

**THE BRAZILIAN MARITIME LAW
REFORM AND THE NEW LIABILITY
REGIME**



**International Maritime Law Seminar
London - 16th October, 2014**

1. Introduction to Brazil

2. Laws in force

- 1850 Commercial Code
- 2002 Civil Code
- Multimodal Transportation (Law 9.611/98)
- 1990 Consumers Act
- Piecemeal legislation

3. Bill nº 1.572

- Time Bar on Cargo Claim
- Arrest of Vessels
- Shipowner's Liability and Limitation

8,500 km of navigable coastline.¹

Among world's leading exporters of soy beans, corn, coffee, orange juice and iron ore.²

60 % of all fresh running water in Americas.

200 million people³.

2013 GDP: US\$ 2.07 trillion, worlds 7th largest economy.³
Increase of 2.3% in 2013.⁴



¹ Bahia State Docas Compy

² Ministry of Development, Industry and Foreign Trade

³ Brazilian Institute of Geography and Statistics (IBGE)

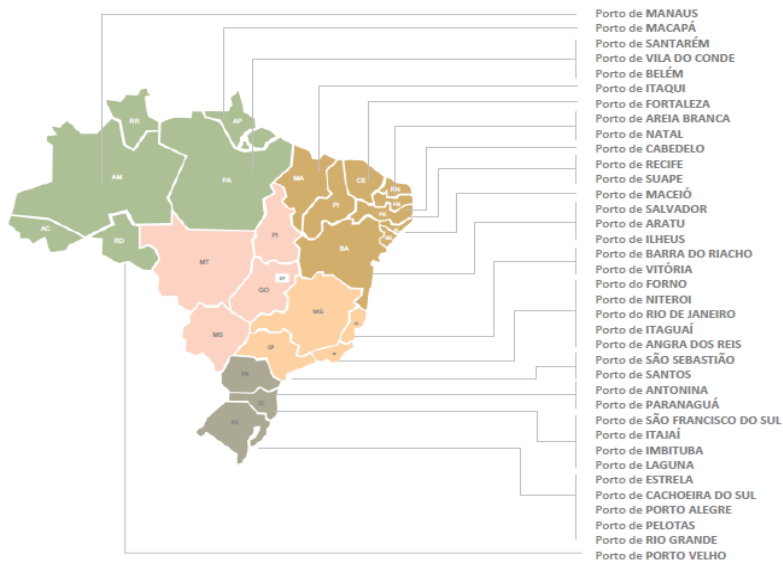
⁴ Brazilian Central Bank

✓ Ports Overview:¹

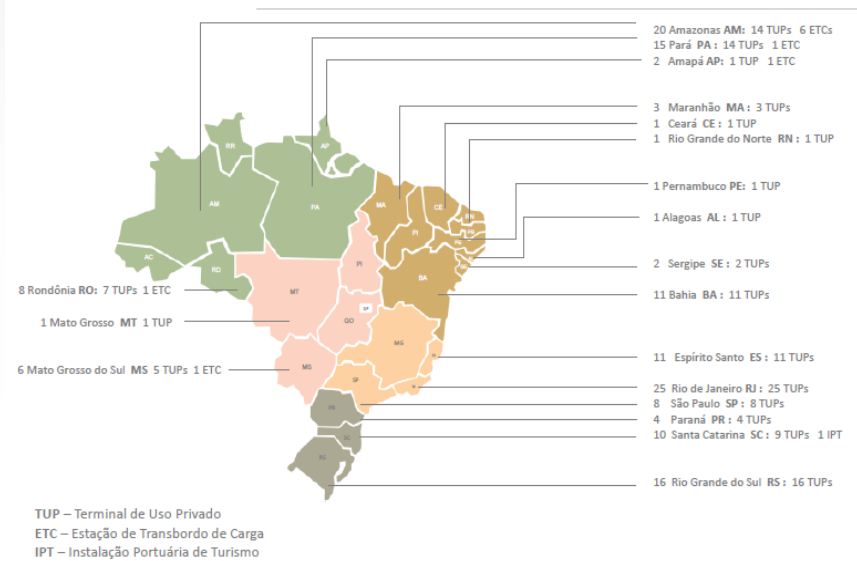
- 37 public ports
- 146 private use terminals

✓ Estimated investments in the ports sector of at least R\$ 50 bi (approx. USD 22 bi) for the next 10 (ten) years.²

Brazilian Public Ports: 37 Ports



Brazilian Private Terminals: 146 Terminals

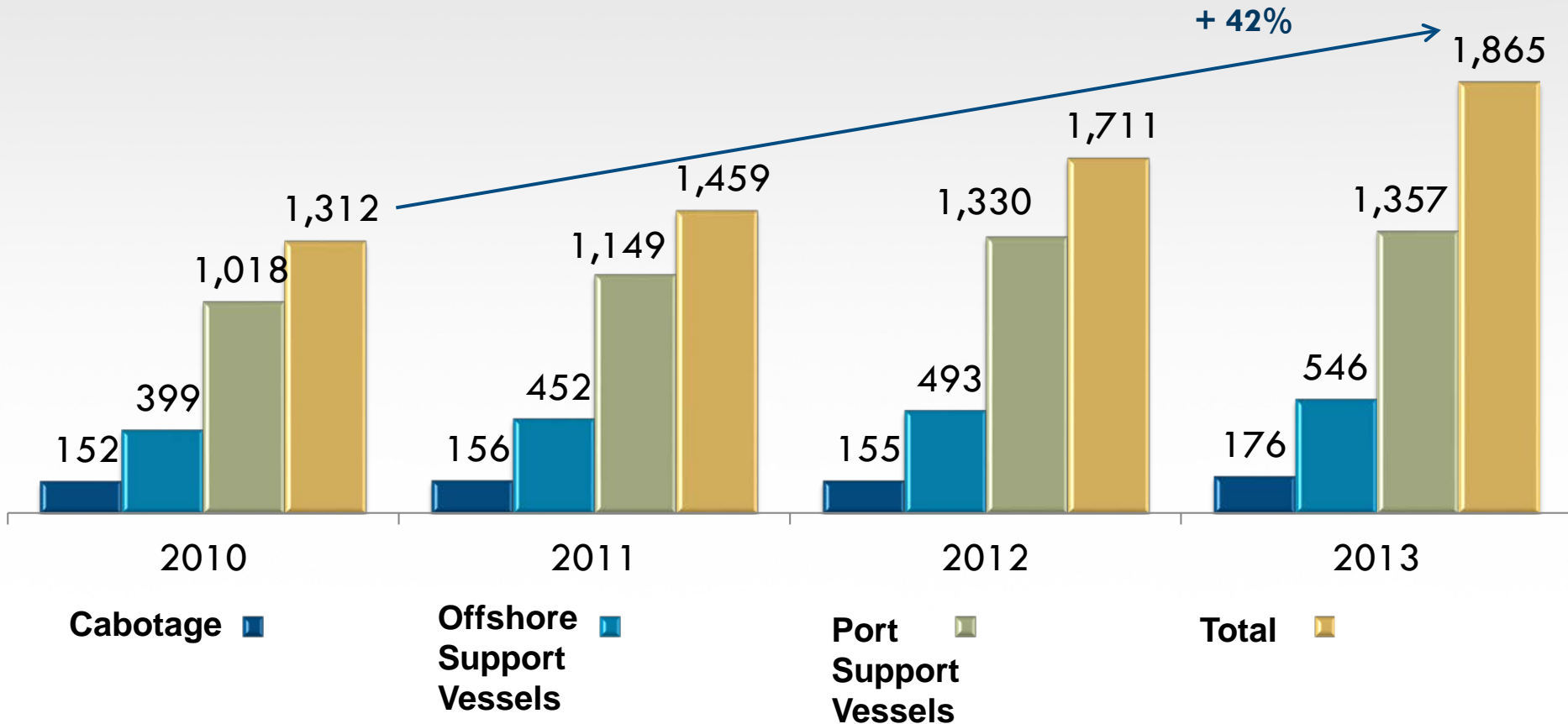


¹ Ministry of Ports - Secretaria de Portos da Presidência da República SEP/PR

² <http://memoria.ebc.com.br/agenciabrasil/noticia/2013-05-17/portos-receberao-mais-de-r-50-bilhoes-em-investimentos-estima-abdbi>

Vessels Operating in Brazil

Growth of Number of Vessels Operating in Brazil



Brazilian Commercial Legislation in force today

➤ 1850 Commercial Code

- Based on the 1808 Napoleon Commercial Code
- Partially revoked by the Brazilian Civil Code of 2002.
- Part of the 1850 Commercial Code is still in force, including provisions related to Maritime Law (Maritime Trade, losses, insurance, abandonment, etc)



- Aligning Brazil with international practice;
- More legal certainty in commercial relationships – rights, responsibilities and restrictions;
- Improving Brazilian business environment and commercial trade;
- Consolidating regulation of maritime law in the Brazilian legal system;



- **Bill nº 1.572/2011 – Chamber of Deputies (Lower House)**
- **Amendment nº 56/2012 to Bill nº 1.572/2011**
 - Proposes Maritime Law provisions.
 - Drafted by ABDM
(Brazilian Maritime Law Association)
- **Bill nº 487/2013 – Senate (Upper House)**



- **Commercial Code Reform – main aspects:**
 - **Trade Law**
 - **Corporate Law**
 - **Agro-business**
 - **Maritime Law**

- **Bill nº 1.572 still under analysis before the Brazilian Congress.**



➤ Cargo Claim Time Bar:

➤ 1850 Commercial Code – 1 year time bar

➤ 2002 Civil Code does not give any specific provision regarding time bar for cargo claims

➤ Different Interpretations:

- 1 year (Federal Decree 116/67 and Multimodal Law)
- 3 years (general time bar for civil liability under the 2002 Civil Code)
- 5 years (Consumer Act)

➤ Bill nº 1.572:

- 1 year time bar for cargo claims
- Consumer Act does not apply to maritime carriage involving corporate entities



➤ Brazilian Arrest Regulation in Force

- Brazil has NOT ratified the 1952 and 1999 International Arrest Conventions;
- It is not possible to arrest a vessel in Brazil to obtain security for a foreign claim/arbitration (lack of jurisdiction).
- There are no provisions regarding the arrest of sister ships, arrest of bunkers or wrongful arrest

➤ The Provisions in Bill nº 1.572

- Jurisdiction for the arrest of vessels in Brazilian waters based on a foreign claim
- Possibility of arrest of sister ships, bunkers and consequences of a wrongful arrest
- Bill nº 1.572 aligned with international practices on privileged credits ranking.

- 1850 Commercial Code – no provision except for abandonment of the vessel
- Brazil is a party to 1924 Brussels Convention
- Brazil is **not** a party to 1976 Convention (London 1976 - LLMC)
- Brazil is **not** a party to 1978 Hamburg Rules (Brazil signed but did not ratify)
- Brazil is **not** a party to 2009 Rotterdam Rules (Spain, USA, France, Norway, Switzerland and others)

➤ **The Constitution of a Liability Limitation Fund**

- **Similar to the 1976 Convention, updated by its 1996 Protocol**
- **Creation of a limitation fund in cases of great losses, against which all creditors shall seek their claims.**
- **The creation of a liability limitation fund is not a mandatory procedure, being at the discretion of the shipowner whether to create the fund or not;**
- **In order to create a liability limitation fund, the shipowner must verify the maximum extent of the limitation of his liability, with the purpose of distribution among creditors.**

➤ The Application of the Limitation of Liability

- **The limitation of liability applies to:**
 - ✓ death and injury;
 - ✓ damages to third parties property;
 - ✓ loss and damage to the cargo (Cargo value declared in the Bill of Lading or 666,67 SDR p/ volume-unity or 2;5 per kg);
 - ✓ claims arising from extra contractual liability directly related to the vessel operation.

- **The limitation of liability does not apply to:**
 - ✓ environmental damages;
 - ✓ wreck removal;
 - ✓ vessel rescue operations;
 - ✓ nuclear damages; and
 - ✓ labour credits.

Limitation of Liability

- **Bill nº 1.572: Provisions for Limitation of Liability**

DEATH AND INJURY	US DOLLARS	SDR (SPECIAL DRAWING RIGHTS)
Up to 2,000 Tons (Gross Tonnage)	4,649,290.00	3,020,000
2,001 to 30,000 Tons	4,649,290.00 + 1,859.72 per ton	3,020,000 + 1,208 per ton
30,001 to 70,000 Tons	4,649,290.00 + 1,394.79 per ton	3,020,000 + 906 per ton
More than 70,000 Tons	4,649,290.00 + 929.86 per ton	3,020,000 + 604 per ton

OTHERS	US DOLLARS	SDR (SPECIAL DRAWING RIGHTS)
Up to 2,000 Tons (Gross Tonnage)	2,324,645.00	1,510,000
2,001 to 30,000 Tons	2,324,645.00 + 929.86 per ton	1,510,000 + 604 per ton
30,001 to 70,000 Tons	2,324,645.00 + 697.39 per ton	1,510,000 + 453 per ton
More than 70,000 Tons	2,324,645.00 + 464.93 per ton	1,510,000 + 302 per ton

Cargo Owners x Shipowners?



More important: Clearer Rules

BRAZIL: “CARGO PARADISE”?





Thank you.

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