

IMPACTO ECONÓMICO DE LAS LEYES DE CABOTAJE SOBRE PUERTO RICO



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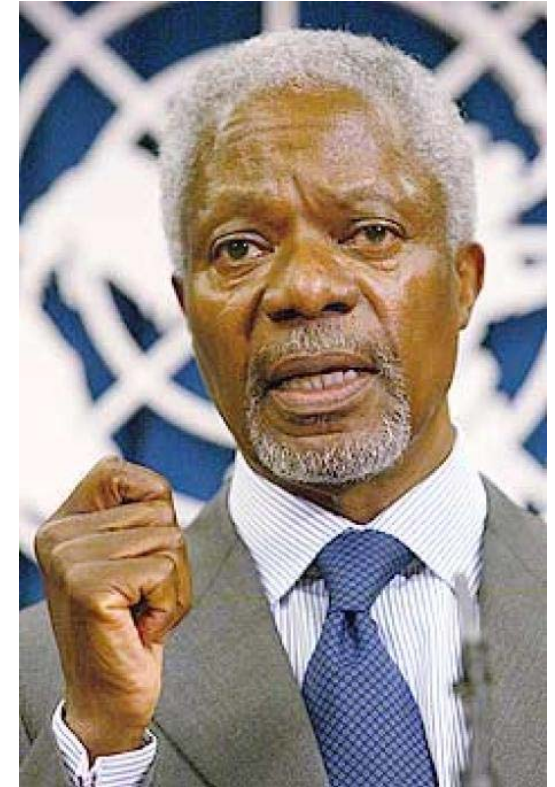
5 de septiembre de 2014



Reflexión...

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- “Se ha dicho que argumentar contra la globalización es como argumentar contra la ley de la gravedad. Pero eso no significa que debemos aceptar una ley que permite sólo pesos pesados para sobrevivir. Por el contrario: debemos hacer de la globalización un motor que levanta personas de privaciones y miseria, no una fuerza que los mantiene desligados.”
 - Kofi A. Annan, Secretario General de la ONU (1996-2007)



Agenda

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1. Organización Industrial del Transporte Marítimo
2. Marco Regulatorio Internacional
3. Definir Cabotaje
4. *Diferenciar Coastwise Laws y Jones Act*
6. Exenciones al Estatuto Federal y *Waterborne Commerce*
7. Estudios Sobre el Caso de Puerto Rico
8. Justificando el Análisis
9. Estimación del Impacto Económico
10. Recomendaciones

Cuatro Piezas Angulares de la Globalización

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- Liberalización Comercial
- Estandarización Internacional
- Telecomunicaciones
- Transportación



La verdadera fuerza motriz de la globalización es la **disminución** en los **costos de transportación**

Globalización del Comercio y Transporte

Marítimo

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- El comercio marítimo es probablemente una de las industrias más globalizadas. En una simple transacción comercial pueden intervenir personas y bienes de una docena de países:

Un barco  construido en  registrado en 
charteado por un operador  que emplea marineros 
asegurado en  que transporta carga fabricada en 
a nombre de un agente naviero  que va desde
un puerto de  hacia la  mediante terminales
concesionados a operadores de puertos de  .

Organización Transporte Marítimo

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- Buques Porta Contenedores
 - Línea de servicio regular que publica por adelantado las tarifas en los diferentes puertos.
 - Línea atendida por diversas compañías de navieros.
 - Carácter de capital intensivo en el manejo de la carga transportada.
 - Alta valor monetario de la mercancía.
 - Capacidad para entrar en acuerdos y arreglos cooperativos – Conferencias Marítimas
 - *Transpacific Stabilization Agreement*
 - *Trans-Atlantic Conference Agreement*



Organización Transporte Marítimo

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- Buques Carga a Granel
 - Operan en viajes específicos en cumplimiento de contratos de corto o largo plazo.
 - La carga enviada en un viaje particular pertenece a un propietario.
 - Dominan en términos de volúmenes el comercio marítimo.
 - Mayores regulaciones por la naturaleza de la carga transportada.



International Seaborne Trade, selected years (millions of tons loaded)

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Year	Oil	Main bulks	Other dry cargo	Total (all cargoes)
1970	1,440	448	717	2,605
1980	1,871	608	1,225	3,704
1990	1,755	988	1,265	4,008
2000	2,163	1,295	2,526	5,984
2005	2,422	1,709	2,978	7,109
2006	2,698	1,814	3,188	7,700
2007	2,747	1,953	3,334	8,034
2008	2,742	2,065	3,422	8,229
2009	2,642	2,085	3,131	7,858
2010	2,772	2,335	3,302	8,409
2011	2796	2,477	3,475	8,748

MUNDIAL -0.6%
ZONA EURO -4.1%
EUA -2.4%

-4.5%

Source: UNCTAD. *Review of Maritime Transport*. various issues.

World Total Container Fleet Ship, Selected Years

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Year	Number of vessels	TEU capacity	Average vessel size (TEU)
1987	1,052	1,215,215	1,155
1997	1,954	3,089,682	1,581
2006	3,494	8,120,485	2,324
2007	3,904	9,436,377	2,417
2008	4,276	10,760,173	2,516
2009	4,638	12,142,444	2,618
2010	4,677	12,824,648	2,742
2011	4,868	14,081,957	2,893

Source: UNCTAD. *Review of Maritime Transport*. various issues.

Top Ten Countries with the largest fleet, as of January 2012

Country or territory of ownership ^b	Number of vessels			Deadweight tonnage				Estimated market share 1 January 2012
	National flag ^c	Foreign flag	Total	National flag ^c	Foreign flag	Total	Foreign flag as a percentage of total	
Greece	738	2 583	3 321	64 921 486	159 130 395	224 051 881	71.02	16.10
Japan	717	3 243	3 960	20 452 832	197 210 070	217 662 902	90.60	15.64
Germany	422	3 567	3 989	17 296 198	108 330 510	125 626 708	86.23	9.03
China	2 060	1 569	3 629	51 716 318	72 285 422	124 001 740	58.29	8.91
Korea, Republic of	740	496	1 236	17 102 300	39 083 270	56 185 570	69.56	4.04
United States	741	1 314	2 055	7 162 685	47 460 048	54 622 733	86.89	3.92
China, Taiwan Province of	470	383	853	28 884 470	16 601 518	45 485 988	36.50	3.27
Norway	851	1 141	1 992	15 772 288	27 327 579	43 099 867	63.41	3.10
Denmark	394	649	1 043	13 463 727	26 527 607	39 991 334	66.33	2.87
Chinese Taipei	102	601	703	4 076 815	34 968 474	39 045 289	89.56	2.81
World Total			46 901			1 518 109 503		

Source: UNCTAD. *Review of Maritime Transport* 2012.

Leading Service Operators of Containers Vessels

Ranking (TEU)	Operator	Country/ territory	Number of vessels	Average vessel size	TEU	Share of world total, TEU (percentage)	Cumulated share, TEU (percentage)	Growth in TEU over 2011 (percentage)
1	Maersk Line	Denmark	453	4 646	2 104 825	11.8	11.8	15.6
2	MSC	Switzerland	432	4 688	2 025 179	11.3	23.1	14.9
3	CMA CGM Group	France	290	4 004	1 161 141	6.5	29.5	8.5
4	APL	Singapore	144	4 168	600 168	3.4	32.9	1.4
5	COSCO	China	145	4 304	624 055	3.5	36.4	10.3
6	Evergreen Line	China, Taiwan Province of	159	3 590	570 843	3.2	39.6	-3.9
7	Hapag-Lloyd Group	Germany	145	4 476	648 976	3.6	43.2	15.8
8	CSCL	China	124	4 493	557 168	3.1	46.3	20.9
9	Hanjin	Korea, Republic of	101	4 927	497 641	2.8	49.1	11.2
10	MOL	Japan	107	4 194	448 727	2.5	51.6	23.6
11	OOCL	China, Hong Kong SAR	88	4 516	397 433	2.2	53.8	6.1
12	Zim	Israel	82	3 708	304 074	1.7	55.5	8.0
13	HMM	Korea, Republic of	70	4 497	314 770	1.8	57.3	10.4
14	NYK	Japan	93	4 129	383 964	2.1	59.4	8.8
15	Yang Ming	China, Taiwan Province of	84	4 089	343 476	1.9	61.3	6.4
16	Hamburg Sud	Germany	99	3 728	369 057	2.1	63.4	10.0
17	K Line	Japan	79	4 336	342 572	1.9	65.3	-1.6
18	CSAV	Chile	85	4 095	348 035	1.9	67.2	-9.1
19	PIL	Singapore	104	2 279	236 978	1.3	68.6	-0.5
20	Wan Hai Lines Limited	China, Taiwan Province of	89	2 080	185 146	1.0	69.6	8.8
Total top 20 carriers			2 973	3 979	12 464 228	69.6	69.6	10.0
Others			7 093	768	5 445 054	30.3	30.4	10.7
World container ship fleet			10 066	1 678	17 909 282	100.0	100.0	10.2

Marco Regulatorio Internacional

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- *UN Liner Code of Conduct for Maritime Conferences*
 - Reglas y condiciones a conferencias marítimas
 - Partes aceptan 40-40-20
- *International Maritime Organization (IMO)*
 - Organismo especializado de las Naciones Unidas.
 - Promueve la seguridad marítima y prevenir la contaminación marina.
- *International Labor Organization (ILO)*
 - Convenio sobre el trabajo marítimo.

OECD Common Shipping Principles

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- The OECD Maritime Transport Committee have in place a number of Common Shipping Principles that govern the maritime industry. Originally agreed in 1987, and updated in 2000, the 16th Principles provide for the five basic elements:
 1. The maintenance of open trades and free competitive access to international shipping operations, maritime auxiliary services and multimodal transport involving a maritime leg.
 2. Co-ordinated response to external pressure, based on full consultations between Member countries.
 3. **The role and recognition of governmental involvement by member countries to preserve free competitive access and the provision of choice to the shippers.**
 4. A common approach to the application of competition policy to the liner shipping sector.
 5. Measures relating to safety, the environment and substandard shipping.

WTO: General Agreement on Trade in Services

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- Efforts have been undertaken by the World Trade Organization (WTO) to liberalizing the maritime transportation service.
- Uruguay Round (1986-94)
 - The General Agreement on Trade in Services (GATS) was one of the landmark achievements of the 8th round of multilateral agreements.
 - The GATS was inspired by essentially the same objectives as its counterpart in merchandise trade, the General Agreement on Tariffs and Trade (GATT).
- Doha Development Round (2001 - Present)
 - Free trade service sector negotiations in agenda.
 - Allies include countries Canada, Japan, Korea, Switzerland, New Zealand, Norway, Hong Kong, the EC, Singapore, Chile, Australia and Colombia
- However, there is until today no global regimen governing shipping.

Cabotaje

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□ Cabotaje

- Deriva de la palabra francesa “caboter” que significa navegar a lo largo de las costas o por los cabos.

□ Comercio de Cabotaje

- Transportación de mercancías y personas mediante navíos entre puertos dentro de una misma jurisdicción.

□ Derechos de Cabotaje

- El privilegio de participar en el comercio y la navegación en aguas costeras y a la restricción de ese derecho a los transportistas nacionales.

Cabotaje como Barrera Comercial

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- El comercio es visto como el motor del desarrollo de cualquier nación.
- La balanza comercial de un país afecta el Producto Interno Bruto, incluyendo la expansión de la mano de obra y el desarrollo tecnológico.
- En la economía global de hoy, el comercio es mayoritariamente realizado sobre el agua y los barcos son el vehículo de conexión.
- No existe ninguna otra forma de transporte que supera a la navegación marítima en términos de cantidad y volumen de las mercancías que se comercian a nivel mundial.
- La transportación marítima es el peaje esencial en el que una política de promoción de exportación puede montarse y sostenerse.

Cabotaje como Barrera Comercial

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- Económicamente, las regulaciones de cabotaje que restringen el acceso o reservan el comercio marítimo de una jurisdicción territorial de un país a las capacidades locales constituyen una forma de proteccionismo.
- Dentro de una nación, las reglas de cabotaje pueden ser políticamente justificables para la seguridad nacional o seguridad pública.

Tipos de Leyes de Cabotaje

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- ❑ *National Shipping*
 - ❑ Los derechos de navegación y comercio en las costas de un país o de puerto en puerto dentro de una nación son exclusivamente reservados a buques insignia nacional y nacionales.
- ❑ *Regional Shipping (or Short Sea Shipping)*
 - ❑ Los derechos de navegación y comercio entre los puertos de un determinado grupo de países se reservan exclusivamente dentro de los miembros de las Naciones de la agrupación económica específica. Por ejemplo: Mercosur y la UE (APEC está actualmente bajo análisis).

Tipos de Leyes de Cabotaje

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❑ *Strict Cabotage Laws*

- ❑ Política diseñada a fomentar la exclusión de buques contruidos y registrados en el exterior, de propiedad y tripulación extranjera.

❑ *Liberalized Cabotage Laws*

- ❑ Política diseñada para fomentar la participación extranjera en la propiedad, registro o construcción de los buques utilizados y en la nacionalidad de la de los operadores involucrados.

Coastwise Laws

- A set of rules governing shipment of freight, household goods and passengers by water between points within a country or its territories.
- Title 46 of the United States Code covers the coastwise laws.
- Public Law 109-304, enacted on October 6, 2006, substantially reorganized and re-codified the U.S. coastwise laws.
- Two commonly mentioned U.S. coastwise laws are:
 - The Passenger Vessel Services Act of 1886
 - The Merchant Marine Act of 1920

What is the Jones Act?

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- The term Jones Act may refer to one of several federal laws in the United States:
 - ▣ Jones Act (Philippines Autonomy Act)
 - Approved by Congress in August 29, 1916
 - Sponsored by Representative William Atkinson Jones
 - Provided an autonomous government to prepare the Phillipines for independence.
 - ▣ Jones Act (Jones-Shafroth Act, Puerto Rico)
 - Signed by President Woodrow Wilson in March 2, 1917.
 - Sponsored by Representative William Atkinson Jones.
 - Provided a civilian government and conferred U.S. citizenship.
 - ▣ Jones Act (Merchant Marine Act of 1920)
 - Signed by President Woodrow Wilson in June 5, 1920.
 - Sponsored by Senator Wesley L. Jones.

Jones Act

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- The Jones Act, formally known, Merchant Marine Act of 1920, stated that a vessel may not provide any part of the transportation of merchandise by water between points in the U.S. unless the vessel is (46 U.S.C. §55102):

- owned by U.S. citizens.
- a U.S.-flag ships.
- built in the U.S.
- crewed by U.S. citizens.

Compliance with a:
Registry endorsement &
Coastwise endorsement
(45 U.S.C. Chapter 121)

Dos Aspectos de Importancia del Jones Act

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- Reconoce la importancia de poseer un sistema de marina mercante para (46 U.S.C. 50101):
 - ▣ *Assist the national defense in case of war or national emergency.*
 - ▣ *The development of foreign and domestic commerce.*

Dos Aspectos de Importancia del Jones Act

- El segundo aspecto esta relacionado a la protección laboral al proveer benéficos a los marinos:
 - *A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section (46 U.S.C. § 30104).*

Passenger Vessel Services Act of 1886

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- States that no foreign vessel shall transport passengers between ports or places in the US unless the vessel is (46 U.S.C. § 55103):
 - owned by U.S. citizens.
 - a U.S.-flag ships.
 - built in the U.S.
 - crewed by U.S. citizens.

Compliance with a:
Registry endorsement &
Coastwise endorsement
(45 U.S.C. Chapter 121)

Where Does the Coastwise Laws Apply?

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- ❑ The coastwise laws applies to the U.S., including the island territories and possessions of the U.S. (46 U.S.C. § 55101).
- ❑ The coastwise laws do not apply to:
 - ❑ American Samoa
 - ❑ The Northern Mariana Islands, except as provided in the *Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America*.
 - ❑ The Virgin Islands until the President declares by proclamation that the coastwise laws apply to the Virgin Islands.

Exemptions to the Coastwise Laws

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- Ships that are constructed outside the U.S., but are registered under the U.S. flag, are permitted to operate between American Samoa, Guam, Midway, Wake, or Kingman Reef and other U.S. ports (46 U.S.C. 12111).
- A foreign-built, foreign-flagged vessel that is salvaged in U.S. waters and subsequently rebuilt in the United States may operate in the U.S. domestic market, provided that the cost of rebuilding it is at least three times its assessed value at the point of salvage (46 U.S.C. §12107).
- A foreign-built, foreign-flagged vessel seized during war by U.S. citizens may subsequently be permitted to operate under the U.S. flag in the domestic maritime market (46 U.S.C. 12112).

Exemptions to the Coastwise Laws

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- ❑ Transportation of passengers between Puerto Rico and other ports in the United States (46 U.S.C. §55104):
 - ❑ A vessel not qualified to engage in the coastwise trade may transport passengers between a port in Puerto Rico and another port in the United States.
 - ❑ However, if a U.S. passenger vessel qualified to engage in the coastwise trade between Puerto Rico and another port of the U.S., the Secretary of the Department of Homeland Security shall notify the owner or operator of the foreign vessel to terminate the service within 270 days after the Secretary's notification.

Other U.S. Coastwise Laws

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- Aside from the Jones Act, the U.S. maintains cargo preference laws, which reserve the transport of certain types of U.S. cargo to vessels operating under the U.S. flag.
 - Cargo Preference Act of 1954
 - U.S.-flag vessels must transport at least 50 percent of government-owned cargo and all U.S. military cargo.
 - Food Security Act of 1985
 - Requires that U.S.-flag vessels transport at least 75 percent of agricultural cargoes that are a part of foreign assistance programs administered by USDA and the U.S. Agency for International Development.
 - Alaska Power Administration Asset Sale and Termination Act of 1995
 - Requires that international exports of Alaskan crude oil be transported solely by U.S.-flagged and U.S.-owned vessels, although such vessels may be constructed outside of the United States.

Leyes de Cabotaje en el Contexto Internacional

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- Los países han paulatinamente abolido la restricción de construcción de los buques.
- Se mantienen las restricciones en vías navegables internas (ríos y lagos), por razones de soberanía y seguridad nacional.
- La mayoría de los países desarrollados permiten la operaciones de embarcaciones de propiedad extranjera en sus mercados nacionales.

Fuente: U.S. Department of Transportation, Maritime Administration, *By the Capes Around the World: A Summary of World Cabotage Practices*, found at <http://www.marad.dot.gov/publications/pubs.html>.

Registration conditions in OECD countries

OECD Country	REGISTRATION MARITIME POLICY
Australia	Australia vessel must be majority Australian-owned unless designated to be chartered by an Australian operator.
Austria	Austria over 50% ownership by EEA-nationals; principal place of business must be located in Austria.
Belgium	Belgium vessel must be owned by nationals domiciled and resident in Belgium or legal identities having their main establishment in Belgium.
Canada	Canada vessel must be owned by Canadian/Commonwealth citizens/company, principal place of business must be in Canada/Commonwealth country.
Denmark	Denmark at least 2/3 of the vessel must be owned by persons/companies of EU/EEA nationality, principal place of business must be in Denmark.
Finland	Finland more than 60% of Finnish registered vessels must be owned by Finnish nationals, principal place of business must be in Finland.
France	France 50% of the vessel must be owned by EU/EEA nationals or wholly owned by companies headquartered in a EU country, principal place of business France
Germany	Germany vessel must be owned by an EU national or a company having its principal place of business in an EU Member country.
Greece	Greece foreign ownership in Greek flag vessel is limited to 49% for non-Greek natural or legal persons.
Hungary	Hungary foreign ownership is limited up to 50% unless bilateral agreements imply otherwise.
Ireland	Ireland vessels must be fully owned by Irish nationals/corporations or nationals/corporations of a reciprocating state (i.e. UK, Canada, New Zealand and Pakistan).
Italy	Italy at least 50% of the vessel must be owned by Italian or EU nationals (persons or companies), derogations can be granted under certain circumstances.
Japan	Japan vessel must be fully owned by Japanese nationals or companies having their principal place of business in Japan, two-thirds of the representatives must be Japanese.
Korea	Korea majority-owned by Koreans (60% of the voting interest); board of directors and representative director must be Korean nationals.
Luxembourg	Luxembourg over 50% ownership by EU-nationals or companies established in Luxembourg; master must be EU-national.

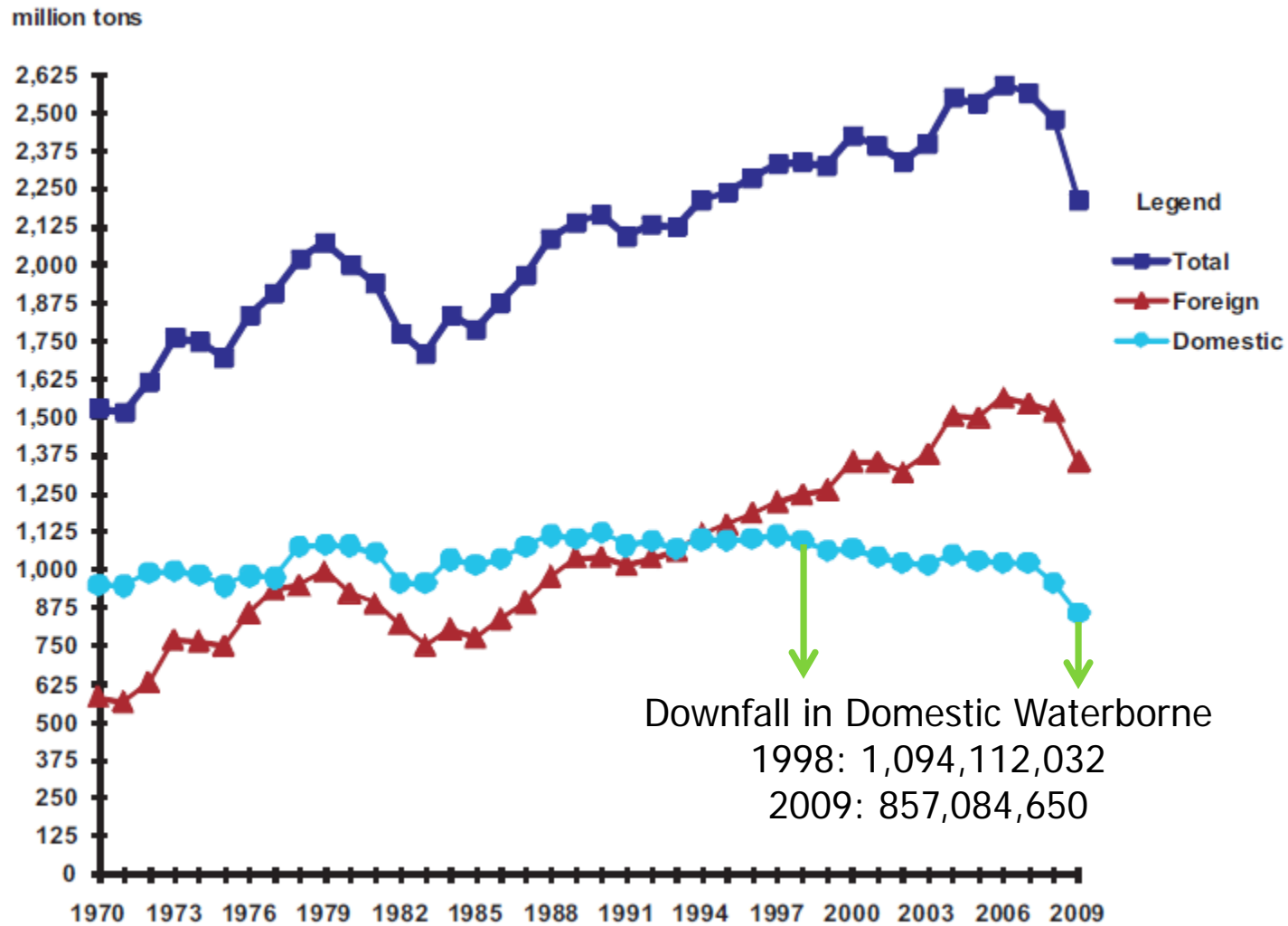
Source: OECD. *Regulatory Issues in International Maritime Transport*. OECD: Directorate for Science, Technology and Industry, Division of Transport

Registration conditions in OECD countries

OECD Country	REGISTRATION MARITIME POLICY
Mexico	Mexico vessels must be owned by Mexican natural/legal person
Netherlands	Netherlands ship must be owned 2/3rds by EU/EEA-nationals; place of business must be in the Netherlands; management must be in the hands of EU/EEA-nationals
New Zealand	New Zealand ships must be majority-owned by New Zealand citizens/residents
Norway	Norway if registered in the NIS,* ships with more than 40% foreign ownership must be managed by a Norwegian company with its registered office in Norway.
Poland	Poland ship must be owned by Polish citizens or a company incorporated in Poland
Portugal	Portugal only resident in Portugal can register vessels under the Portuguese flag
Spain	Spain EU nationals or companies; corporations must be domiciled in an EU country and have a representative in Spain
Sweden	Sweden 50% of the vessel must be owned by Swedish nationals or if the vessel is essentially under Swedish control and its owner his permanent residence in Sweden
Switzerland	Switzerland majority of the capital and two thirds of the voting rights, administrative bodies and management must be exercised by Swiss nationals
United Kingdom	United Kingdom ship must be owned by EEA-citizens; place of business must be in the UK

Source: OECD. *Regulatory Issues in International Maritime Transport*. OECD: Directorate for Science, Technology and Industry, Division of Transport

Total Waterborne Commerce in the U.S., 1970-2009 (millions short tons)



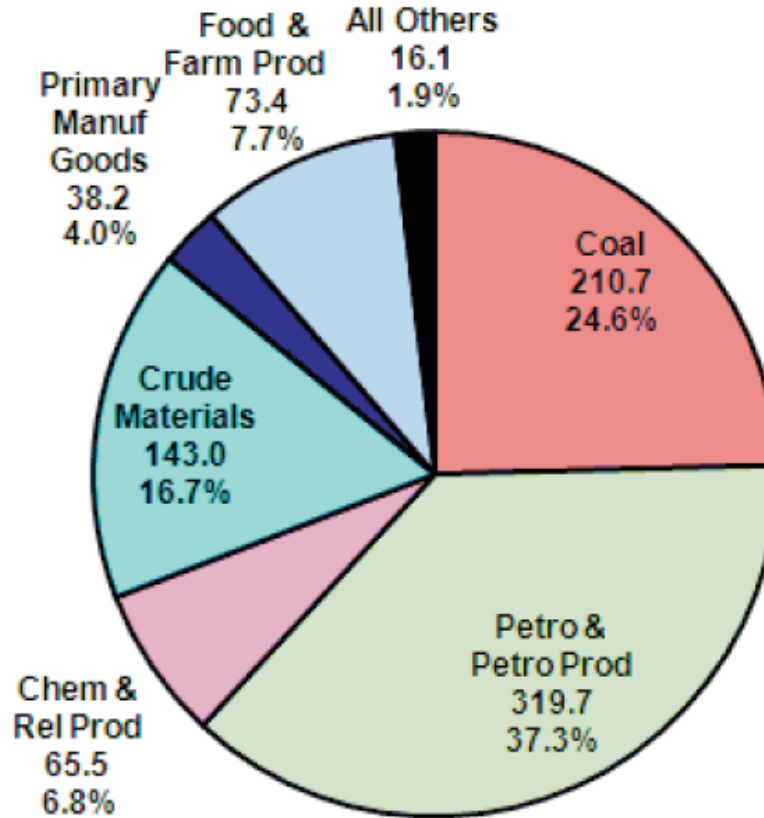
Source: U.S. Army Corps of Engineers, *Waterborne Commerce of the United States (Part 5, National Summaries)*, Calendar Year 2009.

PRINCIPAL COMMODITY GROUPS CARRIED BY WATER, 2009
(million short tons and percentage of short tons)

Domestic Commerce

Intermediate products
dominate domestic
waterborne commerce

Coal, petro
& related
products
represents
62%



Source: U.S. Army Corps of Engineers, *Waterborne Commerce of the United States (Part 5, National Summaries)*, Calendar Year 2009.

Estudios Previos

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- Paquita Pesquera (1965), found a surcharged cost of \$48.3 millions in 1964.
 - Pesquera, Paquita (1965), *Algunos Problemas que Confronta la Transportación Marítima entre Puerto Rico y Estados Unidos y sus Implicaciones para la Economía de la Isla*. Tesis de Maestría, Departamento de Economía, Universidad de Puerto Rico, Recinto de Rio Piedras.
- *Management and Economic Consultant, Inc, (1993)*, found if Cabotage Laws were repealed, the net saving will be near \$100 million of a total of \$961 million on freight costs.
 - See John Collins, "The Jones Act: Good or Bad ?": Caribbean Business, August 10, 1995.
- Herrero, José, A. Soriano & J. Valentín-Mari (2003), found an additional cost of \$426 million in fiscal year 2000.
 - *El Efecto del Régimen Actual del Comercio Exterior en Relación al Transporte Marítimo sobre la Economía de Puerto Rico*. Ceteris Paribus, Vol. 3. Marzo 2003. Available at <http://ceterisparibus.uprm.edu/articulos/vol3/articulo2.htm>

Estudios Recientes

36

- Estudio del Banco Reserva Federal de Nueva York.
- *General Accounting Office, Characteristics of the Island's Maritime Trade and Possible Effects of Modifying the Jones Act in Puerto Rico. GAO-13-260. March 2013.*
- *Estudios Técnicos. The Maritime Industry in Puerto Rico. (2013).*
- U.S. Department of Transportation Maritime Administration. *Comparison of U.S. and Foreign-Flag Operating Costs, Septiembre 2011.*

Informe Fed Nueva York

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- En un informe realizado por el Banco de Reserva Federal de Nueva York sobre la competitividad de la economía de Puerto Rico, presentando en junio de 2012, entre las recomendaciones que se brinda está sobre aquella que abarca los costos de transporte bajo la Ley Jones. Argumenta el informe (página 14, versión en español), y citamos.....

<http://www.newyorkfed.org/images/nav/logo-new-york-fed.gif>

Informe Fed Nueva York

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- *Los datos disponibles muestran que el transporte marítimo es más costoso para Puerto Rico que para sus pares regionales y que la actividad en los puertos de Puerto Rico ha estado a la zaga de la de otros puertos regionales en los últimos años.*
- *Aunque no se ha establecido la causalidad de la Ley Jones, es lógico pensar que la ley es un factor importante en la medida en que reduce la competencia --los envíos entre la Isla y el continente están a cargo de sólo cuatro compañías.....*

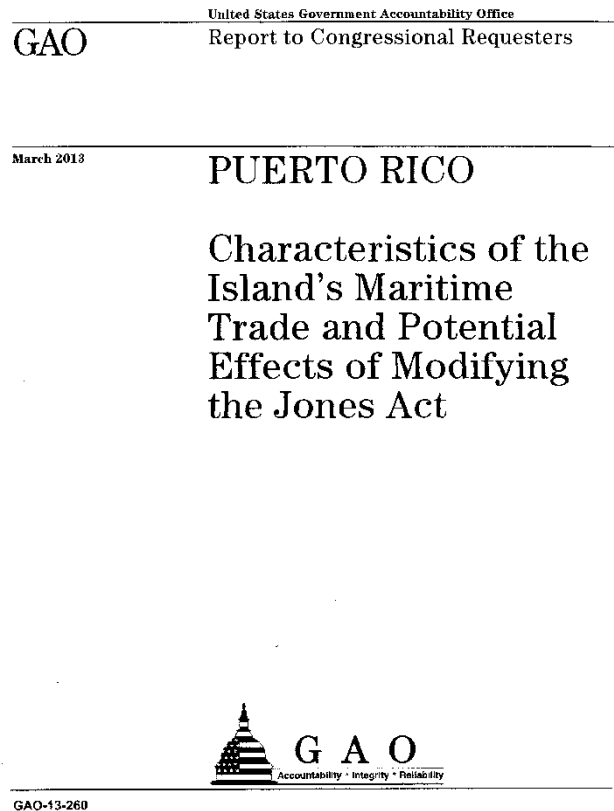
Informe Fed Nueva York

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- *..Cuesta aproximadamente \$3,063 transportar un contenedor de veinte pies de bienes domésticos y comerciales desde la Costa Este de los Estados Unidos hasta Puerto Rico;.....*
- *..... el mismo envío cuesta \$1,504 hasta el vecino Santo Domingo (República Dominicana) y \$1,687 a Kingston (Jamaica)—destinos que no están sujetos a las restricciones de la Ley Jones.*

El Informe del GAO—marzo 2013

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- La conclusión del informe es que el impacto de la aplicación de la Ley Jones es incierta y varios conflictos podrían materializarse dependiendo de cómo se modifique las disposiciones del Acta.
- Bajo una exención total, habrá que determinarse si las reglas y requerimientos podrán aplicar a todas las empresas de marinas mercantes.

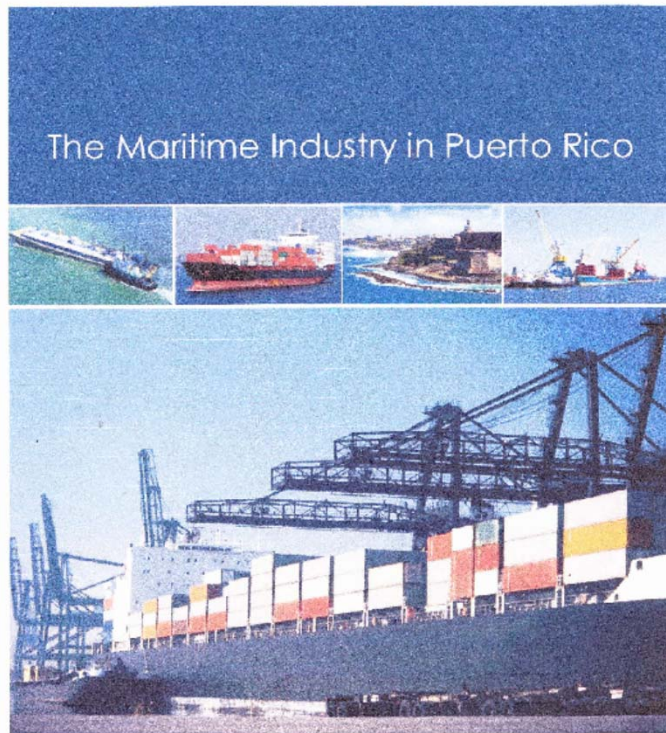
El Informe del GAO cont.....

El informe del GAO tiene la limitación al carecer de conclusión alguna sobre:

1. Cuánto es el impacto económico en el producto nacional, el ingreso nacional y en el empleo de esta Ley Jones vis a vis la liberación de la misma;
2. No determinar el efecto en los precios al por mayor y al final;
3. No tiene estimados de cómo sería el ahorro o desahorro de liberarse la Ley Jones

Estudios Técnicos-mayo 2013

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May 3, 2013

Submitted to:
La Alianza Marítima

□ A tenor con la presentación del informe del GAO, la Alianza Marítima de Puerto Rico (*Puerto Rico Maritime Alliance*, en adelante AMPR) contrató a la firma de consultoría ubicada en San Juan, Estudios Técnicos (ET), Inc. para que realizara un informe sobre la industria.

□ Esta AMPR está compuesta por las cuatro compañías de marina mercante que operan en Puerto Rico-- *Crowley Maritime Corp.*; *Horizon Lines Inc.*; *Sea Star Line LLC*, y *Trailer Bridge Inc.*

Estudios Técnicos

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- El estudio concluye que la Ley Jones ha brindado beneficios para Puerto Rico pues la marina mercante de Estados Unidos es más eficiente y productiva; cubre de manera más óptima las rutas y ha logrado reducir los costos de fletes.
- El argumento principal es que la Ley Jones representa \$48.5 millones como costo incremental de operaciones pero el beneficio de esta Ley provee llega a \$120.8 millones, por lo que el efecto neto incremental es positivo con \$72.3 millones.

Estudios Técnicos

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- El informe de ET, sin embargo, no aborda”:
 - Las razones para insistir en la protección industrial que brinda la Ley Jones aun reconociendo que las norteamericanas son más eficientes y productivas que las extranjeras.
 - Si frente a la eliminación de esta parte de la Ley Jones, la competencia se abre a otras extranjeras se les haría difícil entrar y mantener operaciones mercantes rentables y productivas en la Isla frente a la superioridad de aquellas que operan localmente.
 - Otro punto controvertible sobre el estudio de ET es que no realiza mención alguna sobre las acusaciones y luego, convicción de las marinas mercantes locales frente al foro judicial federal por violar disposiciones de las leyes antimonopolios de los Estados Unidos.

Estudios Técnicos

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- Frente a la argumentación de su productividad y eficiencia en condiciones para establecer precios, ¿por qué las marinas mercantes conspiraron por medio del mecanismo ilegal de fijación de precios afectando a las operaciones de las empresas productivas y el bienestar de los consumidores locales ?.

El informe de MARAD de septiembre 2011. **COMPARISON OF U.S. AND FOREIGN-FLAG OPERATING COSTS, sept 2011**. U.S. Department of Transportation Maritime Administration.

Este informe establece las diferencias entre los costos operacionales de los barcos bajo bandera americana versus aquellos extranjeros. Tradicionalmente, hay tres categorías de costos: (a) operacionales; (b) navegación (en inglés, *voyage*) --combustible y cargos en puertos--y (c) el costo de capital

PARTIDAS (por día)	Bandera Americana	% Total	Bandera Extranjera	% Total
Tripulación (salarios por día)	\$13,655	68.1%	\$2,590	34.7%
Almacenaje (<i>store and lube</i>)	\$1,158	5.8%	\$1,073	14.4%
Mantenimiento y reparación	\$2,994	14.9%	\$2,390	32.1%
Seguros	\$1,057	5.3%	\$692	9.3%
Overhead	\$1,189	5.9%	\$700	9.4%
TOTAL DE COSTOS (por día, 2010)	\$20,053	100.0%	\$7,454	100.0%

Fuente: MARAD. Comparison of U.S. and Foreign-Flag Operating Costs, septiembre de 2011.
Appendix B: Comparison of U.S. and Foreign-Flag Operating Costs.

Where Built	UNITED STATES	JAPAN	JAPAN
Crew Nationality	UNITED STATES	UNITED STATES	SINGAPORE
Propulsion System	STEAM	DIESEL	DIESEL
Wages	3,780	3,780	570
Subsistence	124	124	53
Supplies	247	247	158
Maintenance	1,050	1,050	471
Insurance	933	933	328
Other	77	77	30
Fuel	5,500	4,600	4,600
Capital	14,200	5,200	5,200
Cargo/Port	4,600	4,600	4,600
Total	30,511	20,611	16,010
Cost per Delivered Ton	61	41	32

Source: Atlantic Institute for Market Studies. *The Jones Act Under NAFTA and Its Effects on the Canadian Shipbuilding Industry*. September 2006.

Table of Stakeholders

Pro Cabotage	Reformers/Repealers of Cabotage
Government Agencies	
<ul style="list-style-type: none"> • Department of Defense • Department of Transportation 	<ul style="list-style-type: none"> • Department of Commerce • Senate Committee on Commerce and Transportation • United States Trade Representative (USTR)
Coalitions/Organizations	
<ul style="list-style-type: none"> • Cruising America Coalition • Jones Act Reform Coalition • International Maritime Organization • Maritime Cabotage Task Force • Transportation Institute 	<ul style="list-style-type: none"> • American Society of travel agents • American Association of Port Authorities • International Council of Cruise Lines • Alaska Division of Tourism
Unions	
<ul style="list-style-type: none"> • Maritime Trades Department of the AFL CIO • Atlantic Marine S.Y. • Shipbuilders • American Maritime Officer's Union • Seafarers International Union 	
Business	
<ul style="list-style-type: none"> • Cruise West • American Classic Voyages • Various U.S. domestic Liner companies 	<ul style="list-style-type: none"> • Walt Disney Cruise • Carnival • Princess • Royal Caribbean • Norwegian
International Stakeholders	
	<ul style="list-style-type: none"> • World Trade Organization • OECD • UNCTAD • USTR

PANAMA: Beyond the Canal

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❑ **City of Knowledge**

- ❑ Cluster for education, research, and innovation, and was developed to promote and facilitate synergy between universities, scientific research centers, businesses, and international organizations.
- ❑ It is located in what used to be United States Army South headquarters, Fort Clayton.

❑ **Colon Free Zone**

- ❑ The largest cargo and transshipment centre in the hemisphere.
- ❑ 2011: 7% PAN GDP, 30,669 employees and 2,223 firms.

❑ **Panama Pacific Special Economic Area**

- ❑ Area designated in 2004 for the production of goods and services of high added value and technology in the former USAF base Howard.

❑ **Tocumen Air Cargo Transshipment**

- ❑ Plan 2025 propose to establish 20 air cargo terminals in the Tocumen International Airport.

❑ **Panama Canal Railway Company**

- ❑ The trans-isthmus railroad handles some 500,000 container operations each year, and its continual expansion will allow it to reach 750,000.

Highly Concentrated Oligopolistic Structure

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Market Structure of Maritime Shipping Service in Puerto Rico, 2001

Carrier	Type of Vessel Operated	Vessels in PR	Weekly Capacity (FEUs one way)	Weekly Service Frequently	Ports Served	
					CONUS	PR
Crowley	Roll-On/Roll-Off Trailer Barges	8	1,837	4	Pennsauken, NJ; Jacksonville, FL	San Juan
CSX Lines	Containers	4	2,194	4	Elizabeth, NJ; Jacksonville, FL; Houston, TX; New Orleans, LA	San Juan
NPR, Inc	Containers	3	1,725	3	Philadelphia, PA Jacksonville, FL	San Juan
Sea-Star Line	Combination Ro/Ro and Container	2	1,130	2	Jacksonville, FL Port Everglades, FL	San Juan
Trailer Bridge	Container & Roll-On/ Roll-Off Barges	6	1,226	3	Jacksonville, FL	San Juan
TOTAL	N/A	23	8,112	16	N/A	N/A

Source: Data obtained from carrier web pages

Sea Star bought *Navieras de Puerto Rico* (the original government-sponsored shipping company) in 2002/2003. In March 5, 1995, *Navieras* was first sold to a private group of investors.

Highly Concentrated Oligopolistic Structure

Market Structure of Maritime Shipping Service in Puerto Rico, 2012

Carrier	Type of Vessel Operated	Vessels		Weekly Capacity (one way)	Weekly Service Frequency	Ports Served	
		Total	PR			CONUS	PR
Crowley	Roll-On/Roll-Off (Ro/Ro)	200 (21 LAC)	8	3,640 FEU	3 weekly sailing service & 1 weekly from Jacksonville, FL	Pennsauken, NJ Jacksonville, FL	San Juan
Sea Star Line	Lift-On/Lift-Off (Lo/Lo) & Ro/Ro	4	3	1,800 FEU	3	Jacksonville, FL Port Everglades, FL	San Juan
Trailer Bridge, Inc.	Ro/Ro	7	5	1,655 containers 54' (2,235 FEU)*	Four vessels provide 2 weekly sailing service & one vessel every 7 days	Jacksonville, FL	San Juan
Horizon Lines, Inc.	Containers	20	4	7,947 TEU (3,974 FEU)*	3 weekly sailing service & 1 every 14 day from Houston with connection in Tampa, FL	Elizabeth, NJ Jacksonville, FL Houston, TX Tampa, FL	San Juan
TOTAL	N/A	231	20	11,649	14	N/A	N/A

Source: Data obtained from carrier web pages

* Conversions in FEU made by authors

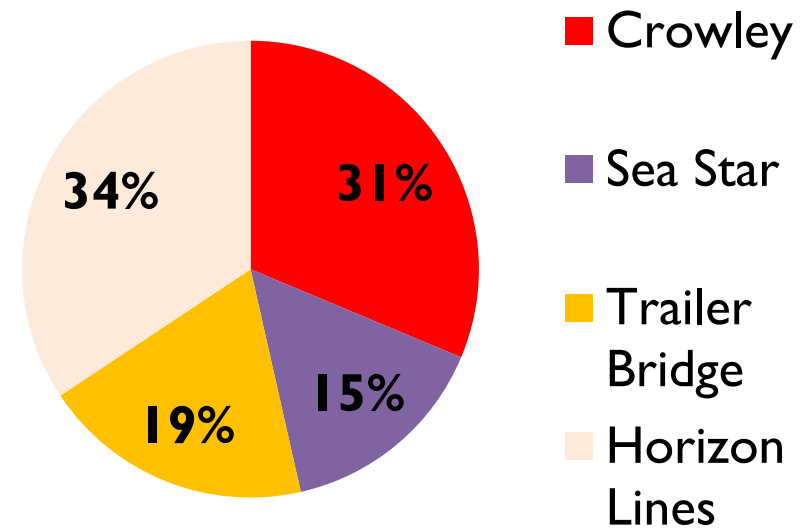
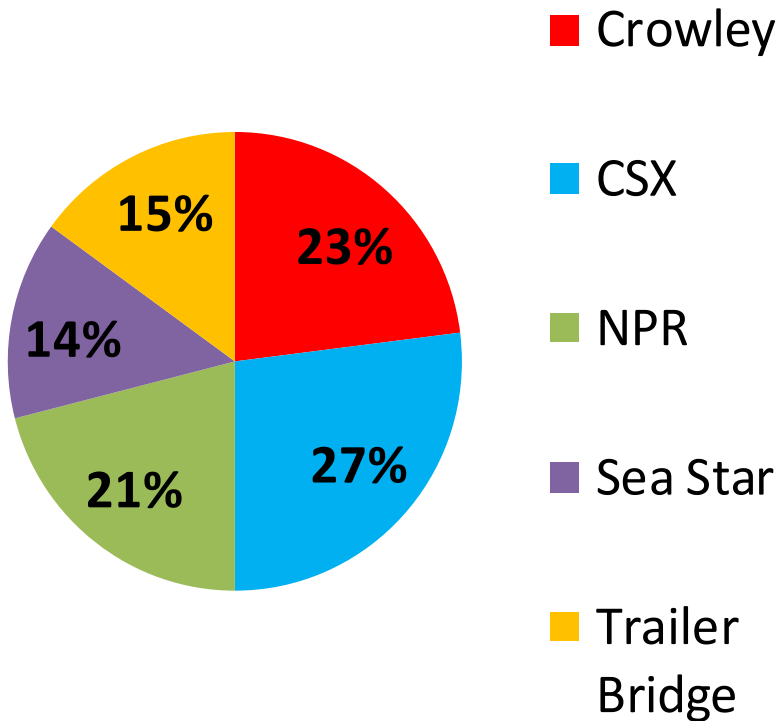
A reduction in weekly service frequency and in number of vessels. However, the vessels weekly capacity shows an increase.

Potential Market Shares based on
Total FEU weekly capacity

2001

Potential Market Shares based on
Total FEU weekly capacity

2012



Highly Concentrated Oligopolistic Structure

Justificación: Discriminación de Precios y Leyes de Antimonopolio

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- Acusadas por la US DOJ en el 2008.
 - Trailer Bridge (inmunidad).
 - Horizon Line, LLC (multa \$45 millones, paga \$15 millones quiebra).
 - Sea Star Line - \$14.2 millones.
- Demanda de clase por parte de 58 importadores
 - \$52.25 millones (\$20 Horizon, \$18.5 Sea Star y \$13.75 Crowley).
- Gobierno de P.R.
 - MOU \$1.7 millones
 - En conjunto Horizon line, Sea Star Line, Crowley Liner Services

Price Discrimination & Antitrust Litigations

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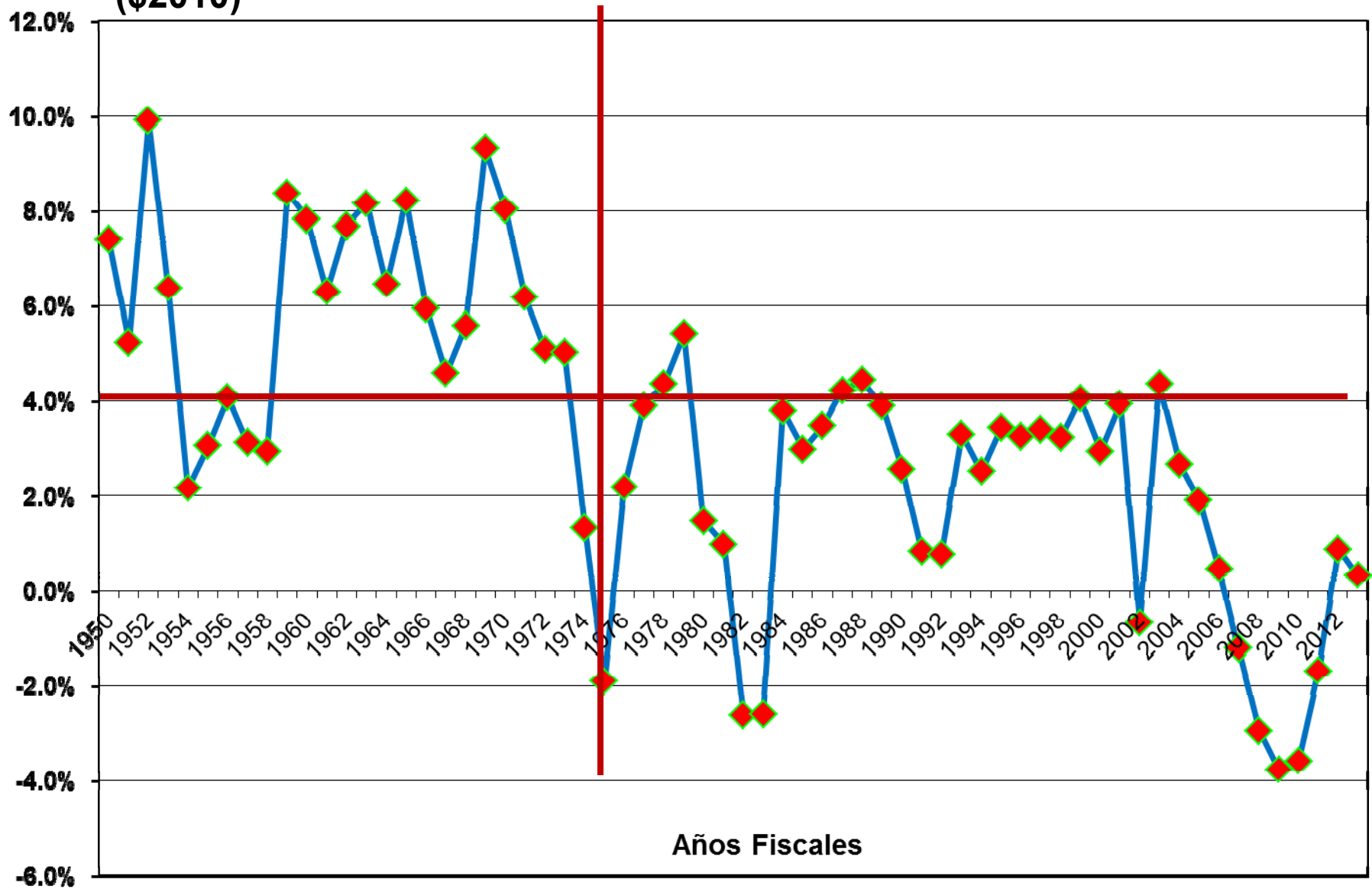
- ❑ In 2008, the U.S. DOJ Antitrust Division served search warrants and subpoenas on four shipping carriers for violation of the Sherman Act. 15 U.S.C. §§ 1 and 3.
- ❑ Relevant period: May 2002 – April 2008
 - ❑ Trailer Bridge enter into the DOJ Antitrust Division's Leniency Program (2008).
 - ❑ Horizon Line, LLC agrees to pay a criminal fine of \$45 million (Feb. 23, 2011). The fine was reduce to \$15 million due to bankruptcy (April 2011).
 - ❑ Sea Star Line agrees to pay a criminal fine of \$14.2 million (Nov. 17, 2011).
 - ❑ Five former shipping executives from both Sea Star Line and Horizon Lines have been sentenced to pay a total of nearly \$85,000 in criminal fines and to serve more than 11 years in prison, collectively.
 - ❑ In January 2009, one of the former shipping executive was sentenced to 48 months in jail, the longest jail term ever imposed for a single antitrust violation.

Price Discrimination & Antitrust Litigations

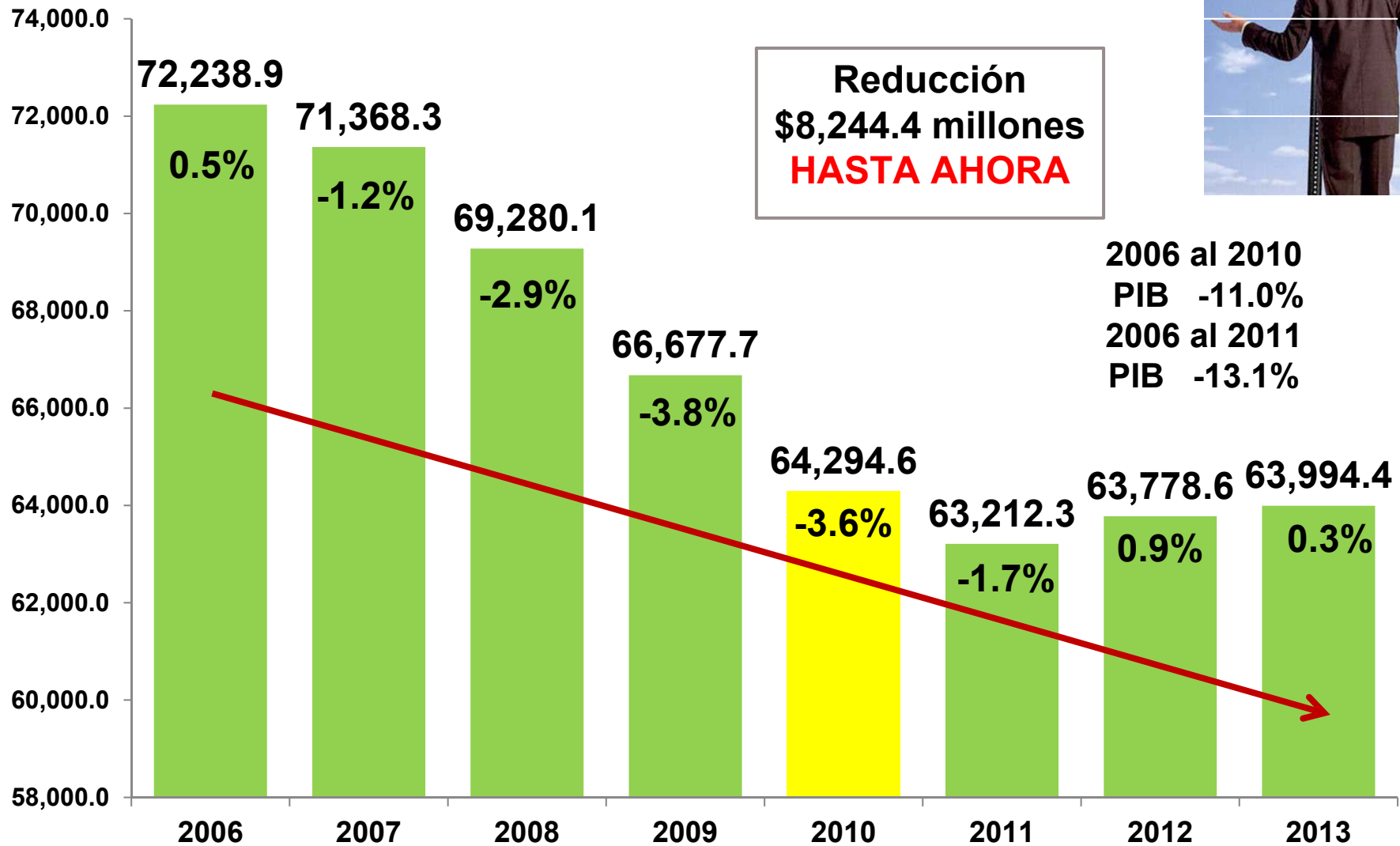
55

- ❑ Subsequent to the commencement of the DOJ investigation, 58 Class Action Lawsuits were filed by the direct purchasers against the domestic shipping carriers, 34 were relate to ocean shipping services in PR.
- ❑ On August 31, 2011, the U.S. District Court for the District of Puerto Rico approved the settlements for a total of \$52.25 million — \$20 million from Horizon, \$18.5 million from Sea Star and \$13.75 million from Crowley.
- ❑ In February 2011, the shipping carriers entered into a Memorandum of Understanding with the attorneys representing the indirect purchasers and the Commonwealth of Puerto Rico.
- ❑ Under the Memorandum of Understanding, Horizon line, Sea Star Line and Crowley Liner Services each agreed to pay \$1.7 million for a full release in those matters.

Cambio Porcentual en el PNB Real de Puerto Rico: 1950 – 2013 (\$2010)



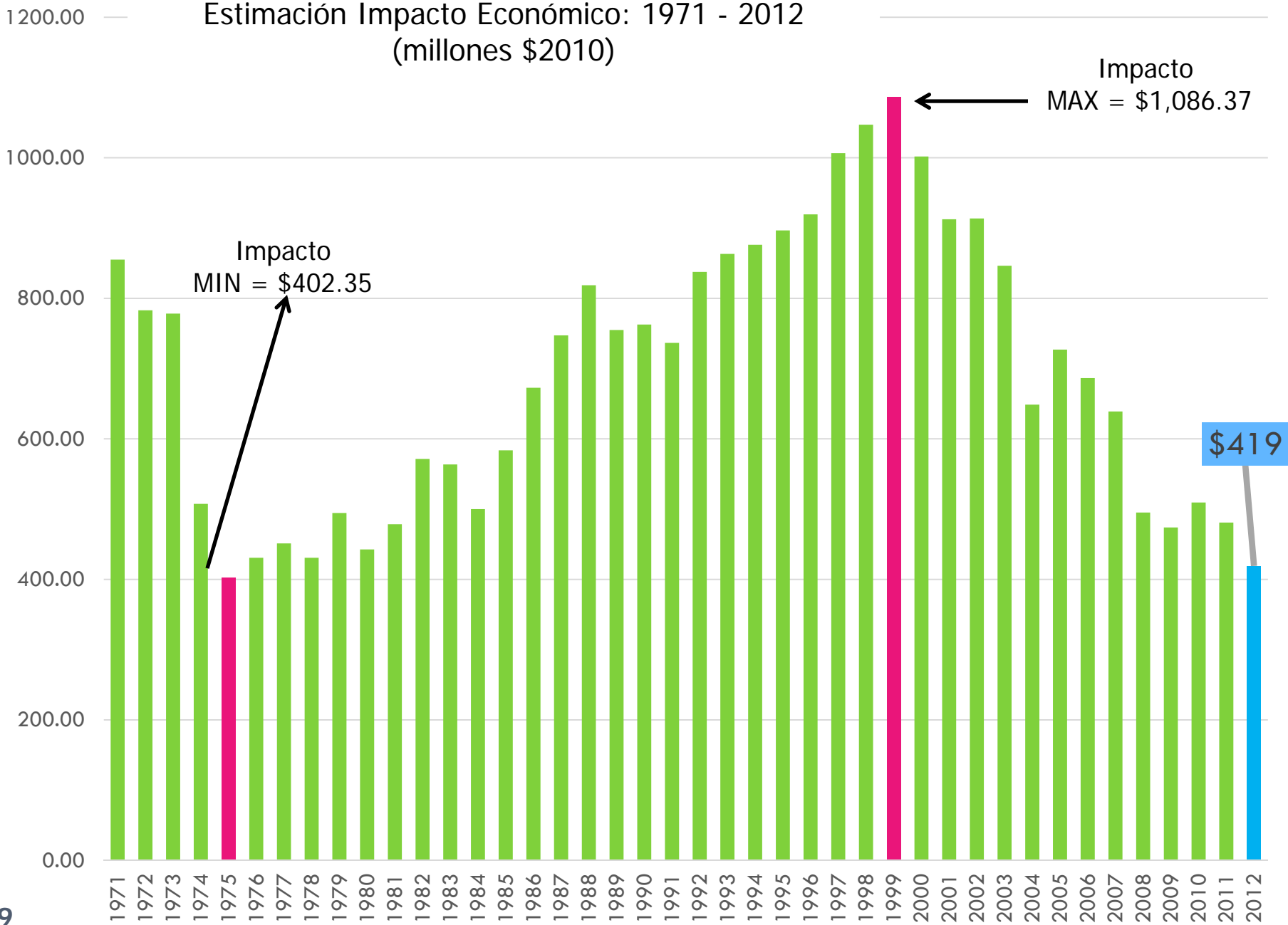
Recesiones en Puerto Rico



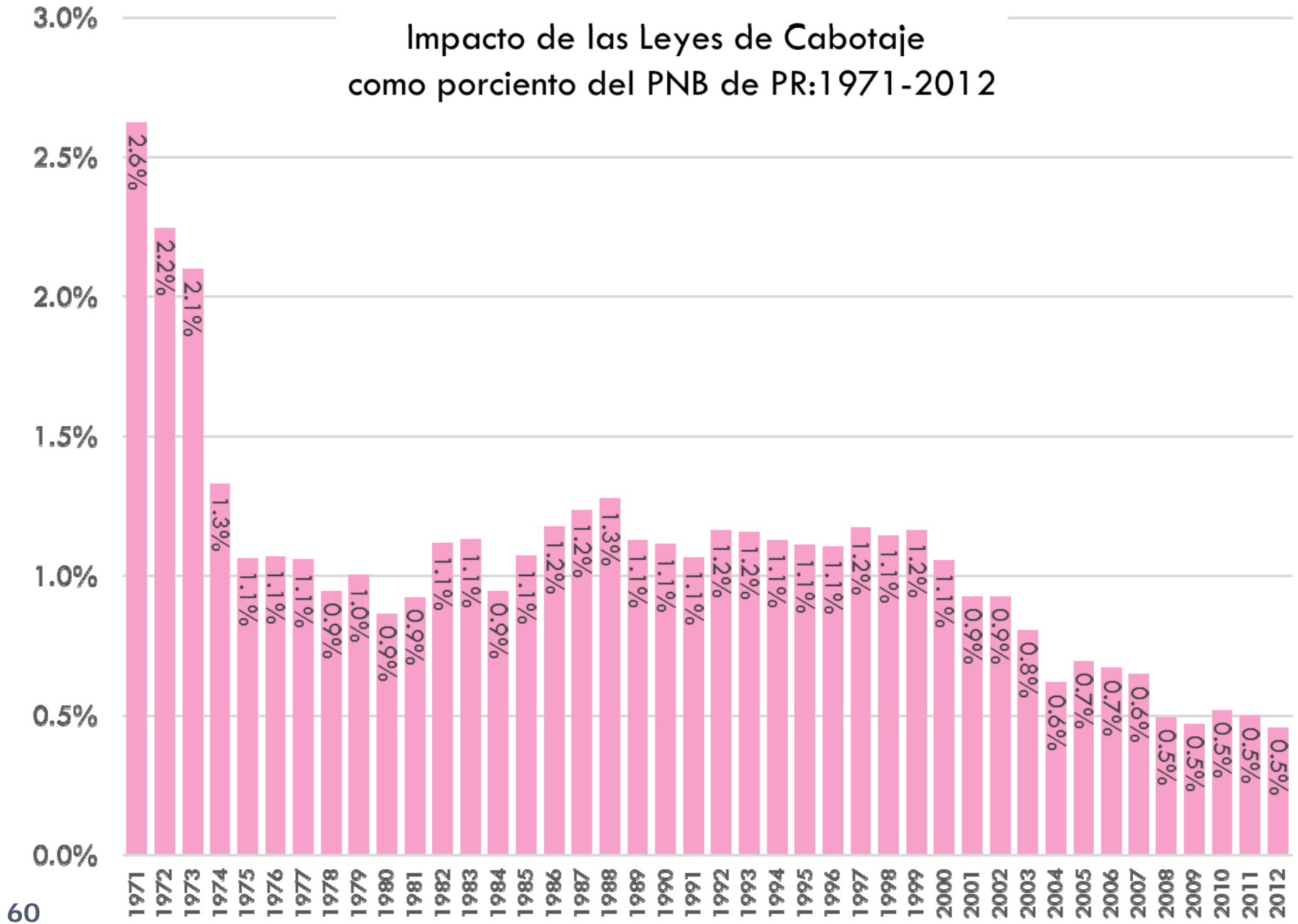
Modelo Econométrico



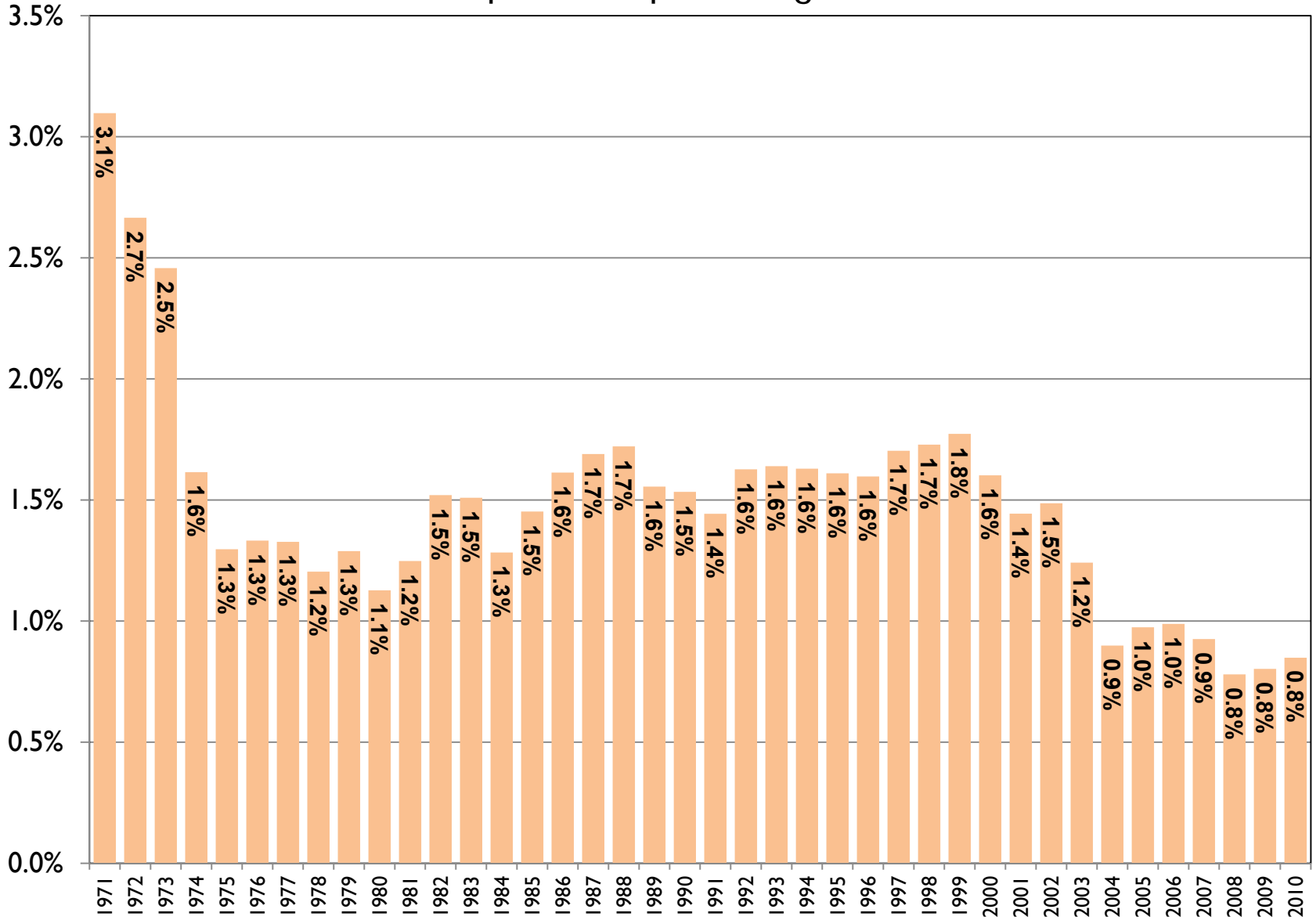
Estimación Impacto Económico: 1971 - 2012 (millones \$2010)



Impacto de las Leyes de Cabotaje como porcentaje del PNB de PR:1971-2012



Jones Act Impact as a percentage of PR's GNP

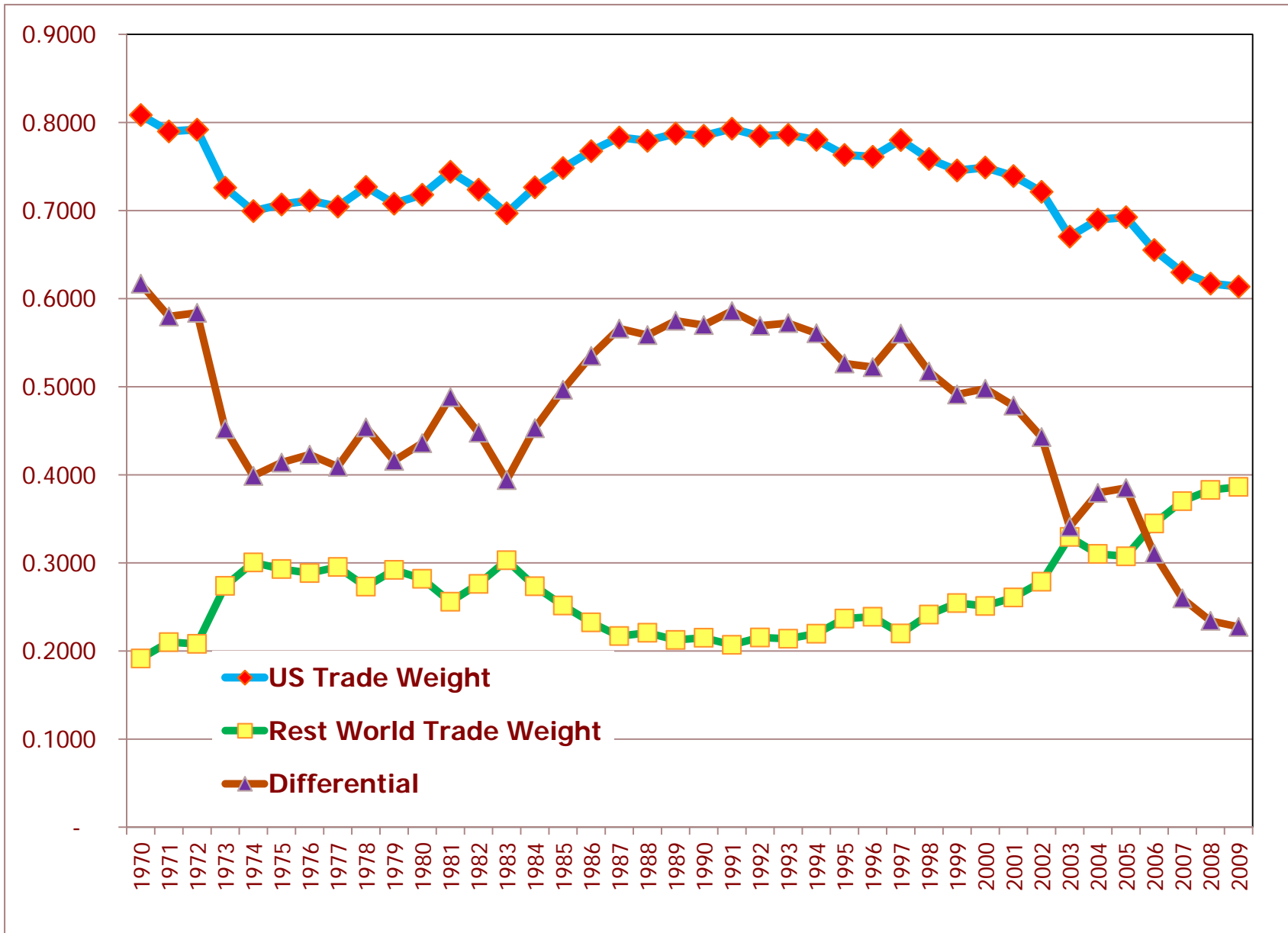


Factores Determinantes en Impacto de las Leyes de Cabotaje

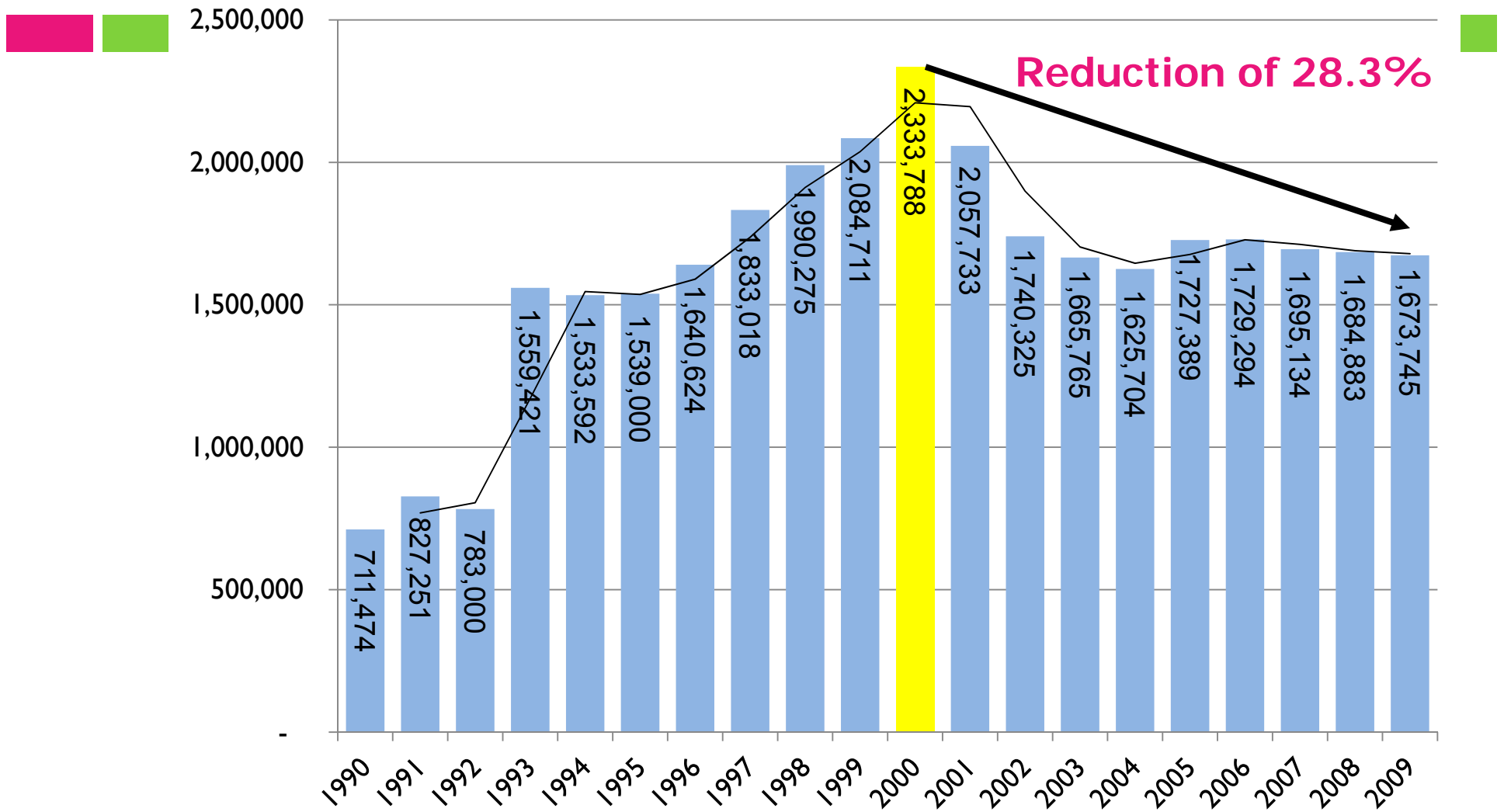
62

1. La Gran Recesión.
2. Debilitamiento base manufacturera.
3. Disminución comercio exterior con EUA.
4. Aumento en comercio exterior con el resto del mundo.
5. Cambio estructural: Transporte de mercancías áreas Aeropuerto Rafael Hernández en Aguadilla, PR.

Puerto Rico's Trade Commerce Distributional Weight: FY 1970 - 2010



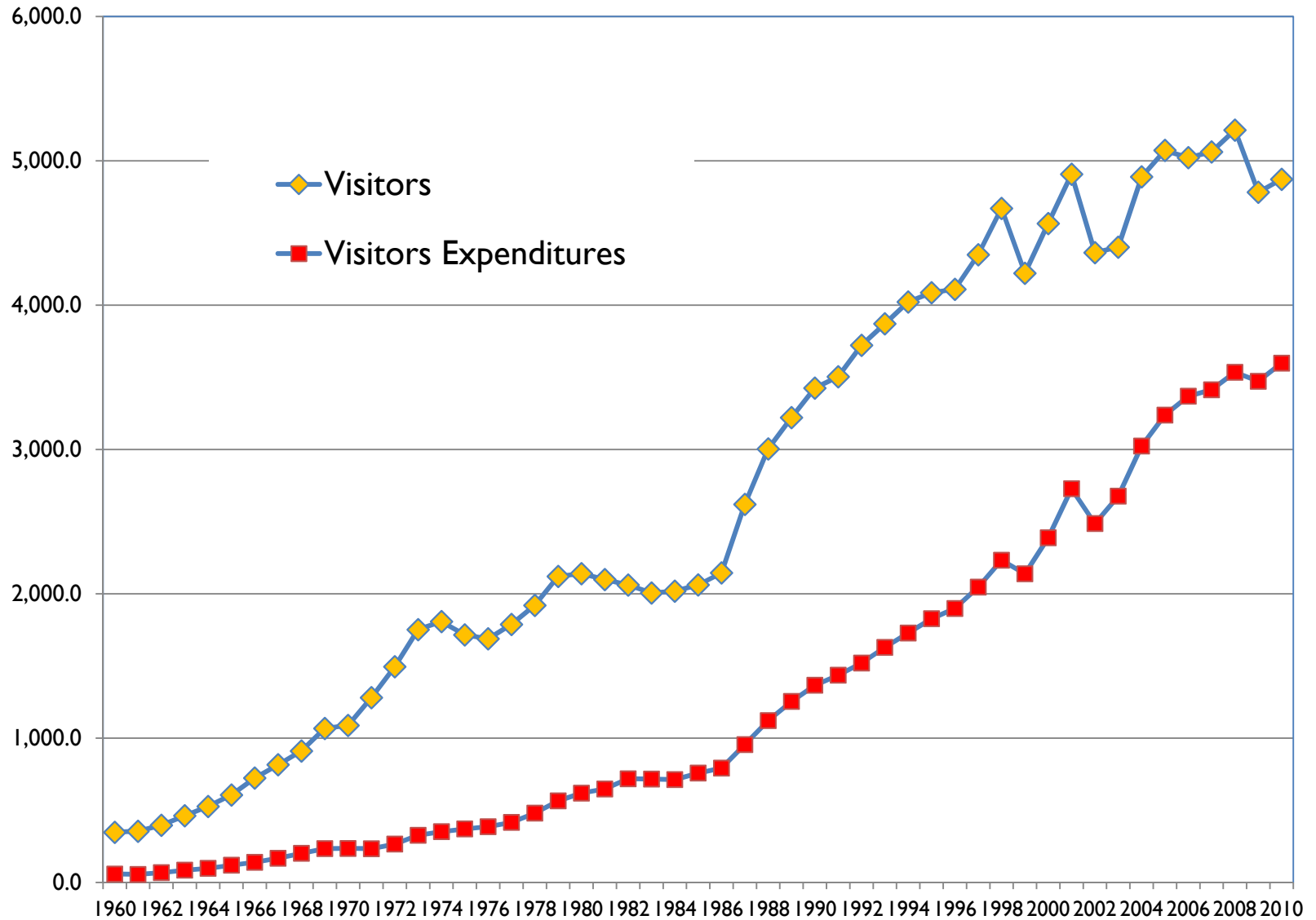
San Juan: Traffic of Containers in TEUs



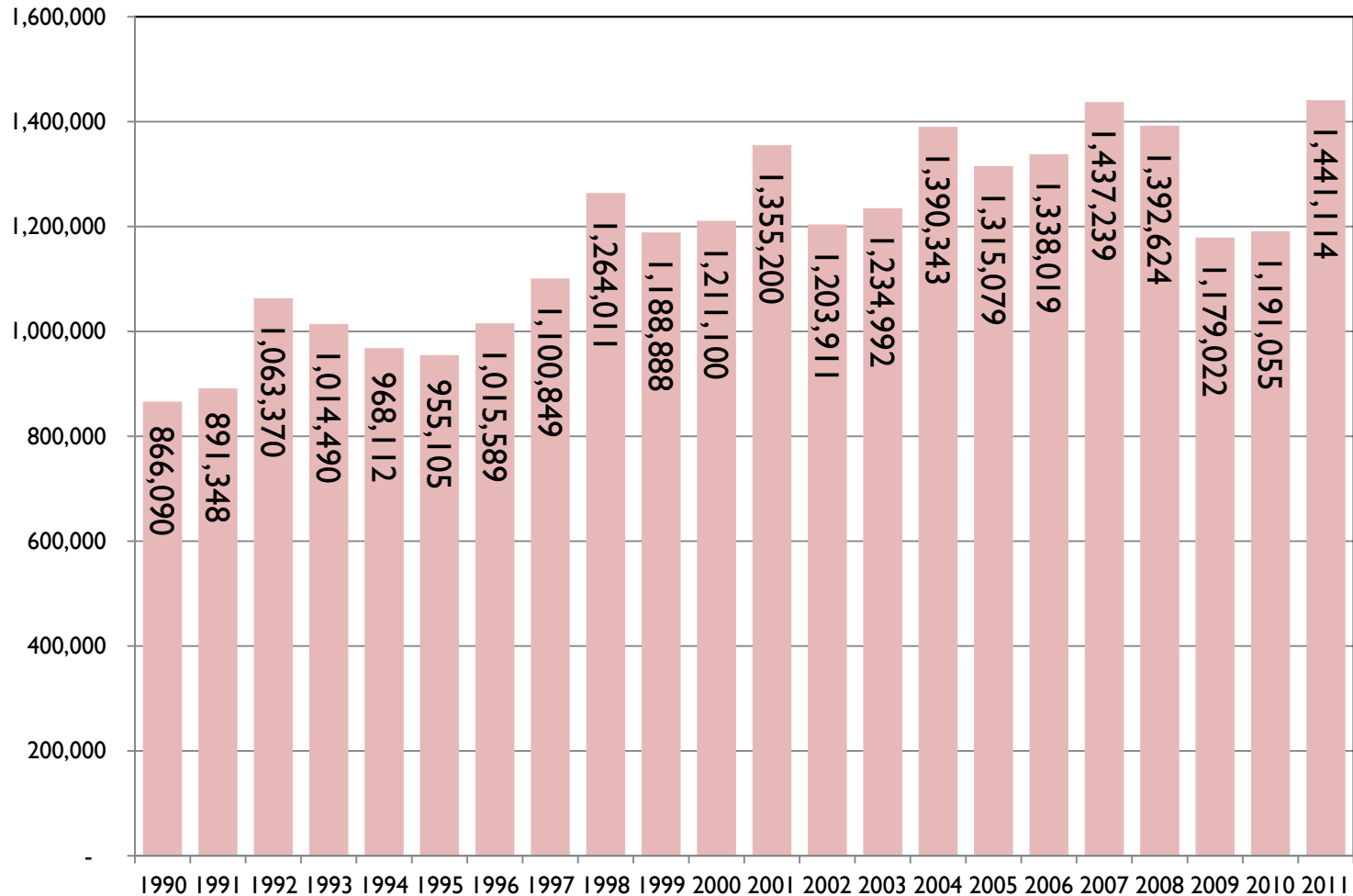
Source: America Association of Ports Authorities at <http://www.aapa-ports.org>

Number and Expenditures of Visitors in Puerto Rico: FY 1960-2010

(Visitors in thousand persons & Expenditures in millions dollars)



PR's Success Story Cruise Ship Passengers: FY 1990-2011



Source: Puerto Rico Tourism Company. *Selected Tourism Industry Statistics*. Various issues.

Recommendations

- The development of a value added fishery industry by allowing foreign vessels to unload fishery in Puerto Rico's ports (Mayaguez, Ponce) could be accomplished by the no application of the Nicholson Act (46 U.S.C. § 55114) in Puerto Rico.

Who is exempted from the Nicholson Act?

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□ **Virgin Islands.**—

□ *In general.*— A **foreign vessel of not more than 50 feet overall in length** may unload its catch of fresh fish (whole or with the heads, viscera, or fins removed, but not frozen, otherwise processed, or further advanced) in a port of the Virgin Islands for immediate consumption in those islands. Fish unloaded under this paragraph may be sold or transferred **only for immediate consumption**. In the absence of satisfactory evidence that a sale or transfer to an agent, representative, or employee of a freezer or cannery is for immediate consumption, the sale or transfer is deemed not to be for immediate consumption. This paragraph does not prohibit the freezing, smoking, or other processing of fresh fish by the ultimate consumer of the fish.

□ **Northern Mariana Islands.**— Subsection (a) does not apply to the Northern Mariana Islands.

□ **American Samoa,** exempted since 1954.

Recommendations

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- A phase out process of 10 years to repeal Jones Act.
 - Phase One (Enacted in the 1st year):
 - No U.S. built requirement. Shipping companies operating in Puerto Rico will be able to buy vessels in Korea, Japan, Brazil or elsewhere. According to a GAO (1988) these vessels can be purchased at capital investment of about one-third of those under the Jones Act.

Recommendations

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- A phase out process of 10 years to repeal Jones Act.
 - Phase Two (Enacted in the 5th year):
 - 50% ownership vessel requirement and place of business in Puerto Rico. This will allow the possibility of foreign direct investment in Puerto Rico's shipping market.
 - This is crucial for the potential development of a valued added transshipment port in Ponce were intermediates foreign products could be imported for final elaboration in order to be re-exported to the US market or elsewhere, taking advantage of the "free market" between Puerto Rico and the US or other U.S. free trade agreement .

Recommendations

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- A phase out process of 10 years to repeal Jones Act.
 - Phase Three (Enacted in the 10th year).
 - 50 % of U.S. flagged ship requirement. To allow 50% of foreign-registered ships' involvement in the coastal shipping between ports of Puerto Rico and U.S.

OCDE (2001) en su informe titulado *Regulatory Issues in International Maritime Transport*

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- Cabotaje es reconocido como importante para muchos países. Sin embargo, se ha cuestionado la efectividad del cabotaje en la preservación de empleo y flotas nacionales y regulaciones de cabotaje se han relajado en la Unión Europea y en otros lugares sin evidente desventaja en costos. Por lo tanto, teniendo en cuenta los beneficios que siguió a la liberalización interna en otros sectores económicos, se sugiere que los países que restringen el cabotaje deben considerar retirar esas disposiciones. Incluso si no es políticamente viable para lograr la plena liberalización inmediatamente, debe prestarse atención seria a fijar un plazo para esa liberalización, con acceso dado inicialmente a países miembros de la OCDE. Plena liberalización puede seguir en una etapa posterior

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. p.11

Crecimiento versus Desarrollo Económico

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Reflexión...

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(1706-1790)

- “Without continual growth and progress, such words as improvement, achievement, and success have no meaning.”

-Benjamin Franklin



(1917-1963)

- “Conformity is the jailer of freedom and the enemy of growth.”

-John F. Kennedy - Address to the UN General Assembly (Sept. 25, 1961)

GRACIAS