

RETHINKING *the* ADMINISTRATION *of* JUSTICE

Essays in Honour of
Hon. Justice Abdullahi Mustapha,
OFR, FCI Arb (Rtd)

Editors

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Effect of the Cabotage Act 2003 on the Nigerian Maritime Industry*

The Maritime industry of any country is recognised as the orbit around which the economic development of that country revolves. Due to this fact, most maritime nations are quick to draft policies that assure protection from exploitation and dominance by foreigners. Nigeria is not different from other countries in this regard; as it has since 2003 put into place a cabotage policy through the promulgation of the Coastal and Inland Shipping Act that is meant to protect and reserve commercial activities within its waterways for its citizens. A question which readily comes to mind is whether the Nigerian government has been successful in its bid to assure the needed development of indigenous participation in the sector. This chapter seeks to examine in detail, the Nigerian Maritime industry, the effects and advantages of implementing the cabotage policy and determine whether the objectives listed for the enactment of the Act has been achieved after six years. The article will further consider the problems encountered in implementation and the extent to which the Nigerian Maritime Administration and Safety Agency (NIMASA) has been able to ensure compliance.

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Introduction

Maritime nations have usually at one time or the other resorted to making laws to promote and protect their domestic shipping industries. It is a widely known fact that a strong maritime industry represents a nation's foundation for both economic and even military security.¹ The approach of protecting domestic shipping companies by prohibiting foreign vessels from participating in domestic or coastal shipping is one which is recognised all over the world as that based upon the realisation that the protection of a nation's maritime industry is an avenue for economic advancement and the availability of defence/security in situation of national emergencies and crisis.²

As a result of the foregoing, a vast majority of nations with seafaring history have cabotage laws in place that require ships engaged in coastal transport under their jurisdiction not only to be acquired, maintained or domestically built but also to be owned and operated by nationals of the country³.

The Nigerian Government being aware of the importance of developing the local shipping industry at various times decided to put in place policies⁴ which were meant to serve as a boost for the

¹ Andrew Obinna Onyearu, "Cabotage in Nigeria and the Waiver Clauses: A Critical Appraisal of Control Options," <http://www.andreusolicitors.com/html/News/cabotage> accessed on the 4th March, 2009

² A ready example of the advantages of domestic cabotage is that of Australia where the domestic vessels operating under the country's cabotage laws were used for the deployment of the Interfet Forces in the East Timor Crises. While in the United States, the Jones Act Fleet contributed to her military needs during the Gulf War. See Mike Igbokwe SAN, *The Nigeria Maritime Cabotage Policy & Law: the Case and Advocacy*, 2006, Pg. 291.

³ A prominent example of such nations include the United States of America. Other countries that practise cabotage include Malaysia, India etc

⁴ The Nigerian National Shipping Line was set up in 1959 with the hope that the two other partners (Elder Dumpster and Palm Line Limited) would assist in training Nigerians in all aspects of navigation. When this failed as a result of mismanagement, the NNSL was liquidated and replaced with the National Unity Line which also suffered a similar fate like its predecessor. Others are the Merchant Shipping Act (section 5), the Nigerian Shipping Policy Act (sections 26, 27) etc. See Emeka Akabogu, *Maritime Cabotage in Nigeria*, page 7, 2004, published by Olisa Agbakoba & Associates, See also, Mike Igbokwe SAN, *The Nigeria Maritime Cabotage Policy & Law: the Case and Advocacy*, 2006, Pg. 356

development of the sector. Unfortunately, these policies failed to achieve the set objectives and business continued as usual with the dominance of foreigners in the carriage of goods and passengers in even the inland coastal waters⁵. This was the position in the country before the National Assembly passed into law the Coastal and Inland Shipping Cabotage Act 2003. The Cabotage Act 2003 is now in force in Nigeria.

What is Cabotage

The word cabotage is a nautical term from Spanish, denoting strictly the navigation or sailing from cape to cape along the coast without going out into the open sea.⁶ It involves the movement of goods and passengers between the ports of the coast or the ports of the same country. It is also the exclusive reservation of the coasting trade of a nation to ships operating under the flag of that country⁷. In the maritime law context, the cabotage principle is one which allows a country to make laws pertaining to the navigation and operation of vessels within its coastal territories and territorial waters. Apart from the above, the cabotage policy is a protectionist policy whereby national resources are reserved and employed for the use of nationals of the given country i.e the policy is used by the government to encourage its citizens to participate in the activities of the shipping industry by providing an enabling environment and giving necessary incentives to boost local empowerment in the sector.

A cabotage law refers to the sets of rules and regulations which govern coastal shipping in any country. It essentially refers to the practice whereby, in encouraging a country's indigenous shipping

⁵ See Emeka Akabogu, *Maritime Cabotage in Nigeria*, page xi, 2004, published by Olisa Agbakoba & Associates

⁶ See the Black's Law Dictionary, 6th Edition, pg 202

⁷ See Peter Brodie, Dictionary of Shipping Terms, 2nd Edition at page 27 quoted by Mike Igbokwe SAN, "The Nigeria Maritime Cabotage Policy & Law: the Case and Advocacy," 2006, Pg. 273

industry, coastal trade is confined to its nationals as a matter of strategy. Usually, under Cabotage regime, the transportation of goods between two local ports by foreign ships is allowed only if suitable domestic vessels are not available and special licences have been granted by the appropriate authority. In fact, a maritime cabotage law may be in a single shipping legislation, or in a combination of two or more shipping legislation of a country⁸.

It should be noted that there are two different types of cabotage regimes practised all over the world; the strict and liberal or relaxed cabotage regime. The adoption and application of any of these types of cabotage regimes is determined by the national, economic, shipping interests, socio-political reasons and any other local conditions prevalent in a nation. In the strict cabotage regime, the three elements of restriction vis-à-vis that only vessels that are built in a country, owned by nationals of the country and crewed and operated solely by the citizens of the country are allowed to participate in the domestic shipping trade. The object of the strict cabotage policy is to totally exclude foreign-built, foreign-owned, foreign-crewed and operated vessels from participating in a country's domestic shipping industry.

In the other, which is the relaxed or liberalised cabotage regime, it is not compulsory for the three elements of restrictions stated above or some of them to be present⁹. In other words, the three elements are not strictly enforced or/and there is some level of foreign participation either in the ownership or building of the

⁸ Augustine Nweze, "The Impact of Cabotage Act on Entrepreneurial Opportunities and Nigeria's Economic Growth," www.stclements.edu/grad/gradnwez.htm accessed on 12th February 2009.

⁹ Nigeria, Greece and the United States of America etc have "strict" cabotage laws while India, the Philippines, Malaysia, Australia and Brazil, among others have liberalized cabotage laws. See also Augustine Nweze, "The Impact of Cabotage Act on Entrepreneurial Opportunities and Nigeria's Economic Growth" www.stclements.edu/grad/gradnwez.htm accessed on 16th February, 2009.

vessels used, in the nationality of the operators involved and in fact foreign registered ships are actively involved in the nation's coastal shipping¹⁰. In other words, the type of maritime cabotage law promulgated by each country is dependent upon the economic and strategic interest which the government wishes to adopt in protecting the domestic shipping industry from foreign competition.

The advantages gained by a country practising a cabotage regime are numerous. Apart from the fact that the operation of a cabotage regime will enhance the growth of indigenous capacity in maritime trade by creating business opportunities for local shipping companies, builders, seamen etc, it will also impact positively on a nation's economy through revenue generation and the conservation of foreign currency¹¹. In the United States of America, the pro-cabotage movement¹² are of the believe that the cabotage regime is necessary in order to protect their country's domestic shipping market and the jobs of citizens employed in the sector from low cost foreign competition. Also, it is believed that the continued retention of the regime will provide a ready reserve of capable shipbuilders, United States vessels and capable captains and crew for use in times of war.

In Nigeria, the enactment of the cabotage law apart from creating numerous opportunities for Nigerians will encourage the private sector especially financial institutions to provide the needed financial back up that is required to ensure economic growth

¹⁰ Augustine Nweze, "The Impact of Cabotage Act on Entrepreneurial Opportunities and Nigeria's Economic Growth" www.stclements.edu/grad/gradnwez.htm accessed on 16th February, 2009.

¹¹ It helps in the expansion of a nation's fleet, increase in tonnage capacities, creation of employment opportunities for citizens, creating an enabling environment for the formation of joint ventures between Nigerians and foreigners which also leads to the exposure of the local shipping industry to the technicalities of the business.

¹² Those in support of the continued retention of the Jones Act. See U.S. Cabotage Laws: Protective or Damaging? http://www.commercialdiplomacy.org/ma_projects/magee3.htm accessed on 16th February, 2009.

through investment and funding of the shipping industry¹³. However, the beneficiaries of the new opportunities will need to demonstrate a serious level of responsibility and commitment before they can be allowed to assess loan for the acquisition and maintenance of their vessels¹⁴.

History of the Nigerian Maritime Industry

Nigeria is a country that is richly endowed with a lot of maritime potentials. The various opportunities available to be tapped in the sector was realised by the colonial masters, who exploited and utilized it to further trading activities between their colonies and Britain, the home country.

With a coastline of about 800km and inland waterway covering about 3,000km¹⁵, Nigeria was seen by the British at that time as a potential leading maritime nation in West Africa¹⁶. To achieve this lofty objective, the Nigerian National Shipping Line (NNSL) was set up in 1958 with the Nigerian government having 51% of its shares while two other companies¹⁷ had 33% and 16% respectively. After independence in 1960, these companies divested themselves of their shares in the Nigerian National Shipping Line and reduced their activities to only international carriage¹⁸.

¹³ Among others, the Cabotage Act 2003 makes provisions for the Cabotage Vessel Financing Fund (CVFF) under section 77.

¹⁴ Odita Sunday, Nimsa: Ensuring Effective Implementation of Coastal, Inland Shipping Policy, www.ngrguardian.com/maritime/article accessed on the 12th February, 2009

¹⁵ Mike Igbokwe, SAN, "The Nigeria Maritime Cabotage Policy & Law: the Case and Advocacy," 2006, Pg. 353

¹⁶ Augustine Nweze, "The Impact of Cabotage Act on Entrepreneurial Opportunities and Nigeria's Economic Growth" www.stclements.edu/grad/gradmwez.htm accessed on 16th February, 2009.

¹⁷ Elder Dempster and Palm Line Limited. These shipping companies were formed from the shipping departments of the United African Company (UAC) and John Holt & Company. See further Mike Igbokwe, "The Nigeria Maritime Cabotage Policy & Law: the Case and Advocacy," 2006, Pg. 355. The NNSL when formed had two million pounds shares and it was agreed that the two companies would assist in the training of Nigerians in all aspects of the shipping business.

¹⁸ Mike Igbokwe SAN. "The Nigeria Maritime Cabotage Policy & Law: the Case and

It is necessary to state that as at 1979, the Nigerian National Shipping Line (NNSL) owned 24 vessels out of which nineteen were newly built. However, despite the boom in the maritime sector in the 70's and 80's, the government's investment in the shipping line failed and the Nigerian National Shipping Line was liquidated in 1995¹⁹. The National Unity Line (NUL) which replaced the Nigerian National Shipping Line (NNSL) also suffered a similar fate. In fact, the only vessel which the National Unity Line (NUL) had, the *MV Abuja*, was auctioned off in 2003 at a price that was far less than the amount with which it was acquired²⁰.

Apart from the above, along with other African countries which had just gained independence from the colonial masters, Nigeria joined the International Maritime Organization (IMO). As the countries began to expand their national fleets and improve their maritime activities, they were confronted with the major problems of shortage of funds and dearth of experienced maritime professionals. On the issue of trained professionals, the International Maritime Organisation (IMO) assisted the nations through its technical co-operation programmes²¹. The International Maritime Organization had also gone ahead in assisting through the provision of fellowships, research and specialist training grants for nationals of its member states²².

Apart from the establishment of the Nigerian National Shipping Line, the Merchant Shipping Act was passed into law in

¹⁹ Funke Agbor, Wearing Shades in Nigeria, <http://allafrica.com/stories/200810160855.html> accessed on 24th November, 2008.

²⁰ Mike Igbokwe, "The Nigeria Maritime Cabotage Policy & Law: the Case and Advocacy," 2006, Pg. 283

²¹ The International Maritime Organization provided experienced professionals for the countries with the aim that such professionals would assist in educating the nationals of the various countries on the technicalities of the shipping industry.

²² Augustine Nweze PhD, "The Impact of Cabotage Act on Entrepreneurial Opportunities and Nigeria's Economic Growth" www.stclements.edu/grad/gradmwez.htm accessed on

1962²³. Section 5 of the Act made provisions for ships allowed to trade in Nigeria and such vessels were required to either be Nigerian ships, commonwealth ships or ships with foreign registry. This provision was however not effective as it was diluted by the definition given a Nigerian ship in the Act²⁴. It should however be noted that the Merchant Shipping Act, 1962 has been amended by the Merchant Shipping Act (Amendment) Act 2007²⁵.

In 1974, the UNCTAD Linear Code of Conduct for linear conferences²⁶ known as UNCTAD 40:40:20 was adopted by Nigeria. The code which was for cargo sharing was a developing nation's initiative in which the two trading states²⁷ had the right to reserve for their national shipping lines, the right to carry up to 40% each of intended linear cargo while the remaining 20% was left for third party countries to carry.

It is however important to note that the UNCTAD Code was not used in the country until it was domesticated in 1987 when the National Shipping Policy Act²⁸ was passed into law. The Act²⁹ established the Nigerian Maritime Authority (NMA)³⁰ with the aim of correcting any imbalance in the Nigerian shipping trade for the purpose of implementation of the provisions of the UNCTAD

²³ Cap. M11, Vol 9, LFN 2004. It should be noted that until the Merchant Shipping Act was passed into law, there had never been a Nigerian legislation regulating the coastal and inland water trade. See Mike Igbokwe, "The Nigeria Maritime Cabotage Policy & Law: the Case and Advocacy," 2006, Pg. 356.

²⁴ Under section 2 of the Merchant Shipping Act 1962, a Nigerian ship is one that is either registered or licensed in Nigeria and section 360 of the Act made it possible for a ship to be registered in Nigeria once the owner is ordinarily resident within the country. See also Emeka Akabogu, *Maritime Cabotage in Nigeria*, page 8, 2004, published by Olisa Agbakoba & Associates.

²⁵ Merchant Shipping Act, No. 27 of 2007.

²⁶ The code was formulated by developing nations to assist in the development of their indigenous shipping companies. It was a code used for the sharing of maritime cargo between indigenous carriers and foreigners.

²⁷ The Cargo Originating State and the Receiving State.

²⁸ Cap. N75, Vol.11, LFN 2004.

²⁹ the National Shipping Policy Act.

³⁰ See Section 3 of the National Shipping Policy Act.

Code of conduct³¹ in respect of the carriage of goods to and from Nigerian seaports. In other words, the Nigerian Maritime Authority was established to implement the Nation's shipping policy in line with the wish of UNCTAD communities. The Nigerian Maritime Authority (NMA) in a bid to carry out the duty imposed on it by the National Shipping Policy Act³² See Section 18(3) of the National Shipping Policy Act 1987 developed the cargo allocation system. This system however failed as the weekly cargo allocations made by the Nigerian Maritime Authority (NMA) to "indigenous shipping companies" were sold to foreigners³³.

Though the cargo allocation system put in place by the Nigerian Maritime Authority was still in operation, the Nigerian Maritime Authority (NMA) was not able to exert control over the Nigerian National Petroleum Corporation (NNPC) as it refused to deliver up its petroleum cargo to the Nigerian Maritime Authority (NMA) for allocation to indigenous companies in line with the provisions of the Act³⁴. Instead, the Nigerian National Petroleum Corporation (NNPC) left the product in the hands of its joint venture partners, who naturally prefer foreign shipping lines to carry their cargo³⁵. Obviously, this sad trend put the country at a very great disadvantage as huge revenue is lost daily due to the inability of Nigerians to participate in the affreightment of their wet cargo³⁶. In fact, the cargo allocation policy was finally abolished

³¹ In fact, in the Act, provisions was made to allow National carriers participating under it to carry bulk cargo from and to Nigeria to carry not less than 50% of cargo (whether wet or dry) while foreign vessels were allowed to lift the remaining cargo. See Section 9 (4) of the NSPA 1987. Note that under the Act, a National Carrier is shipping company which as been granted carrier status by the NMA. See Section 7 of the Act

³³ See Emeka Akabogu, *Maritime Cabotage in Nigeria*, page xi, 2004, published by Olisa Agbakoba & Associates

³⁴ See "Legal Regime of Shipment of Wet Cargo: A Case against the Nigerian National Petroleum Corporation," *The Maritime Newsletter*, Vol. 2, A compilation of Maritime Newsletter 2006, Edited by Priscilla Ogwemoh, Olisa Agbakoba & Associates, Pg 124.

³⁵ Ibid at page 125.

³⁶ See also Mfon Ekong Usoro, *Cabotage Policy and International Maritime Politics: The Nigerian Coastal and Inland Shipping (Cabotage) Act 2003*, www.paulusoro.com/publicationscabotagepolicy accessed on the 13th February, 2009.

by the Federal Government³⁷ in the year 2000 as a result of the various anomalies that besieged it³⁸.

As a result of the above, the various problems of the local maritime industry coupled with the absence of a national fleet, which no doubt gave room for the dominance of foreign players in the sector, led to perpetual stagnation of indigenous shipping companies and the operation of a Nigerian cabotage regime became an issue of urgent necessity so as to redress imbalance in the sector and fast track development of indigenous shipping.

In fact, it was the belief that the enactment of a Cabotage Law in Nigeria would provide the foundation for an accelerated growth of the domestic maritime in the sense that it would stimulate and contribute significantly to the Nigerian economy through meaningful participation of Nigerians in the industry which will in turn assist in the ownership and management of vessels and on the long run finally lead to a gradual control of our cargo; whether dry or wet.

Also, it was felt that a cabotage policy would help to develop the domestic maritime fleet; create employment opportunities for over 30,000 trained but unemployed seafarers; boost training requirements of the Maritime Academy; increase the currently optional exploitation of the under-utilised facilities at the Niger Dock; encourage the development of required infrastructure and technical know how in the land waterways and lead to a boom in transport and haulage businesses³⁹.

³⁷ See *The Guardian* Newspaper of Monday, February 21, 2000

³⁸ The reasons given for the abolition of the sharing policy includes among other things; corruption in the system of cargo allocation by official in charge of allocation, sales of allocation papers by supposed shipping companies etc. See "The Abolition of the Cargo Sharing Policy: Matters Arising," *The Maritime Newsletter*, Vol. 2, A compilation of Maritime Newsletter 2006, Edited by Priscilla Ogwemoh, Olisa Agbakoba & Associates, Pg 128.

³⁹ Dr Okey Udeh, Chairman, House of Representatives Committee on Transport quoted by Andrew Obinna Onyearu, "Cabotage in Nigeria and the Waiver Clauses: A Critical Appraisal of Control Options," <http://www.andrewsolicitors.com/html/News/cabotage> accessed on the 4th March, 2009

The Cabotage Act 2003

The Coastal and Inland Shipping (Cabotage) Act was enacted in the year 2003 but it came into operation in May 2004. The major objectives that were intended to be achieved with the implementation of the Act include the restriction of the use of foreign vessels in domestic coastal trade and the promotion of the development of indigenous tonnage⁴⁰ with the aim of protecting and empowering Nigerians, especially the entrepreneurs who are engaged in maritime enterprises to become masters in the trade.

The Cabotage Act 2003, defines cabotage as "the carriage of goods or passengers by vessels from one place in Nigeria or above Nigerian waters to any other place in Nigeria or above Nigerian waters, either directly or via a place outside Nigeria and includes the carriage of goods in relation to the exploration, exploitation or transportation of mineral or non-living natural resources of Nigeria whether in or under Nigerian waters" etc⁴¹.

In all, the purport of the Act is that all economic activities including carriage (whether of passengers or cargo) within Nigeria's coastal waters should be indigenised and reserved for Nigerians. Also, since most of the activities carried out in the sector relate to shipping services, it is implied that for Nigerians to participate in coastal trade, they must own vessels which apart from being Nigerian built, must be registered and crewed by Nigerians⁴². Apart from the general restriction contained in section 3 of the Act, there is provision for the restriction of participation in towage activities in the nation's coastal waters to only Nigerians⁴³. It is however important to state that there is no provision in the subsection that the vessels to be used in towage activities have to

⁴⁰ See the preamble to the Coastal and Inland Shipping (Cabotage) Act, 2003.

⁴¹ See Section 2 of the Cabotage Act. This is the definition section of the Act.

⁴² See Section 3 of the Cabotage Act, 2003. See also, Augustine Nweze, "The Impact of Cabotage Act on Entrepreneurial Opportunities and Nigeria's Economic Growth" www.stclements.edu/grad/gradnweze.htm accessed on 16th February, 2009.

⁴³ See section 4(1) of the Act.

comply with the requirement of Nigerian build and registration. In this instance, once the vessel is owned by a Nigerian, it is enough.

Though foreigners are restricted from participating in towage activities, the Act recognizes the provisions of the Salvage Convention and other international laws⁴⁴ which provide that vessels in distress should be assisted by other passing vessels. To this end, any vessel is to render immediate assistance to other vessels in distress irrespective of whether the assisting vessel is manned by a foreigner.

Apart from all the above, the Act under section 5 makes provisions specifically for vessels used for the carriage of petroleum products and other ancillary services related to it, in the sense that the vessels apart from satisfying the major requirements made under section 3 must also be beneficially owned by Nigerians.

The reason for insisting on beneficial ownership is to prevent the issue of ownership by proxy i.e prevent a situation whereby Nigerians acts as fronts for foreigners in the ownership of the ships used for the cabotage trade⁴⁵. Also, the Act under section 23 allows a vessel which is on a bareboat charter to a Nigerian citizen to be used for cabotage activities so far as the vessel is under the full control and management of the charterer⁴⁶. Apart from the foregoing, where the vessel is not fully owned but partly and substantially owned by a Nigerian, the Act allows it to be registered for cabotage trade⁴⁷. It should however be noted that even though foreign vessels are barred from trading and economic activities within Nigerians coastal waters, some foreign vessels engaged in salvage and emergency activities are allowed to operate within the

⁴⁴ See Article 10,11 &12 of the Salvage Convention and Article 18 and 21 of the United Nations Convention on Laws of the Seas (UNCLOS)

⁴⁵ See generally section 5. A beneficial owner of then shares of a vessel has full powers to deal with the shares whichever way he wishes and can in fact derive all maximum benefits which arise from such ownership. See also section 23(1)(a) of the Act.

⁴⁶ See Section 23(1)(b) of the Act.

coastal waters but the approval of the minister must first be obtained. In this instance, the minister before granting approval must be satisfied that the operation is one that is beyond the capacity of Nigerian-owned and operated vessels⁴⁸.

Due to the fact that Nigeria does not have sufficient domestic capacity to contribute effectively in both the ownership and infrastructural aspects of cabotage provided for in the Act, and also taking into account the fact that there is the problem of inadequate indigenous capacity, the Act adopted a cabotage policy where there is the use of the internationally recognised waiver systems. The waiver principle is based on either of three reasons i.e. non-availability, reciprocity or bilateral agreements⁴⁹ reached between two states. On the grounds of non-availability, local maritime participants do not have the required tonnage or manpower to carry out necessary duties while on the grounds of reciprocity and bilateral agreements, two or more states have agreed to allow their citizens to participate in the local shipping of the two contracting states.

Based on the provisions contained in the Act, it can be stated categorically that the Nigerian cabotage law operates its waiver principle only on the grounds of non-availability i.e waivers will only be granted if there is no way in which either of the four major requirements⁵⁰ of cabotage can be satisfied.

The conditions for the grant of waivers are expressly stated and provided for in the Act to prevent situations whereby grant of

⁴⁸ See section 8(1) of the Act. It should also be noted that the foreign vessel to be used for salvage activities does not have to wait for the minister's approval in emergency cases. See Section 8(2) of the Act

⁴⁹ See also Mfon Ekong Usoro, "Cabotage Policy and International Maritime Politics: The Nigerian Coastal and Inland Shipping (Cabotage) Act 2003", www.paulusoro.com/publications/cabotagepolicy accessed on the 13th February, 2009.

⁵⁰ The four requirements for involvement in the Nigerian cabotage regime are those of ownership, crewing, building and registration by Nigerians and in Nigeria. See generally

waivers will be used to circumvent the noble objectives of the Act⁵¹. Before granting any waiver application, the Minister must be satisfied that the requirement requested to be waived is not available locally. Also, where the condition suitable for the grant of a waiver has been established, the Minister must follow the prescribed order i.e. priority must be given to a shipping company which operates a joint venture agreement between Nigerians and non-Nigerians. Even where such joint venture agreement exists, the equity shareholding of the Nigerian partner should not be less than 60%⁵². It is only where this is not available that a fully foreign-owned vessel will be allowed to render the service⁵³. Also, in a bid to prevent a situation where waivers will be granted for an unreasonable length of time, provision is made for in the Act that waivers should not be granted for more than one year⁵⁴.

Apart from the waiver system, the Act makes provisions for the grant of restricted licences to foreign vessels upon the satisfaction that the conditions which exist in the grant of waivers also exist. However, a difference here is that the foreign vessel must be one that is eligible for registration in Nigeria and the company which owns the vessel must have a representative company in Nigeria. Also, all appropriate levies and taxes must have been paid and the vessel must, in addition, possess certificates to show that all international conventions

⁵¹ See the Draft Modalities for Implementation of the Cabotage Act issued by the then Nigerian Maritime Authority quoted by Emeke Akabogu in *Maritime Cabotage in Nigeria*, published by Olisa Agbakoba & Associates in page 25.

⁵² Apart from the above, the shareholding must be free from any form of encumbrance which might be tied in favour of the non-Nigerian partner. The reason for these precautions is very obvious as the Act is trying to cover basic areas in which loopholes which can be cashed upon by fraudulent people might exist.

⁵³ See Mfon Ekong Usoro, *Cabotage Policy and International Maritime Politics: The Nigerian Coastal and Inland Shipping (Cabotage) Act 2003*, www.paulusoro.com/publications/cabotagepolicy accessed on the 13th February, 2009.

⁵⁴ See Section 13 of the Cabotage Act.

and Nigerian laws have been complied with⁵⁵.

All vessels (whether foreign or indigenous) involved in cabotage trade must be registered by the registrar of ships in the register set aside for registration⁵⁶ but a vessel can be deregistered where there is a subsequent change in its ownership structure or where the company that owns it changes to the extent that such change will lead to a contravention of the Act⁵⁷. As a result of peculiarity and constant mobility of the vessels especially those involved in the oil and gas industry, allowance is made for the dual registration of vessels. This is done by permitting the temporary registration for foreign vessels under Section 28 of the Act. It should be noted that practical implications of these provisions are that foreign shipping companies are guaranteed, at least in the short-term, continued participation in cabotage activities upon the satisfaction of all prescribed conditions⁵⁸.

Effect of Cabotage

Perhaps from the intention of the framers of the Act,⁵⁹ the desired effect of the Cabotage Act can be gleaned from its preamble which provides that "this Act restricts the use of foreign vessels in domestic coastal trade, promotes the development of indigenous tonnage and establishes a cabotage vessel financing fund"⁶⁰. However, it is the intention of the writer to look into other resultant effects which naturally flow from the provisions of the Act.

An intended effect of the Act on the local shipping industry

⁵⁵ See generally Section 15. Also, the minister is allowed to impose terms and conditions which he considers to be appropriate and the licence must not exceed a year. In fact he has the power to suspend a licence already granted if a condition is contravened or where it is necessary and expedient that he does so. See Sections 16, 17 and 18 of the Act.

⁵⁶ See Section 22 of the Cabotage Act.

⁵⁷ See Section 25 of the Cabotage Act.

⁵⁸ See also Mfon Ekong Usoro, "Cabotage Policy and International Maritime Politics: The Nigerian Coastal and Inland Shipping (Cabotage) Act 2003", www.paulusoro.com/publications/cabotagepolicy accessed on the 13th February, 2009.

⁵⁹ The Coastal and Inland Shipping (Cabotage) Act, 2003.

⁶⁰ See the Preamble to the Cabotage Act, 2003

is the establishment of a "liberal protectionist policy" that would protect indigenous shipping companies from death and incapacitation which results from the domination of the carriage of cargo within Nigerian waters by foreign vessels. Where the provisions of the Act are adhered to strictly, the local shipping industry will definitely grow to the extent that Nigerian citizens will achieve dominance in shipping activities which take place within the country's territorial waters⁶¹.

Apart from the above, another intended effect of the Act is to empower indigenous shipping companies so that they can build their capacity to acquire more vessels which will further increase the nation's tonnage that Nigeria desperately needs so as to have some leverage in international maritime negotiations⁶². Also, employment opportunities will be created for Nigerians who are desirous of working in the industry and manpower development will definitely occur as the seafarers will be subjected to training from time to time to increase their knowledge and expertise.

The growth of the domestic trade will also increase the nation's revenue base and this will lead to conservation of foreign exchange that is usually used in paying for services rendered by foreign shipping companies. In the area of ship-building, indigenous companies engaged in cabotage and who wish to increase the number of their vessels will definitely have to patronise the dockyards in the nation for the building of new vessels with the required capacity and tonnage. Also, where such vessels are to be repaired, the nation's dockyards would be patronised to carry them out⁶³.

⁶¹ Once the companies get their share of contracts and cargo from companies who need their services, and if the contracts come in regularly, their financial base will definitely increase and this will definitely lead to an increase in the nation's revenue.

⁶² See also Mfon Ekong Usoro, "Cabotage Policy and International Maritime Politics: The Nigerian Coastal and Inland Shipping (Cabotage) Act 2003," www.paulusoro.com/publications/cabotagepolicy accessed on the 13th February, 2009.

⁶³ See generally Mike Igbokwe, "The Nigeria Maritime Cabotage Policy & Law: the Case and Advocacy," 2006, Pg. 275.

Apart from the obvious intended effects listed above, the cabotage law will give rise to new investment opportunities and even especially stimulate private/public sector investment that is necessary for the development of maritime infrastructures such as the nation's waterways, ports etc. Furthermore, the availability of an indigenous fleet and seamen especially in times of conflict will assure an effective policing of the waterways and thereby contribute greatly to attainment of national security⁶⁴. Finally, in general, the cabotage regime will remove the unnecessary hurdles put in place by foreign operators to frustrate the entry of new indigenous operators into the sector.

Problems of Implementation of the Cabotage Act

As at 2003 when the Cabotage Act was enacted, majority of Nigerians were of the belief that the days of exploitation by foreign operators in the maritime industry was over for good. Industry players considered the step that had been taken by the Federal Government to build capacity among indigenous ship owners after the demise of the National Shipping Lines to be a right step in the right direction.

However years after the promulgation of the Act, it is still difficult to see the gains that have been touted to have been gained by implementation of the Act. In fact, industry players have been unanimous in their view that the cabotage law has been grossly under implemented⁶⁵. Based on the above, it is pertinent to look into some of the problems which are being encountered in the implementation of the Act.

The major cargo available for the cabotage trade in Nigeria is in the oil and gas industry. Since Nigeria is a major producer of

⁶⁴ See also Mfon Ekong Usoro, "Cabotage Policy and International Maritime Politics: The Nigerian Coastal and Inland Shipping (Cabotage) Act 2003," www.paulusoro.com/publications/cabotagepolicy accessed on the 13th February, 2009.

⁶⁵ Ngozi Uche, "Exploiting the Potentials of the Maritime Industry Through the Cabotage Trade," <http://www.businessdayonline.com> accessed on February, 15th 2009.

crude oil, it is of necessity that petroleum products and other oil support services would be available as cargo which should ordinarily be enough to boost the nation's indigenous maritime trade. The importance of availability of cargo in the shipping industry cannot be over-emphasised. Where cargo cannot be guaranteed and made readily available, indigenous tonnage will not thrive and the economy will not get the desired boost which it deserves.

As at the time the Act was promulgated, it was felt that the NNPC's drive to increase the local content in the industry would be readily achieved by implementing the Act to the letter. However, the NNPC and its subsidiaries have been criticised as not giving their full support in ensuring the success of the Act⁶⁶. It should be known that it is only where an availability of cargo is guaranteed that funding options for indigenous vessels become readily available and practicable⁶⁷.

Another challenge which implementation of the cabotage law faces is that of the provision of funds needed for the acquisition of new vessels and other marine equipments which by nature are quite expensive. Naturally, the Act to prevent this problem had made provision for the Cabotage Vessel Financing Fund (CVFF)⁶⁸. The fund is expected to be derived from the two percent surcharge of contract sum on coastal trade cargo, tariffs, fines and fees realized from the grant of waivers and licenses and interest generated from loans granted from the fund etc⁶⁹.

⁶⁶ Godwin Oritse, House Committee scores cabotage implementation low, <http://www.vanguardngr.com/content> accessed on the 24th April, 2009, Odita Sunday, NIMASA: Ensuring effective implementation of coastal, inland shipping policy, www.ngrguardiannews.com/maritime/article/article, accessed on the 12th February, 2009. See also Angus Haruna, Cabotage: NNPC should work with the NMA, *This Day Newspaper* of 29/01/06 and Mike Igbokwe, "The Nigeria Maritime Cabotage Policy & Law: the Case and Advocacy," 2006, Pg. 311.

⁶⁷ Chidi Ilogu, "Challenges of Economic Reforms in the Maritime and Ports Sector," www.nba-sbl.org/pdf/Challenges accessed on 19th February, 2009, See also, *The Guardian Newspapers* of 26th October, 2005 at page 51.

⁶⁸ Part VIII of the Coastal and Inland Shipping Act 2003

⁶⁹ See Section 43 of the Act

However, even though the CVFF Guidelines has been approved by the National Assembly since 2007, there is nothing to show that local shipping companies have had access to it. In fact, it has been alleged that banks are unfriendly to operators in terms of financing and where money is eventually lent, the interest rate is astronomical. Also, it is important to state that the funds from the Cabotage Vessel Financing Fund (CVFF) are yet to be disbursed to beneficiaries⁷⁰.

Apart from the above, another problem being encountered is in the area of grant of waivers and licenses. The Cabotage Act gives the minister the power to grant waivers⁷¹ so as to ensure that the cabotage regime takes off smoothly. The reason for making provisions for the grant of waivers was as a result of the fact that the author of the Act realised that there was non-availability of adequate manpower and technical knowhow needed for the catering of the amount of activities that are carried out in the indigenous shipping industry. It was felt that as Nigerians became more technically and financially empowered through partnership with foreign partners, the discretionary power would be used less⁷².

⁷⁰ New Lease of Life For Cabotage Operators, <http://thepmnews.com/2009/03/02/new-lease-of-life-for-cabotage-operators> accessed on 24th April, 2009. Even though the CVFF as at December, 2009 was already over NGB, the funds are yet to be disbursed to indigenous shipping companies who need it. The writer, though in agreement that the NIMASA should take proper care before disbursing the funds and also approves the decision that adequate security measures are put in place to avoid a situation where the funds will 'disappear' like what happened with the the Ship Acquisition and Ship Building Fund (SASBF), it is however felt that the supposed modalities should be concluded in time to assure timely access to it. See also Bankole Adeshina, NIMASA renews approach on implementation of Cabotage, www.ngrguardiannews.com/.../indexn2_html? Accessed on 20th February, 2010.

⁷¹ See Sections 9-14 of the Act. The Minister of Transport has the authority, upon receipt of an application, to grant a waiver of the requirement for vessels involved in coastal trade regulated under the Act where he is satisfied that a number of named conditions precedent exist. See also section 15 of the Act.

⁷² Andrew Obinna Onykaru, "Cabotage in Nigeria and the Waiver Clauses: A Critical Appraisal of Control Options," <http://www.andrewsolitors.com/html/News/cabotage> accessed on the 4th March, 2009

Stakeholders in the industry are however of the belief that the provision of the waiver system is one which hinders the effective implementation of the cabotage policy⁷³. In fact, it has been observed that sometimes foreign vessels were allowed to operate even before their waiver application is approved and some in extreme cases, the contracts would even have been completed before the waiver application is approved. This situation is one which makes the process of enforcement unworkable and in fact defeats the requirement for prior approval of waiver before operating in the coastal waters.⁷⁴ Apart from the above, the discretionary power granted to the minister in the Act is one that can be subjected to abuse.⁷⁵

Another problem that is affecting the smooth implementation of the cabotage regime is that of tonnage availability. For a cabotage regime to be successful, it is necessary that there is available in abundance, vessels which are owned, registered and crewed by Nigerian citizens. Apart from the above, the vessels must also be of different tonnages. As a result of the fact that the major market available for indigenous cabotage operators in the country is in the oil and gas sector, it is also important that appropriate tanker vessels should be made available. Unfortunately, as at today, the vessels available and used by indigenous shipping companies are not of the right tonnage and specifications required by the oil companies and so resort is usually had to foreign vessels which are of the proper specifications and tonnage.

⁷³ New Lease of Life For Cabotage Operators, <http://thepmnews.com/2009/03/02/new-lease-of-life-for-cabotage-operators> accessed on 24th April, 2009. Andrew Obinna Onyearu, Cabotage in Nigeria and the Waiver Clauses: A Critical Appraisal of Control Options, <http://www.andrewsolitors.com/html/News/cabotage> accessed on the 4th March, 2009

⁷⁴ Andrew Airahuobhor, Nigeria: Travails of Maritime Industry, <http://www.independentnigeriaonline.com> accessed on the 24th of April, 2009.

⁷⁵ This fear is not farfetched as evidence abounds to show that various well intentioned policies have been abused by corrupt officials and citizens who would go to great lengths

Another challenge relates to the fifteen years age limit⁷⁶ which was prescribed in respect of vessels involved in the cabotage trade. It is necessary to state categorically that there are no rules anywhere in the world which prescribes an age limit for seagoing vessels in so far as the vessels comply with all existing rules in respect to compliance with all safety provisions⁷⁷. In fact, it is felt that a 15-year old vessel is still a fairly new ship and this requirement, if enforced, will make shippers have a hard time in financing the purchase of new vessels and this will in turn increase the cost of Nigeria's maritime commerce in general. Apart from the above, the provision is one that would severely curtail the available tonnage in Nigeria's coastal trade as most vessels currently in service are already over the 15 years age limit. Also, the country's shippers would be placed in the embarrassing position of being able to trade everywhere in the world, except their own backyard, Nigeria⁷⁸.

Other problems currently affecting the effective implementation of the cabotage regime includes the lack of experienced and properly trained seafarers, lack of capacity building in the ship building sector i.e the existing ship building industry does not have the required capacity to satisfy the cabotage market and most times, they are only involved in the repair of vessels only. Apart from the above, there is the problem caused by the weak enforcement of the cabotage regime by the relevant authority, political and civil unrest coupled with the issue of piracy activities in the Niger Delta region⁷⁹ etc.

⁷⁶ See Section 28 of the Act.

⁷⁷ The provision of the Act is not supported at all by the provisions of international law such as the International Convention for the Safety of Life at Sea (SOLAS) 1974 on the requirements for safety and seaworthiness of a vessel.

⁷⁸ Godwin Oritse, Shipping Firms Protest 15 Years Age Limit on Vessels, <http://www.nsnet.com/archive> accessed on 1st May, 2009.

⁷⁹ Andrew Airahuobhor, Nigeria: Travails of Maritime Industry, the *Daily Independent* of 26/02/09: NIMASA seeks Navv's assistance to fight piracy. <http://>

The Role of the NIMASA in the Implementation of the Cabotage Regime

The Nigeria Maritime Administration and Safety Agency (NIMASA) Act was passed into law by the Federal Government in May 2007⁸⁰. The Act among other things provides for the promotion of maritime safety and security in the nation's coastal waters and also established the Nigeria Maritime Administration and Safety Agency,⁸¹ which was formed from a coalition of the NMA and the former Joint Maritime Industrial Labour Council (JOMALIC). The NIMASA has been primarily charged with the duties of responsibility for the execution of the provisions of the NIMASA Act, the Cabotage Act and other legislations relating to the shipping industry⁸².

In a bid to achieve the aims and objectives⁸³ of its establishment, the NIMASA has taken several steps with the aim of improving the various operations carried out in the maritime industry; part of which is to ensure the successful implementation of the cabotage policy. One of such steps taken by the agency is its partnership with the Small and Medium Enterprises Development Agency (SMEDAN) in order to provide loan facilities to small scale maritime companies in a bid to assist them in building capacity to operate effectively in the rendering of services, including support services to oil companies.⁸⁴ Also, the NIMASA has seen to the establishment of the National Seafarers Development Programme (NSDP) which is aimed at developing manpower for the industry. According to the agency, the country needs nothing less than

⁸⁰ It was one of the laws passed at the tail end of the Obasanjo regime. The NIMASA replaced the NMA which was established by the National Shipping Policy Act.

⁸¹ See the preamble to the NIMASA Act.

⁸² See Section 1(2)(a) of the Act.

⁸³ See generally section 1 of the NIMASA Act.

⁸⁴ Oditia Sunday, NIMASA: Ensuring effective implementation of coastal, inland shipping policy, *www.nguardiannews.com/maritime/article/article*, accessed on the 12th February, 2009. The enterprises, were selected from different parts of the country and were in fact approved by the two agencies.

30,000 trained and certified seafarers to effectively run the cabotage policy⁸⁵. To achieve this end, the agency has organised various sensitization programmes so as to raise awareness about career opportunities available in the industry stating the intention of the agency to train at least 3,000 seafarers yearly.⁸⁶

Apart from the above, the agency has started taking steps to implement the provision of the Cabotage Act relating to the Cabotage Vessel Financing Fund (CVFF).⁸⁷ According to the NIMASA, an arrangement is being made to assure the mass production of ships based on the level of demand of the Cabotage trade. Also, indigenous operators will be given the opportunity to assess loan for the maintenance of their vessels at designated ship repair firms within the country. Existing shipyard facilities are to be accessed with the aim of increasing their capacity to handle vessels engaged in the cabotage trade. To this end, the Agency has always continued to stress the importance of the need that vessels involved in the cabotage trade are properly registered with the agency.⁸⁸

In the area of enforcement of the provisions of the Act, the Nigeria Maritime Administration and Safety Agency (NIMASA) has taken up the gauntlet in ensuring that shipping companies comply with the various regulations whether international⁸⁹ or local, relating to the shipping industry such as those relating to the

⁸⁵ Nigeria requires 30000 seafarers to work on Cabotage, *www.businessdayonline.com* accessed on 30th April, 2009

⁸⁶ Chris Ajaero, A Scheme for Seafarers, *http://www.newswatchngr.com* accessed on 30th April, 2009. See also, NIMASA: Ambitious Aims, Modest Strides, *http://www.thenationonlineng.com/dynamicpage.asp* accessed on 30th April, 2009.

⁸⁷ Section 42 of the Act. The Senate had previously approved the guidelines for assessing the Cabotage Vessel Finance Fund (CVFF) in 2007 in accordance with the provision laid down in the Act. See Sections 43, 44 and 45 of the Act.

⁸⁸ Registration Vessels for Coastal Shipping Mandatory, *http://www.channelstv.com/newsdetails.php?news_id=2849* accessed on 29th April, 2009.

⁸⁹ Akoma Chinweoke, NIMASA, ISAN to phase out single hull tankers, *http://www.vanguardngr.com/content/view/25467/49/* accessed on 03/03/09.

disposal of waste to avoid marine pollution⁹⁰. Also, vessels which in one way or the other have flouted the provisions of the Cabotage Act are arrested when caught. Apart from obtaining fines from the offending vessels, such vessels are not released until they have complied with the provisions of the law⁹¹. Recently, the NIMASA was successful in its application for re-election into the International Maritime Organisation (IMO) Council⁹². This achievement was greatly applauded by stakeholders as it was felt that apart from placing the country in the top-class decision-making group of the world's maritime industry, it would also assist it in reaching its desire of being a major and consistent player in the maritime industry.

Despite the courageous strides that have been taken by the NIMASA, the agency has not been free from criticisms from stakeholders, who believe it can perform better than it is currently doing. Some of the criticisms that have come the way of the NIMASA include that generated by the launching of its national seafarers development programme. Some industry players are of the view that the programme is just an avenue to waste funds which can be of good use in other areas of the industry such as in the Maritime Academy of Nigeria, Oron, that has not yet been fully developed to date⁹³.

Also, a committee that was set up to appraise the implementation of the Cabotage law, scored the implementation of the law low and indicted the Nigerian Maritime Administration and Safety Agency (NIMASA) and the Nigerian National Petroleum

⁹⁰ Godfrey Bivbere, NIMASA to enforce compliance to marine waste dumping in Nigeria, <http://www.vanguardngr.com/content/view/full/34197/49/> accessed on 02/04/09.

⁹¹ NIMASA Detains Two Vessels Over Non-Compliance of Cabotage Law, <http://allafrica.com/stories/200708300262.html> accessed on 01/05/09.

⁹² IMO Council Seat: What prospect for Nigeria?, www.thetidenews.com/article, accessed on the 23rd April, 2009.

⁹³ Andrew Airahuobhor, "How much does NIMASA make now, annually?" <http://allafrica.com/stories/200904160541.html> accessed on 18/04/09. The Maritime Academy of Nigeria (MAN) does not have adequate facilities and according to the critics, if the MAN has one or two ships attached, the nation will definitely be the better for it.

Corporation for being insensitive to the law⁹⁴. According to them, the Agency was responsible for the improper implementation of the provisions of the Act and categorically said that it was responsible for the constraints facing the Maritime Academy of Nigeria in its bid to produce internationally accepted seafarers.⁹⁵

Other problems that can be said to have contributed to poor performance of the NIMASA include the issue of poor enforcement of the cabotage policy against violators,⁹⁶ the inability of the agency to call the NNPC and its subsidiaries to order as regards their refusal to comply with cabotage regulations especially as it relates to local content development. Finally, it can be said that a criticism and problem affecting the NIMASA relates to the issue of unstable leadership to direct the agency's affairs. Most sectors or parastatals that have been able to achieve great impact in the economy have enjoyed stable leadership as their managers have been allowed to stay long enough to complete their agendas. However, in the maritime sector, the reverse has been the case as the leadership of the agencies is changed continually to suit political interest.⁹⁷

⁹⁴ Godwin Oritse, "House Committee Scores Cabotage Implementation Low", <http://www.vanguardngr.com/content/view/full/34197/49/> accessed on 23/04/09

⁹⁵ See Section 16 (2) (b) of the NIMASA Act of 2007, which provides that not less than 5% of the Agency's revenue should be reserved for the Maritime Academy, Oron. Over the years, the Academy has found it difficult to meet up with the International Maritime Organisation's standard in accordance with its STCW Convention. The NIMASA has not been living up to its expectations in the proper release of the funds to the Academy. In fact it is due to this reason that the decision of the NIMASA to establish other maritime schools within the country was criticised as that in existence has not been fully funded. See Godwin Oritse, "House Committee Scores Cabotage Implementation Low", <http://www.vanguardngr.com/content/view/full/34197/49/> accessed on 23/04/09

⁹⁶ Recently, the Federal High Court sitting in Lagos has found a foreign vessel, MT Lovell Sea, guilty of contravening the provisions of the Cabotage Act in a suit filed by the Indigenous Ship owners Association of Nigeria (ISAN). The court held that the tanker vessel and its owners violated the Cabotage Act and ordered them to pay N10 million as damages to ISAN. The ISAN had to take their destiny in their hands by assuring the arrest of vessels violating the Cabotage Act when the NIMASA was not living up to expectation. See Cabotage: Court convicts foreign ship, www.vanguardngr.com/2010/.../cabotage-court-convicts-foreign-ship accessed on 20/02/2010.

⁹⁷ David Ogah, "Nigeria's maritime industry groaning under unsteady leadership", <http://www.nguardiannews.com/maritime/article01/indexn3.html> accessed on the 23rd April, 2009.

Recommendations

The provision of the Cabotage Act is clear as regards its intention which is to restrict the use of foreign vessels in domestic coastal trade and also promote the development of indigenous tonnage. The various problems which are also preventing the Act from achieving this intention have been highlighted in the preceding paragraphs of this chapter. It is therefore the writer's intention to make recommendations which will go a long way in assisting in the development of the local maritime industry.

First, on the issue of grant of waivers, the criteria listed for its grant under Section 9 to 12 of the Act are elastic and can be easily abused by corrupt officials. To this end, it is important that the minister, in exercising this discretionary power, exercise extreme care and ensure that all applications brought before him are screened carefully by checking available registers so as to be sure that Nigerian vessels or seafarers are actually not available to fill the required vacancies for which waiver has been applied. It is necessary that this is done so as not to render the cabotage policy ineffective.

Secondly, it is suggested that the Nigerian Maritime Administration and Safety Agency (NIMASA), should begin to live up to its responsibilities of being a regulatory and enforcement agency. It is suggested that the agency must be fully resourced with competent staff, who are properly trained. Also, comprehensive and transparent monitoring systems should be put into place so as to achieve an effective compliance with the Cabotage Act. Also, the local maritime companies must be thoroughly screened so as to prevent a situation where these companies would be acting as a screen for foreign companies just as was done during the operation of the cargo sharing policy. It is only by doing this, that the intention of the law which is to develop the Nigerian maritime industry will be actualised.

Thirdly, urgent steps should be taken to further develop the Maritime Academy of Nigeria, Oron, by injecting funds into it so that it can live up to its duties of training Nigerians, in all cadres of maritime manpower so that they would be effective in manning

and operating vessels used in cabotage regime. Also, training vessels should be acquired for the academy because there is no way one can properly train seafarers without having at least a vessel for their practical use. The National Seafarers Development Programme can be continued but in conjunction with the Academy while Nigerians from different geographical areas should be encouraged to participate in it. Also experienced hands in the industry should be invited on board so that Nigerians entering the programme would have the opportunity of learning from the best. It is only by doing this that the country's aim of ensuring greater indigenous participation in the shipping industry can be achieved.

Fourthly, the Cabotage Vessel Finance Fund which is provided for in the Act should be implemented without delay. Modalities on how the funds can be accessed should be set up while adequate measures for the recovery of such loans should be known. In fact, this is particularly necessary so as to prevent a situation where phony companies would access the loans thereby preventing genuine companies from benefiting from the fund. It is known that the acquisition of vessels is capital intensive and it is only where funds such as the Cabotage Vessel Finance Fund are available that it will be possible for the country to achieve its aim of increasing its tonnage capacity. Also, initially, the vessels to be acquired should be of the type and specifications needed specifically in the oil and gas industry. Apart from this, the banking industry should also be encouraged to assist local shipping companies by providing access to long-term loans for the acquisition of vessels. However, the issue of high interest rate charges should be looked into so the companies will not become overburdened by unnecessary liabilities.

The importance of the availability of cargo in the shipping industry cannot be over-emphasised. Where cargo cannot be guaranteed and made readily available in an open market environment, indigenous tonnage will definitely not thrive. Since the country is a major producer and player in the oil and gas industry, cargo patronage from sources such as the Nigerian National Petroleum Corporation (NNPC), its subsidiaries and

other oil companies operating in the country, should be assured on favourable terms. A situation whereby foreign vessels would continue to dominate the local market should be discouraged.

Finally, the criminal liability provided for in the Act should be revised so that stiffer penalties will be meted out to offenders. It is felt that it is only where the punishment is stiffer, that the companies will see the necessity of complying with the provisions of the law. Also, after some years, the waiver clause inserted into the cabotage law should be removed because it is felt that the necessary transition and adaptation processes would have been completed.

Conclusion

There is no doubt that the cabotage policy if properly implemented will on the long run be a boost to the Nigerian shipping industry and economy in general. To this end therefore, the success of the law depends on everyone i.e. the government and the private sector inclusive. The private sector should look into avenues where it can adequately and effectively participate without assistance from the government. The government should also ensure that an enabling environment where investments will thrive is assured. Also the public should continue to act as a watchdog so as to prevent a situation where unscrupulous elements will prevent the law from achieving its objective of improving the maritime industry.