

Puerto Rico and the United States Under the Cabotage Laws: A Breach to the World Trade Organization's Member Agreement?

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■ **ABSTRACT**

The objective of this essay is to evaluate the governmental and self-regulated power of Puerto Rico, regarding the cabotage laws and its relation with the United States. The history of Puerto Rico with the United States, certain laws and jurisprudence, as well as, the responsibility of the United States and the World Trade Organization is studied. It is concluded that Puerto Rico, although enjoying certain sovereign attributes, remains a territory under the control of the United States Congress.

Keywords: Puerto Rico, United States, cabotage laws, territory, World Trade Organization

■ **RESUMEN**

El objetivo de este ensayo es evaluar el poder gubernamental y auto regulatorio de Puerto Rico, en relación con las leyes de cabotaje y su relación con Estados Unidos. Se estudia la historia de Puerto Rico con Estados Unidos, ciertas leyes y jurisprudencia, así como la responsabilidad de Estados Unidos y la Organización Mundial del Comercio. Se concluye que, aunque Puerto Rico goza de ciertos atributos de soberanía, sigue siendo un territorio bajo el control del Congreso de Estados Unidos.

Palabras clave: Puerto Rico, Estados Unidos, leyes de cabotaje, territorio, Organización Mundial del Comercio

Puerto Rico (P.R.) has been a territory of the United States (U.S.) since 1898. In 1900, the Foraker Act, the first constitutional law governing the relation between P.R. and the U.S., decreed that all maritime transportation between the mainland and the island shall be conducted in vessels under the U.S. flag (Foraker Act, 1900), as a result of the nationalization of all vessels owned by Puerto Ricans in the island.¹ From there onwards, the Foraker Act defined that the coastal transportation between the U.S. and P.R., would be regulated according to U.S. laws and regulations.

In 1917, the second constitutional law between the U.S. and P.R., known as the Jones Act, defined via an amendment in 1920 that from then onward, all maritime transportation between the U.S. mainland and the island of P.R. would be conducted exclusively with vessels operating under the U.S. flag; this amendment is called the Merchant Maritime Act of 1920, also known as the cabotage laws. Different from the period that initiated in 1900, when the U.S. nationalization of the Puerto Rican vessels occurred, the amendment defined that the maritime trade between the U.S. mainland and P.R. should occur exclusively in U.S. flagged vessels.

The cabotage laws sanction in Section 27, among other things, that the coastwise trade should be conducted under vessels registered with the U.S. flag; in addition, no ship used for coastwise trade can be manufactured outside of U.S. dockyards. Finally, the vessel crew in particular the captain, engineers, and sailors must be U.S. citizens (Jones, 1921).

The U.S. cabotage laws apply to P.R., although it is important to recognize that they also apply arbitrarily to other non-mainland ports. In the same line of thought, they also exclude certain non-mainland ports. It is important to explain that the cabotage laws apply both to U.S. states and territories (George, 1990). There are several exceptions on their application that benefits U.S. territories

¹ The Foraker Act of 1900, article 9, established the first step for the eventual implementation of the cabotage laws of 1920. Under the Foraker Act, the vessels owned by the inhabitants of P.R. were nationalized under the U.S. flag and regulated under the U.S. coastal maritime laws; this process constituted a foundation for the implementation later of the 1920 legislation.

and not the states. P.R. is in a complicated position; the cabotage laws apply to the island as well as to two U.S. states Hawaii and Alaska, and the territory of Guam; but these laws do not apply to the U.S. Virgin Islands, a jurisdiction next to the Puerto Rican archipelago in the Caribbean.

As of today in 2017 and for almost 100 years, Puerto Ricans living in the island import 85% of all the goods consumed locally. They have to pay between 20% and 60% more for the goods imported from the mainland (Dietz, 1987); this is due to the fact that the U.S. maritime flag is the most expensive in the world. Since the 1920 legislation, 3.5 million Puerto Ricans pay more than the rest of American citizens for the same goods that are much cheaper on the mainland (Valentín-Mari & Alameda-Lozada, 2012).

It is our contention that the U.S. has created an exclusive maritime zone within its borders that privileges the American capital, both by way of exclusive transport rights, as well as increasing the value of the products exported to P.R. from the U.S. mainland. In this sense, P.R. constitutes an economic zone that discriminates against non-U.S. based capital, in the service industry of maritime transportation and the manufacturing industry of goods exported to P.R. (Lazarus & Ukepere, 2011).

Keeping alive the U.S. cabotage laws of 1920 can be in itself a type of protectionist measure, which might be against the U.S. position at the World Trade Organization (Oyedemi, 2011); nonetheless, since the U.S. joined said international organization, it raised its position to allow it to exclude the cabotage laws from the interference of the World Trade Organization (WTO). Up to this date, the cabotage laws of the U.S. are excluded, by way of a reserve or exclusion, from the WTO.²

What makes the case of P.R. a unique jurisdiction within the U.S. is that P.R. is a colonial territory, which belongs to the U.S. by virtue of Article IV, section 3 of the U.S. Constitution. Since 1898, P.R. belongs to the U.S. and since the Insular Cases of 1901 it is admin-

² The U.S. joined the WTO in 1995; since then, it managed to be excluded by way of exercising a reserve in paragraph 3 of the General Agreement on Tariffs and Trade of 1994 (Van Grassek, 2013).

istered by the U.S. Congress, with a civilian government with no voting political representation in the U.S. Congress.³ It is evident that the U.S. laws as they are applied to P.R., in particular the cabotage laws render the Puerto Rican people incapable of questioning, modifying, or suspending them (Magee, 2002).

What makes P.R. different from Hawaii, Alaska, or the U.S. Virgin Islands? In 1950, through U.S. constitutional reforms in P.R., the U.S. government promoted a kind of self-government for the island, called Commonwealth of Puerto Rico, which placed it in a different position to the rest of the territories. P.R. is today the only U.S. territory that has a self-rule government and whose constitution was drafted by the local people. In addition, the entire government of P.R. is locally elected.⁴ What P.R. does not have is equal representation in the U.S. Congress. The colonial condition of P.R. in relation to the application of the cabotage laws, distinct from Hawaii, Alaska, and the territory of the U.S. Virgin Islands, rests on the fact that P.R. suffers from the negative impact of such laws without having the capacity to challenge them legally or politically.⁵

³ The exception is under the Foraker Act (1900) that established the position of Resident Commissioner for the Puerto Rican people, who is elected every four years, with capacity to participate in the House of Representative of the U.S. Congress, but who does not have the right to vote.

⁴ On June 13, 2016 the U.S. Supreme Court decided the case of *Commonwealth of Puerto Rico v. Sánchez-Valle* (2016); this case challenged, modified, or partially qualified the existing legal and politically reasoning of what P.R. is, in particular, how much self-rule or “sovereign powers” it has or how much a classic colonial territory P.R. is. For the purpose of the discussion in the text, it suffices to state that as a colonial territory with a self-rule government, P.R. is in no condition or position to challenge the cabotage laws of the U.S.

⁵ During June 2016, the U.S. Supreme Court decided two cases, which are of paramount importance today to define the U.S.-P.R. political relationship; these are the cases of *Commonwealth of Puerto Rico v. Sánchez Valle* (2016) and *Commonwealth of Puerto Rico v. Franklin California Tax Free* (2016), decided in June 9th and 13th, respectively; both cases affirm that P.R. is a U.S. territory, under the U.S. Constitution (Article IV, section 3) and the Congress plenary powers. Within the recently affirmed logic, the U.S. Congress has the ultimate say in what concerns to P.R., and how to conduct business with the territory; this includes, amongst others, preserving the cabotage laws.

By way of U.S. Public Law 600 of 1950, the Congress authorized P.R. to enact its own constitution, creating a unique condition which de facto produces a “sovereign” jurisdiction which can be treated differently and not equally to the rest of the state and territories (*Commonwealth of Puerto Rico v. Sánchez Valle*, 2016).⁶ In this sense, the U.S. has different “sovereign zones” within its own border. One example of an internal equal-sovereign zone can be Alaska or Hawaii; however, a non-sovereign zone, although treated differently can be the U.S. Virgin Islands.

In the case of P.R., a question to be answered is whether once the Commonwealth self-government was created by the sovereign power of the people of P.R., was a different territorial zone established and whether harsher economic regulations can be imposed to the trade of P.R. with the U.S. I contend that if the answers are affirmative, such actions are a breach by the U.S. to its obligations before the WTO.⁷

Can the U.S., which is a signatory to the WTO, promote an internal zone market in which it de facto excludes non-national capital and transport companies? Can non U.S. nationals interested in participating in P.R., which is the fifth largest world consumers market of mainland goods, challenge the current situation created by the cabotage laws? Can a formal complaint be presented against the U.S. before the WTO by the Puerto Rican people, or by non-U.S. citizens interested in participating in the commercial market of the island? These are the questions that this research project and literature review will seek to answer.

⁶ In *Commonwealth of Puerto Rico v. Sánchez-Valle* (2016), the U.S. Supreme Court stated on page 13, the following: “Those constitutional developments were of great significance—and, indeed, made Puerto Rico “sovereign” in one commonly understood sense of that term. At that point, Congress granted Puerto Rico a degree of autonomy comparable to that possessed by the States. (...) As this Court has recognized, Congress in 1952 “relinquished its control over [the Commonwealth’s] local affairs[,] grant[ing] Puerto Rico a measure of autonomy comparable to that possessed by the States.”

⁷ As it will be discussed in the text, the U.S. convenient position in relation to the cabotage laws, is against the principle of free trade and competition, promoted in its agreement with the WTO. See World Trade Organization (2014), Hamilton (2002), and Liu (2009).

The above questions have been raised and to some extent answered by the U.S. Government Accountability Office (GAO) in 2013. According to the GAO, the effect of increasing the prices of the U.S. goods imported to P.R. is not only limited to this consideration and the situation also impacts on the trade and consumer capacity of Puerto Ricans. This U.S. government office states most of the trade today of goods entering P.R. is no longer conducted on U.S. vessels but on “foreign flagged” vessels, as 67% of all the vessels that enter Puerto Rican ports are foreign-flag based and only 33% are U.S.-flag.⁸

The outcome today of the U.S. 1920 cabotage laws applied in P.R. is that they are having an opposite effect by which local entrepreneurs in the island have been purchasing fewer goods from the U.S. This result is against the interest of U.S. manufacturing and agricultural industries (Slattery, Riley, & Loris, 2014).⁹

In this literature review essay, I will explore the above questions among others. In the first part, I will present the U.S.-P.R. legal basis as from the Foraker Act of 1900 up to the Federal Relations Act of 1950. In the second part, I will discuss the constitutional reforms of P.R. from 1946 to 1952, which lead to the establishment of the Commonwealth of Puerto Rico. In the third part, I will explore the U.S. commitments before the WTO in relation to free-market and trade access. Finally, I will provide the conclusion.

⁸ This is a very interesting fact. What is important to raise is that the 33% of the maritime trade which occurs in U.S. flagged vessels amounts to the core of the business. P.R. lives out of the trade with the U.S. An 85% of what we consume comes from the U.S. The report does not explain what is the content of the 33% of the trade conducted in U.S. flagged vessels (Government Accounting Office, 2013); nevertheless, using different data, one realizes the value of trade today between the U.S. and P.R.

⁹ According to the Heritage Foundation working paper on the cabotage laws, the U.S. position is only sustained today in all the international free trade agreements, because it is “a sensitive area” for the U.S. government, (Slattery, Riley, & Loris, 2014); yet, as the authors documented in their working paper, the opposite is happening: the U.S. economy is losing in innovation, in competitiveness, and, moreover, in interrelating and integrating with other investment markets (Slattery et al., 2014).

The U.S. Rule Over P.R.: From the Foraker Act to the Federal Relations Act

The U.S. took formal control over P.R. after the Spanish-American War of 1898. Article II of the U.S.-Spain peace treaty signed on December 10, 1898 established that: “Spain cedes to the U.S. the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones” (Treaty of Paris, 1899, p. 616).

Within the logic of the above article, P.R. became part of the U.S. federation controlled according to Article IX of said treaty, by the sovereign power of the U.S., and in particular by the U.S. Congress. It was established in said article of the Treaty of Paris (1899) that:

Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside. *The civil rights and political status of the native inhabitants of the territories hereby ceded to the U.S. shall be determined by the Congress* [emphasis added]. (p. 619)

As from 1898, Puerto Ricans have been struggling to understand, acquire, or modify the existing relationship between the U.S. and the island; no one was clear at the initial stages, even today, of

how over broad and extensive such U.S. constitutional disposition is. To be under U.S. Congressional authority is for the Puerto Rican people a very confusing if not inexplicable experience. What entails for the Puerto Rican people to be under the plenary powers of the U.S. Congress?¹⁰ The first U.S. constitutional reforms for P.R. as well as for other U.S. territories, took place in 1900, when the Foraker Act was enacted.

As result of the judicial decision by the U.S. Supreme Court in *Commonwealth of Puerto Rico v. Sánchez-Valle* (2016), a new development has emerged which qualifies this conversation. According to the majority opinion issued by Justice Kagan, P.R. has no “sovereign” powers in the traditional sense, although for certain matters can be treated as a state of the U.S. federation, which indeed has sovereign powers. As a colonial territory, organized under Article IV, section 3, of the U.S. Constitution, P.R. only enjoys a delegated power for self-rule government (*Commonwealth of Puerto Rico v. Sánchez Valle*, 2016).

Returning to the original legal history the Foraker Act of April 2, 1900 was enacted to organize a civil government for P.R. It provided for the development of a republican type of government (executive, legislative, and judicial powers) structured by Congress, and executed by the U.S. president. In particular, all members of the Puerto Rican Senate, the local Supreme Court, and the governor were to be appointed by the U.S. president.

In what respects to specific terms about the transportation of maritime goods, the Foraker Act (1900) established in Sec. 9:

¹⁰ Year 2016 has been so far the year in which the three branches of powers of the U.S. government—the executive, the legislative, and the judiciary—have been more active on issues related to P.R., probably since the 1950-1953 period. As an example, recently the U.S. Congress enacted the PROMESA Act (that in English means promise), which is a type of federal financial oversight legislation over the P.R. government and economy. PROMESA is consistent with the will of the U.S. executive power, by way of the constitutional limitation that it is the responsibility of the U.S. Congress to handle the Puerto Rican affairs. This position is also consistent with the legal stance enunciated by the U.S. Supreme Court in the case *Commonwealth of Puerto Rico v. Sánchez Valle* (2016).

That the Commissioner of Navigation shall make such regulations, subject to the approval of the Secretary of the Treasury, as he may deem expedient for the nationalization of all vessels owned by the inhabitants of Porto Rico on the eleventh day of April, eighteen hundred and ninety-nine, and which continued to be so owned up to the date of such nationalization, and for the admission of the same to all the benefits of the coasting trade of the United States; and the coasting trade between Porto 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. (p. 79)

The beginning of the implementation of the cabotage laws of 1920 commenced with the above-mentioned section. The island was perceived as belonging to the U.S. federation because the U.S. Congress established that P.R., for effect of the legal treaty, was part of the U.S. border and within its jurisdiction for internal control of the maritime traffic.

In the Insular Cases, from 1901 to 1922, the U.S. developed an understanding of the scope of the Foraker Act, which was explained in constitutional terms. In the controversial case *Downes v. Bidwell* (1901), in a majority-divided opinion, the U.S. Supreme Court ruled that P.R. belonged to the U.S. but was not part of the federation. Although that decision did not set a precedent, 20 years later in the case *Balzac v. Porto Rico* (1922), the U.S. Supreme Court, in a majority decision, adopted the recommended decision in *Downes v. Bidwell* (1901) and established that certain constitutional rights do not apply to P.R., as the island was a non-incorporated territory.

In light of the reasoning in *Balzac v. Porto Rico* (1922), today we need to explore the decision of *Commonwealth of Puerto Rico v. Sánchez-Valle* (2016). If P.R. is merely a U.S. territory organized under the U.S. Congress, then the U.S. citizens living in the island are exposed to a trade-discrimination pattern. That situation is not less different and complicated than that to which is exposed a foreign national attempting to conduct trade with the U.S. in P.R. Puer-

to Ricans are as to what respect to maritime trade, discriminated against for their place of origin and residence.

In this regard, since 1952 when P.R. adopted a self-rule government where the sovereign power of the people determined their own constitution, a claim of equality begun. Since 1952 P.R. has been recognized as an entity with different local government to the U.S. mainland, although as a congressionally-controlled U.S. territory; nevertheless, P.R. to date has no legal representation and equal rights in the U.S. Congress; therefore, the application of the cabotage laws, created multiple tiers of discriminatory practices both at the level of foreign trade and human rights.¹¹ This is an atypical critique or grievance, not recognized by the WTO, but which colonial territories such as P.R. do face.

The category of non-incorporated territory was introduced in 1901 by Judge White. This non-binding decision, established the foundations for the resolution of *Balzac v. Porto Rico* (1922). In the latter case, Judge Taft issued the opinion of the U.S. Supreme Court, where the court unanimously and with legal consequences, ruled that the island of P.R. was a non-incorporated territory, subject to the will of the U.S. Congress; as such, the rights and obligations of the U.S. citizens living in the island will be determined by the U.S. Congress.

The difference between the case of *Downes v. Bidwell* (1901) and *Balzac v. Porto Rico* (1922) rests on the historical circumstance that

¹¹ As stated under footnote 9, the U.S. by creating the cabotage laws of 1920 and maintaining a position that is not a protectionist trade barrier, should then accept the bottom line consideration: that it is discriminating against Puerto Rican people who have no equal political rights to those of the mainland. Due to the colonial condition, P.R. as a territory lacks the political power to claim to the U.S. Congress equal rights; therefore, P.R. cannot claim either to be fully independent or annexed to the U.S. federation. P.R. remains as a colonial territory where fundamental human rights are violated. In particular, the Universal Declaration of Human Rights, Article 7 (The United Nations General Assembly, 1948), reads: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination." This is consistent with the International Covenant on Civil and Political Rights, Article 14 (The United Nations General Assembly, 1966), to which the U.S. is signatory since 1992.

in 1917 the U.S. Congress enacted the second organic act for P.R., the Jones Act, properly known as the Jones-Shafroth Act. This is an important distinction, because this law only applies to the territory of P.R. As part of the U.S.-Spanish Treaty of Peace of 1898, the U.S. Congress acquired various territories, which until then belonged to Spain. From 1900, the U.S. regulated in a separate way each territory acquired from Spain, meaning that the Jones Act has its own variations in other territories, for example, in the Philippines. This other territory was organized under the Jones Act, which created the mechanisms to confer full legal sovereignty and independence to the people of Philippines.

In 1920, the U.S. Congress enacted a series of legislative measures under the Jones Act, which are also commonly known as the cabotage acts. The correct name of such legislation is the Merchant Marine Act of 1920, which was enacted to regulate internal transport of goods in U.S. ports. It also includes the manufacturing of the ships used in the U.S. maritime trade and the origin of the crews and engineers employed in the ships used to transport the goods. The cabotage laws apply to the U.S. states of Alaska and Hawaii, and also to the U.S. territories of Guam and P.R., yet it does not apply to other U.S. territories, such as the Virgin Islands.

The crux of the matter is that the Merchant Marine Act of 1920, in particular Article 9, was drafted using as framework the U.S.-Spanish Treaty of Peace (1898) and the logic of the decisions of U.S. Insular Cases, particularly by *Downes v. Bidwell* (1901). Considering the legal frame work of the time, the U.S. could impose the cabotage laws against P.R., because the island was a non-incorporated territory, which exists within the sovereign and inherent powers of the U.S. Congress.

P.R. was a traditional colonial territory, defined in Article IV, Section 3 of the U.S. Constitution. In this sense, because of the lack of any sovereign power P.R. must be treated “as equally as” the U.S. Congress defines; nonetheless, it is the Congress which decides how to treat P.R. and until 1920, it defined the island as an extension of the sovereign powers of the Congress. The “separated borders” make no illusion of sovereign powers for P.R. Moreover, after

the recent decisions of the U.S. Supreme Court on issues regarding P.R., there should be no doubt that P.R. is a self-ruled territory under the guidance and control of the U.S. Congress (*Commonwealth of Puerto Rico v. Sánchez Valle*, 2016).

The cabotage laws impose a terrible economical and financial burden on insular Puerto Ricans, which makes this law discriminatory. The cabotage laws used against the people of P.R. living in the Caribbean island are in violation of the U.S. international responsibilities to protect the human rights of its population (Canino Arroyo, 2015; Torruella, 2007).

In 1950, the U.S. enacted Public Law 600. Such law created a singular momentum in the U.S.-P.R. relation. The law defined a particular moment, by which the local population of P.R., were granted the right to legislate their own constitution. In the history of U.S. territories, this has been a unique circumstance. Neither Washington, D.C., Guam, the U.S. Virgin Islands, and other micro-territories have been granted the right to organize their own constitutional law. Only P.R., under the U.S. congressional authority, had been granted the authority to do so (*Commonwealth of Puerto Rico v. Sánchez Valle*, 2016; Neuman & Brown-Nagin, 2015).

Although there might be some differences or similarities with the Mariana Islands, the main distinction is that P.R. remained a non-incorporated territory since the Insular Cases of 1901. Meanwhile, the Mariana Islands moved to a different and unique status of some sort of free associated country. P.R. has remained within the U.S. federation, although with a particular type of status.¹²

The unique experience of 1950, also created the particularity of having to deal with a dual government for P.R. Beyond promoting the development of a local constitution, it also divided the government as a local and a federal one. The second part of Public Law 600 of 1950 redefines the Jones Act (1917) as the Federal Relations Act (1950).

¹² In this paper I will not address the issue of other U.S. territories or those with special status, such as Mariana Islands; for an interesting summary regarding that topic one should read U.S. Insular Areas: Application of the U.S. Constitution (Government Accounting Office, 1997).

Recently, via *Commonwealth of Puerto Rico v. Sánchez-Valle* (2016), we have been reminded that P.R. is just a U.S. territory administered by Congress. It is a colonial condition which the local population is subject to. Evidently, Puerto Ricans cannot question the cabotage laws, because they exist due to the will of the U.S. Congress that has plenary powers over P.R. and its people. The recent legislation Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), of 2016, is a clear demonstration and statement of the plenary powers in action. The dire effect of the plenary powers is the trade discriminatory practice against the Puerto Rican people, as well as a gross violation of human rights. This is the result of the lack of political sovereign powers, or political representation in the U.S. Congress, which violates the equal protection of the laws principle.

The Constitutional Legal Reforms of 1946-1952

The legal reforms that took place in P.R. last century originated between 1946 and 1952. In particular, the U.S. Congress began to adopt a series of measures, leading towards self-government for P.R. In terms of the measures adopted, a chronological list includes:

- A. Law for the selection of a Puerto Rican-born governor of 1946.
- B. Law for the election of the Puerto Rican governor by the local people of 1948.
- C. Public Law 600 (1950) for the establishment of a constitutional assembly by the Puerto Rican people.
- D. Public Law 600 (1950) for the modification of the Jones Act (1917) and the re-enactment of it under the Federal Relations Act (1950).
- E. Public Law 447 (1952) recognizing the Puerto Rican constitution of 1952, as enacted and voted for by the Puerto Rican people.

Within the scope of the legislation passed in a period of six years, P.R. achieved some sort of self-government, under the sovereign and inherent powers of the U.S. Congress. The subject of self-government of P.R. has never been absolutely clear, of whether it entails sovereign powers; however, in that historical period, the U.S. government proclaimed to the world that P.R. had achieved local rule, with autonomy, and that the colonial relation had been modified (Torruella, 1985, 2007; Trías Monge, 1999).¹³

The above statement needs to be qualified. Within the recent decision of *Commonwealth of Puerto Rico v. Sánchez Valle* (2016), the U.S. Supreme Court has revisited the above-mentioned commentary. The court recognized the unique status of P.R. and its capacity to self-rule; nevertheless, the Court distanced itself from the issue of whether P.R. has become a sovereign state. Indeed, if it were a sovereign state, it would have meant that it had been “invaded” by the U.S., as a matter of political domination.

The representation to the United Nations in 1953 was that P.R. had adopted a level of self-rule, which had modified the colonial relation. In relation to the ending of the U.S. government over the non-self-governing territory of P.R., The United Nations General Assembly (1953), Resolution 748, Article 5, states:

Recognizes that, in the framework of their Constitution and on the compact agreed upon with the U.S., the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty which clearly identify the status of attained of self-government by the Puerto Rican people as that of an autonomous political entity; (p. 26)

¹³ It is important to note that in the Public Law 447 of 1952, the U.S. Congress always referred to P.R. as a territory that achieved self-rule, via the compact theory (a contract between the U.S. government and the Puerto Rican people). In the UN Resolution 743, the terms used are “self-rule” and “some sort of sovereign powers.” In *Commonwealth of Puerto Rico v. Sánchez Valle* (2016), recently decided by the U.S. Supreme Court, the wording used is clear: “local self-rule for the Puerto Rican people.”

The problem with this resolution of the United Nations is that it clearly plays with legal concepts, provoking or creating the false expectation that P.R., after the reforms of 1952, had achieved a level of limited sovereign powers. If P.R. has limited sovereign powers, does it constitute the same sovereign and inherent powers of the U.S. Congress? Are we talking of two different sovereignties, creating a strange political relationship between the U.S. and P.R.?

The response comes now in the case of *Commonwealth of Puerto Rico v. Sánchez-Valle* (2016). The precise answer to the above inquiry is in the negative. P.R. only gained self-rule with attributes of sovereignty, but that does not make P.R. a sovereign state in the traditional sense (*Commonwealth of Puerto Rico v. Sánchez-Valle*, 2016 slip opinion at page 13); notwithstanding, the legal, political and economic questioning remains the same: Can the U.S. apply a double legal standard to a colonial territory which has no adequate political representation in Congress? It is our contention, that this constitutes trade-discrimination based on the colonial status; it is a colonial barrier.

The WTO and the Legal Obligations of its Members

The WTO allows members to join the organization, on a voluntary basis. According to Article XII of the WTO Agreement: “Any state or customs territory having full autonomy in the conduct of its trade policies is eligible to accede to the WTO on terms agreed between it and WTO Members” (World Trade Organization, 1994, p. 20).

Using the above definition for admitting members to the WTO, one would like to explore whether or not, P.R. can be admitted as a state or custom territory member. Note that if P.R. was indeed admitted to have some sort of limited sovereign powers in 1953, then it should be recognized by the WTO, at least as an autonomous customs territory; furthermore, it should be allowed to participate in the maritime services trade with the U.S. without restrictions to the interaction of the commerce in the region.

After the recent legal decisions and reasoning about P.R. by the U.S. Supreme Court, the island cannot be admitted to the WTO,

nor can it be treated as a separate sovereign entity, within its current status. If the political status were to change to one similar to the Marshall Islands or the Mariana Islands, then P.R. could be treated differently and the cabotage laws, for the islander's sake, could be eliminated (World Trade Organization, 2011).

Under the present circumstances and within the current regulations of the WTO, the U.S. can keep the reserves on paragraph 3 of the General Agreement on Tariffs and Trade of 1994 and allow the cabotage laws to be effective over the island of P.R. Puerto Ricans without sovereign powers of political representation cannot do much; they are trapped by legal and political considerations.

P.R.'s inability to participate in the WTO eliminates the possibility of filing a complaint against the U.S. government for discriminatory trade practices or illegal protectionist barriers. This takes the Puerto Rican people to a legal practice that dates back to 1920, which is contrary to WTO's rules and to the international defense of human rights.

The consideration over the cabotage laws in the U.S. and how they apply to P.R. poses other international problems for manufacturing capital and for agricultural capital, which might be losing business inasmuch as the Puerto Rican people are no longer buying products from the U.S.; notwithstanding, the complaint today must be seen from the perspective of the disempowered Puerto Ricans, which under the current legal system do not have the international presence to participate in international forums and seek for equal rights. This includes the right to complain against discriminatory trade practices.

Conclusions

In the U.S., the processes of regulating the cabotage protective rules, regulation, and laws dates to the early days of independence (1789). Political developments in P.R., in the 1950's, forced both the government of the U.S. and the WTO to recognize that something happened in P.R., in terms of achieving some type of limited sovereign powers and self-rule; or to the contrary, that nothing hap-

pened and P.R. remained as a traditional colonial territory since 1898, despite the constitutional changes of 1950 to 1952.

Since the legal decision and reasoning in *Commonwealth of Puerto Rico v. Sánchez-Valle* (2016), the U.S. Supreme Court has cleared up and widened our understanding of what is P.R. and its relationship with the U.S. Within this legal framework, one needs to accept that P.R., although enjoying certain types of sovereign attributes, remains a territory under the control of the U.S. Congress. If that is the case, then the question that arises is whether Congress can exercise trade-discrimination against a colonial country and a colonized people, who have no equal representation in the public policy, and deliberating and voting process.

If P.R. has limited sovereign powers, could it become a member of the WTO, and as such file a claim against the U.S. questioning the cabotage laws as they stand today since they constitute a violation to the WTO Agreement? Without sovereign powers, can P.R. be admitted to the WTO? Are the human rights of the Puerto Rican people being violated? Moreover, as a colonial territory experiencing trade-discrimination, can something be done on its behalf? Apparently, at this historical juncture, the answer to all these question is in the negative.

It seems that today no solution exists for the colonial condition of P.R. and its effect on human rights violations and trade-discrimination practices; nonetheless, the continued exploration of the many angles surrounding the cabotage laws allows us to seek an eventual adequate solution for the people of P.R.

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