**

ORIGIN	DESTINATION	CONTAINER	COST VS. SIMILAR ROUTE	COMMENTS
Nueva York, USA	Río Haina, Dominican Republic	40’ Refrigerated Container	\$100	Comparable route other than Jones Act 1920.
Baltimore, USA	San Juan, Puerto Rico	40’ Refrigerated Container	\$195	Rate before Horizon’s departure.
Baltimore, USA	San Juan, Puerto Rico	40’ Refrigerated Container	\$333	Current market price after Horizon’s departure.
ORIGIN	DESTINATION	CONTAINER	COST VS. SIMILAR ROUTE	COMMENTS
Veracruz, Mexico	San Juan, Puerto Rico	40’ Container	\$100	Rate before Horizon’s departure
Jacksonville, USA	San Juan, Puerto Rico	40’ Container	\$213	Rate before Horizon’s departure
Jacksonville, USA	San Juan, Puerto Rico	40’ Container	\$378	Current market price after Horizon’s departure.

Note that the cost of using a route similar to a route established under the parameters of the Jones Act of 1920 is up to three (3) times higher than that billed

by shipping companies that are not subject to U.S. cabotage laws, that is, foreign shipping companies. This situation occurs with the transshipment of containers whether refrigerated or not.

It also shows how transportation costs have affected this multinational company, which has been able to assume —with difficulty— the price rise better than other shipping companies after Horizon’s departure, due to its economic power and global presence. However, it must be mentioned that this is **not** the case of all companies, especially local ones. Prior to Horizon’s departure, a recently established local company was billed four thousand nine hundred dollars (**\$4,900**) per 45’ container transported in a one (**1**)-week trip. Today, it pays six thousand nine hundred ninety-eight dollars (**\$6,998**) for transporting the same 45’ container in a four (**4**)-week trip.

#### **IX. RECOMMENDATIONS SUPPORTED BY THE COMMITTEE**

- To create a common front between the economic, social, and political sectors of the Island in order to formally request the government of the United States of America to exempt Puerto Rico from the anticompetitive restrictions of the Jones Act, so as to conform the laws of the Commonwealth of Puerto Rico to the international maritime transport policy, of which the United States of America is a consignee;
- First, the government of Puerto Rico shall negotiate directly with federal authorities in order to obtain from the Department of Homeland Security a waiver of certain provisions of the Jones Act of 1920, such as:
  - Eliminating the U.S.-built vessel requirement; and

- Allowing foreign-flag ships from countries or jurisdictions with which the United States has entered into reciprocity agreements to participate in Puerto Rico's maritime transportation market.
- If any of the aforementioned strategies is adopted, it will be necessary to state that all vessels, including U.S. flag vessels, shall meet every internationally-recognized shipbuilding standards and safety requirements and standards, as well as every international standard in connection with the protection of the environment, natural resources, and labor, among others.
- In addition, the Committee supports the recommendations of the Puerto Rico Products Association, to wit:
  - Transportation costs must be classified as a "utility" since they are fundamental for the economic activity of the Island given its geographical location.
  - The need to identify savings, add value, and reduce costs to recover its investment appeal.
  - Emulate and support Hawaii and Alaska's actions seeking to amend or eliminate the most restrictive provisions of the laws; and
  - Exclude the transportation of raw material and fuel from the provisions of the cabotage laws.

#### **RECOMMENDATIONS OF THE COMMITTEE**

- The Government of the Commonwealth of Puerto Rico shall adopt as public policy to engage actively and permanently in achieving full release from the application of the Jones Act of 1920. To attain this, all

- government resources must be employed to initiate such petition immediately;
- The Senate of Puerto Rico and the Executive Branch shall actively engage in discussing and submitting a formal request in Washington D.C. seeking the total repeal of the Jones Act and its application to Puerto Rico, employing resources and government officials as are necessary to achieve the full repeal thereof. For such purpose, we recommend the creation of a Joint Standing Committee on the Jones Act of 1920 in the Legislative Assembly.
  - The Government of the Commonwealth of Puerto Rico shall formally request waivers of the Jones Act of 1920 while Congress acts on the repeal of said Act. As stated above, such waivers may be granted by the President of the United States and the Secretary of the Department of Homeland Security with the consent of the Coast Guard, MARAD, the Department of Defense, and the Department of Energy, among others. Such formal petition for a temporary waiver shall be filed within a term that shall not exceed sixty (60) days after the filing and approval of this Report. If the Central government fails to file such petition, the Senate of Puerto Rico shall submit the same as soon as possible given the urgency of our vulnerable situation;
  - Under its constitutional power, the Legislative Assembly of the Commonwealth of Puerto Rico shall also request the repeal of the Jones Act of 1920 and the application thereof to Puerto Rico. Furthermore, it shall take administrative action with regard to the petition for a

- temporary waiver of the Act, as previously discussed. To achieve this, the Legislative Assembly shall approve Concurrent Resolutions whereby formal petitions shall be made to U.S. Congress and the Department of Homeland Security on such temporary waiver; in addition, the Senate of Puerto Rico shall approve a Resolution expressing its support to the actions taken by states and jurisdictions such as Hawaii, Alaska, and Guam in connection with the repeal of the Jones Act of 1920;
- This Report, which shall be translated into English, shall be delivered to the United Nations Committee on Decolonization and the Organization of American States, so that the serious and ever-growing financial situation and vulnerability of the Island resulting from the application of the Jones Act of 1920 be treated as a matter of financial and civil urgency and as a gross violation of the right of peoples to free and full development;
  - This Report, which shall be translated into English, shall be delivered to all organizations composed of U.S. state and territory legislators and governors, urging them to approve Resolutions in support of the petitions for repeal, partial exemption or waiver of the application of the Jones Act of 1920;
  - The Senate of Puerto Rico shall join efforts with the Legislatures of Hawaii, Alaska, and Guam to achieve the full and/or partial repeal of the Jones Act of 1920. Such efforts shall include lobbying with any national and international entity as necessary to achieve the full and/or partial repeal of the Jones Act of 1920, as the case may be;

- To urge the U.S. President and Congress to create a regulatory entity, at the national level, to regulate the supply, demand, cost and compliance of commercial maritime transportation domestic market, as well as to establish notifications and compliance standards on the potential departure of merchant marines under the Jones Act of 1920 from the markets they serve within at least six months prior to their departure, this would prevent a destabilization of maritime commercial operations in both contiguous and non-contiguous states;
- The Department of Economic Development and Commerce, its agencies and the Ports Authority shall set forth as public policy to make Puerto Rico, as well as its shipment ports and infrastructure, a world-class jurisdiction and to be at a par with direct competitors, guaranteeing the Island's access to the world's top maritime shipping markets;
- To request the Secretary of Justice of the Commonwealth of Puerto Rico to ponder on the possibility of bringing an action at the federal level on behalf of the People of Puerto Rico for damages sustained by the people of Puerto Rico for the past ninety-four (94) years, that is, since the approval of the Jones Act of 1920, as a result of violations of human rights and restriction of its economic development; and
- To request the Department of Consumer Affairs to conduct an analysis on the power of such agency to establish profit caps for the rates imposed and its power to oversee transactions, business, contracts, and agreements entered into by maritime shipping companies operating in Puerto Rico for

being incorporated and having resident agents in our jurisdiction, thus protecting consumers and merchants doing business in the Island.

- To request Puerto Rico delegates to the main political parties of the United States, the Democratic, and the Republican Parties to demand that the government platforms of each party include the waivers and subsequent repeal of the Jones Act as a condition to obtain their support to the parties represented in the United States Congress.

**For all of the foregoing**, this Committee on Civil Rights, Citizen Participation, and Social Economy respectfully recommends to the Senate of the Commonwealth of Puerto Rico **to support this Final Report with findings, conclusions, and recommendations** in connection with **Senate Resolution No. 237** and begin to take every action recommended in this Committee Report with regard to the applicability of the Jones Act of 1920 to the Commonwealth of Puerto Rico.

**Respectfully submitted**, in San Juan, Puerto Rico, on this 9<sup>th</sup> day of April, 2015.

**ROSSANA LÓPEZ-LEÓN**  
**CHAIR**  
**Committee on Civil Rights,**  
**Citizen Participation and**  
**Social Economy**