



The Emergence of Nigerian Maritime Cabotage Laws and the Future of Its Maritime Commerce

Gabriel E. B. Inyang*

Lecturer I, Faculty of Law, University of Calabar, Calabar, Nigeria

Amarachukwu Onyinyechi Ijiomah

Lecturer II, Faculty of Law, University of Calabar, Calabar, Nigeria

Abstract

Nigerian maritime cabotage laws evolved to add efficiency to the country's maritime industry, especially in the area of indigenous fleet expansion, ship building and human capacity development. The aim was to curtail foreign dominance and unequal competition by non-Nigerian operators. Since the enactment of the Cabotage Act, attempt at successful and beneficial implementation could not be achieved due to regulatory inadequacies. What is obtainable now includes foreign dominance, unfair competition, policy failure, institutional ineffectiveness, absent of stable local capacity, regulatory problems, fiscal deficiencies, lack of political will by the government. In view of these inadequacies, appropriate remedial regulatory measures need be considered. These include regulatory overhaul or ample review of all extant maritime laws which are no more relevant in a cabotage regime. There is need for institutional reforms which will engender adequate and effective monitoring and enforcement. Fiscal and financial legal framework needs to be put in place to strengthen this inadequate and weak policy. This article submits that, cabotage laws which are supposed to be the framework of transformation from foreign to indigenous dominance of coastal shipping, have fallen short of the intended objectives. It therefore requires proper and adequate review to cure the obvious defects.

Keywords: Cabotage; Maritime; Shipping; Trading; Coastal and Inland.



CC BY: [Creative Commons Attribution License 4.0](https://creativecommons.org/licenses/by/4.0/)

1. Introduction

Marine cabotage laws are enactments which enable shipping and trading within a nation's inland water or inter-ports shipping and trade within a country which is solely made for and operated by its citizens and indigenous vessels. It is mainly for the administration of coastal shipping and not international shipping. In this respect, it entails the shipping and trading in a country's coastal or inland waters or waterways. These marine cabotage laws can be enacted as a single legislative document or as a conflation of two or more shipping legislation of a nation (Nweze, 2006).

Cabotage as a concept does not only include maritime activities within the coastal and inland waters of a country. It involves also the exclusive reserve or restriction of foreign participation by foreign operation in the aviation sector, where the air-space of a country is utilized by citizens of such country. It may also have to do with railways and even road transportation where the citizens of the country are the only participants in the business of these sectors.

Outstanding maritime countries the world over, have conceived and put in place an age-long practice of operating laws and regulations to advance and defend their own merchant maritime. A solid maritime sector is a nation's pride and strength for military as well as economic safeguard. In today's world with high level of technology, ships account for the carriage of over 90 percent of goods for global trade, and shipping remains a major national computable wealth for the movement of goods and troops for defence objectives (Christie and Dickman, 2020).

A very popular method of approach to advance and safeguard a nation's maritime industry has been the prohibition of foreign ships from participation in domestic or coastal trade or inland shipping cabotage. Most countries with seafaring record have well established cabotage laws which stipulate that ships needed in coastal trade should be built domestically, owned and manned by the nationals of that country. Nigeria is equally doing the same thing. In Nigeria, coastal trade is defined to mean the shipment of either persons or goods between two points within Nigeria. Generally, foreign ships may not be allowed to participate in such trade (lane, 1992).

For many years, Nigeria's maritime sector has not succeeded to draw the intended local and foreign investment mix that is equal to its contribution to the Nigerian and even the West African economy, notwithstanding its huge prospects and tremendous investment opportunities. Airahnobhor (2008) Conscious of the necessity to evolve an indigenous merchant maritime fleet, the Nigerian government had variously embarked upon policies and programmes to support indigenous fleet procurement. Notably, the government procured 24 ships through the extinct Nigerian National Shipping Line in the 1970s. Another was the establishment of the Ship Acquisition and Ship Building Fund (SASBF) under the National Shipping Policy Act of 1987 (Merchant Shipping Act, 2007).

Unluckily, these credible and commendable initiatives could not achieve the desired aims. The economic process of transportation of goods, services and persons in the Nigerian inland and coastal waters is at present practically solely controlled by foreign owned and manned ships.¹

Naturally, Nigeria is a maritime country with a massive coastline of about 853 kilometers with ample human resources. This represents enough proof that Nigeria should expectedly be a functional maritime country of no mean fame among the traditional maritime nations. Factually, Nigeria is reckoned to control over 60 percent of cargo and shipping business in the West and Central African regions. This position is enough to qualify Nigeria as a true maritime nation. It should therefore be a centre of maritime activities in these regions.²

Regardless of the tremendous chances abounding in Nigerian maritime domain, there are problems and difficulties in the area of capacity building for the maximization of the advantages from the opportunities available. Over 90 percent of world trade is undertaken through the oceans, employing ships, and it is, thus, a truism that "he who has the ship controls the world trade."³ However, Nigeria is yet to assume its position in this regard despite her vast coastal line. The operators of the world maritime trade are on a brisk motion and Nigeria is exploring ways to hook up to the speed with the rest of the maritime world. [Ogah \(2009\)](#) Various sectors are very close to their world in Nigeria, for example, the Communications Commission, National Drug Administration and Standards Organization of Nigeria are really doing very well. These agencies of government can favourably compete with their equals elsewhere. These sectors could get this far because their administration knew and enjoyed good and steady leadership. Their operators or administrators have been allowed and exposed to long and smooth leadership; sufficient enough to enable them implement their strategic plans.⁴

The maritime industry is a subsector of the transport sector; more than 90 per cent of global transport is carried on by sea. "Ocean-borne trade also constitutes a greater part of water transport trade which accounts for well over 60 percent of the total Gross Domestic Product (GDP) of the 16 countries that make up the Economic Community for West African States (ECOWAS)."⁵

This sector also establishes a gateway to the Nigerian economy. It has experienced positive changes in the past few years, which include port reforms which heralded the participation of private terminal operations. This made efficient cargo handling and release easier, and also reduced cost of operation and increase in cargo tonnage ([Olukaju, 2008](#)).

The Cabotage Act, which is designed to be similar to the US Jones' Act provides that vessels to be employed under its regime should be built, owned and manned by Nigerian citizens. It equally restricts the shipment of refined petroleum products within Nigerian coastal waters to wholly Nigerian shipping companies. In addition, the enactment of the "Local Content Bill in the oil and gas sector, which is the equivalent of the Cabotage Act in the maritime industry, has further boosted investment opportunities in the two sectors. This is primarily because the local content policy seeks to increase indigenous participation in the sector."⁶

Essentially, the enactment of the Nigerian Maritime Agency and Safety Administration Act, 2007 brought about the Nigerian Maritime and Safety Agency (NIMASA) NIMASA is the product of the amalgamation of the erstwhile National Maritime Authority (NMA) and the extinct Joint Maritime Labour Industrial Council (JOMALIC). NIMASA is empowered by the Act to be responsible for the promotion of the growth of indigenous maritime shipping in both international and inland shipping." This is the first of its kind in the history of the nation's maritime industry. It is also to regulate and promote maritime safety, security, marine pollution and maritime labour, among others".⁷

The erstwhile Managing Director of the Nigerian Ports Authority (NPA)⁸ once made a disclosure that on the ground of a mean crude oil output of estimated two million barrels a day; Nigeria rakes in more than \$5m daily as crude oil income, but over 98 per cent of such funds is domiciled in foreign countries. Although Nigeria is blessed with huge deposits of petroleum and marine computable wealth, she has not been able to appropriate these resources for the advantage of the economy and Nigerians. "On account of tanker fleet growth data for 2012, among the 13 OPEC⁹ members with a total of 134 tankers, only two belonged to Nigeria, Algeria one, Angola none. It is regrettable that the two owned by Nigeria are merely used for storage rather than lifting crude oil."¹⁰

The government of Nigeria through NIMASA has initiated a ship repair and ship maintenance fund from the Cabotage Vessel Financing Fund (CVFF). The National Cabotage Policy Act No.5 of 2003, Laws of Federation of Nigeria, authorized the Nigerian government to limit shipping business along the vast coastline to only Nigerians and to ships built, owned and manned by Nigerians. [Oditia \(2008\)](#) The Nigerian cabotage laws in a way should be the

¹ L Ademiji. 'Maritime's Strategic Economic Importance', Fin-Intell, The doing business Magazine. <www.myfinancialintelligence.com/...>accessed 19 April 2016.

²<http://www.ngrguardiannews> accessed 28 December, 2019

³ Ibid.

⁴ M. Igboke, 'An Appraisal of Cabotage Act: Three Years After' (Maritime Seminar, Eko Le Meridien Hotel, Victoria Island Lagos 1 July, 2006) 7.

⁵ 'Maritime Industry -High Investment Opportunities, Low Investment Inflow', African News Service, 16 October 2008< [Issue- aliafrica.com/stories/200810160855.html](http://aliafrica.com/stories/200810160855.html).AfricaWorld ... > accessed 9 January, 2020.

⁶*African News Service* [n 13].

⁷ O. Daudu, 'NIMASA to Enforce Cabotage Act', 2011 (4) (15) International Maritime Digest, 6.

⁸ Abdulsalam Mohammed.

⁹ Organization of Petroleum Exporting Countries.

¹⁰ H. Abdullahi, 'The Challenges Before the New NPA Boss'<Articles/Thisday, [www.thisday/ live.com/.../the/121579/...](http://www.thisday.com/live.com/.../the/121579/...) > accessed 5 February, 2020.

"framework of system transformation from foreign dominance of coastal trade to a lovely mix of local and expatriate synergy that paves the path for a wholesome global trade benefit relationship. It is succinctly defined by the Nigerian Parliament as an Act to restrict foreign participation of coast-wise trade."¹¹ It should, however, seek to abdicate foreign participation in its entirety. The process is growing but tardy and Jones¹² calls it 'the politics of modernization from within'.¹³

Cabotage is a creation of the legislature restricting participation or preserving maritime or aviation trade within a nation for the exclusive advantage of its nationals. The Nigerian maritime cabotage was enacted by the federal government in reaction to cries by major maritime practitioners and administrators who pressurized the government to set up an organic instrument to use indigenous maritime skills and appropriate the huge profits in the sector for the benefit of the citizens. The call was timely to alter the situation by which the nation's maritime businesses both local and international were controlled by non-Nigerians. The idea of instituting the cabotage policy was to stimulate the promotion of the maritime trade by an interventionist mechanism with the aim of helping the promotion of the indigenous capacity to control more foreign competition and dominance (Agbakoba and Associates, 2019).

Cabotage has been a global phenomenon practiced for over three decades now. It is a current economic trend justifying intervention of this kind to bring about purposeful outcome (as opposed to the traditional economic path of free market principles), as a satisfactory tool to accomplishing some valuable economic objectives, particularly when competition is not fair and domination is widespread. It is confirmed that this programme is global, both in maritime and aviation has been caused by various factors involving preserving all, or a section of the public market share to indigenous flag ships or aircraft whether for political, economic or security purposes. Additional cause why this restrictive policy is applied across the globe is to elaborate local personnel and capital capacity.¹⁴ These are some of the major aims of the Nigerian maritime cabotage.

With respect to the scope of the Cabotage Act, the Coastal and Inland Shipping (Cabotage) Act No.5, 2003, Laws of the Federation of Nigeria, covers the transportation of cargo and persons by ships or other modes of transportation, mineral, other natural resources, and any marine transportation or activity of commercial nature within Nigeria's territorial waters. The Act attempts to limit the employment of foreign ships in the inland/coastal trade so as to aid the growth of indigenous tonnage (Asoluka, 2010).

Nigerians are yet to notice significant change since the enactment of the Act or the implementation of the cabotage policy. The cabotage business is still controlled by foreign operators. On the point of view of the maritime operators, that is, Nigerian shipping companies, the question remains: How far has cabotage brought the expected benefits to Nigerians. What are the causes of the very slow implementation of the policy? What problems are associated with smooth take-off of the programme? Do they have to do with politics of shipping development, the process or policy, or all of these factors? What influences do cabotage laws have on the Nigerian economy?

2. Activities of the Nigerian Maritime Industry

While deliberating on the term, 'maritime' what readily and actually occurs in the mind will be ships and shipment of goods. Truly, these constitute the hardware of the maritime industry. Yet, a ship is not referring to 'beast and meter vessels alone'. It is fascinating to acknowledge that "drilling rigs, offshore platforms buoys and other offshore facilities including mobile units are deemed to be ships under maritime law. Revolving around this hardware is a wide range of services which make-up the software of the industry." Okoroji and Ukpere (2011) The services are crewing, ports, bunkering, fresh water, catering and agency. It is equally trite that investment in maritime trade as a business is good money spinner in all seasons.

The maritime business of any country is a foundation upon which the economic good of that country is built and evolved. Indeed, the landlocked nations cannot advance any much in their business programmes without possessing attendant disposition and affiliation with states endowed with seaport facilities. This position is well appreciated against the background that over 90 percent of international trade is either sea-borne or transported by ships (Offshore Marine Service Association OMSA, 2005).

From available data, global fleet is proved to be about 46,000 sea-going ships having various sizes and cargo carrying capacities. It is believed that on daily basis, "these vessels convey millions tons of goods including commodities, fuel, crude oil, raw materials, machinery, equipment, foodstuffs, medicaments, etc. around the world."¹⁵

The picture is the same in Nigeria being part of the international community. Well over 90 percent of Nigeria's apparent foreign trade is seaborne. Nigeria which greatly relies on the exportation of crude oil for her foreign exchange earnings and importation of different commodities, including raw materials for industries, cannot but give weighty consideration to her maritime sector. This is one of various rationales why the Federal Government is undertaking serious considerable changes seen in the nation's maritime industry.¹⁶

The National Maritime Administration and Safety Agency (NIMASA) is practically a major government's department responsible for the supervision of the enormous maritime programmes in the country. Naturally, Nigeria

¹¹ Ibid.

¹² In the US' Jones Act of 1920.

¹³ C. Igbokwe, 'Issues in Cabotage Law in Nigeria' <<http://www.scribd.com/mobile/.../...>> accessed 22 December, 2016.

¹⁴ A. Nweze [n 3] 60.

¹⁵ Ibid, 97.

¹⁶ Ibid, 98.

is situated on the important trade highway, and is excellently endowed with much significant maritime terrain. The massive resources of Nigeria's maritime environment exert great but positive influence on the country's economy.

The UNCIAD Code of Conduct for cargo sharing, generally called UNCIAD 40,40,20 was adopted in 1974. The Nigerian Shippers Council was later founded¹⁷ to be responsible for the organization of shipping programmes in the country. The National Maritime Authority (NMA) was also set Up¹⁸ for the purpose of implementing the country's shipping policy in tandem with the UNCI AD principles. Therefore, Nigeria was set to participate fully in merchant shipping programmes. "The Nigerian National Shipping Line (NNSL) was incorporated to enable the country to participate fully in the World's Maritime Trade. As at 1987 the NNSL could boast of a fleet of 27 vessels. Sadly enough, NNSL now stands liquidated."¹⁹

National Unity Line (NUL) superseded the NNSL. It started with one ship, but soon experienced the same doom as NNSL. It is generally believed that at the end of the day a total of 122 registered shipping concerns were recorded in the country. None of these companies could boast of any of its personally-acquired vessel. They all resorted to chartering of ships to be able to transport their assigned portion of cargo (Ola, 2004).

Nigeria is largely blessed with maritime capabilities which were discovered by Britain during the colonial era. These resources were fully utilized and used to advance their business between their colonies in Africa and Britain. With her extensive coastline, marine, economic and human resources, Nigeria was recognized by the British then as an important foremost maritime country in West Africa. Essentially, this prediction almost came to realization at independence as Nigeria realized the necessity of economic and political independence as a young nation, and promptly proceeded to create the Nigerian National Shipping Line (NNSL) amidst other facilities. Furthermore, in concert with other newly independent African countries, Nigeria became a member of the International Maritime Organization (IMO). In the 1990s various independent African Countries, including Nigeria, had represented a huge membership of IMO. As these countries prepared to increase their national fleets and enhance their maritime activities, they were faced with the problems of diminished funds and lack of competent maritime experts or professionals. Concerning the trained professionals, IMO succeeded to help these countries through its technical co-operation programmes. IMO also went ahead to help through grant of fellowships, research and specialist training grants for citizens of the member states.²⁰

Notwithstanding the foremost work done by Nigeria to evolve its maritime sector, at independence, the country cannot be said to be a big maritime player in Africa as previously 'predicted' or foretold by the colonists. "Worst still, even as at this moment, Nigeria is not among the first 20 maritime nations of the world; and is unable to build her locally made ocean liner, in spite of being a proud owner of a world class dockyard, which is about the best in Africa" To add to that, the country lost a total of 32 ocean-going vessels, which belonged to mainly private shipping operators, within a short space of time. These ships were sold by reason of the dead of the NNSL. This company suffered gross mismanagement, professional ineptitude, political gimmicks and unrestrained corruption.²¹

3. The Introduction of the Maritime Cabotage Regime

Cabotage is a branch of maritime industry that majority of countries exclusively retain for their citizens due to its economic and defence purposes. There is a negligible impact by Nigerians in cabotage trade in the country's coastal space. "Cabotage is a nautical term from the Spanish, denoting strictly, navigation from cape to cape along the coast without going out into the open sea." (Gould, 2000).

In international law, cabotage is "identified with coastal trade so that it means navigating and traveling along the coast between the ports thereof."²² Similarly, in a document, cabotage is defined as carriage of goods or persons between two points in Nigeria by ships.²³ Cabotage is equally a word taken from the French expression '*caboter*', connoting sailing on the coast. Howbeit, Cabotage has grown and is recognized as 'coastal trade' or 'coasting trade' or 'coastwise shipping', signifying the shipping of cargo and passengers through ships at the ports on the same coast or along the ports in one nation, including the sole prerogative of a nation to control water transportation along its inland waters or to control air traffic inside its geographical air space (Asoluka, 2003).

It is altogether doubtful that deliberations on maritime reorganization and rehabilitation will be conclusive without citing the cabotage Act, which came into force in Nigeria in 2003, as amended in 2007. The cardinal significance or thrust of the Act is to fortify Nigerians, particularly the businessmen engaging in maritime concerns. The confine of the Act is limited to maritime businesses which are undertaken in the precincts of the country's coasts.

The major elements of the Act include the fact that all economic programmes carried out within the Nigerian coasts must be exclusively reserved for its citizens. As long as bulk of the programmes depend on shipping services and allied subjects, it is suggestive therefore that for Nigerians to partake in these businesses, ship must be owned, built crewed and registered by Nigerians. Over time, qualified Nigerians are known to have been cheated or side-

¹⁷ Established by Decree 13 of 1978.

¹⁸ Established by Decree 10 of 1987.

¹⁹ Offshore Marine Services Association (OMSA) [n 28]99. 102

²⁰ Ibid, 66.

²¹ Ibid, 68

²² Black's Law Dictionary, 6th Edition, 202.

²³ Advocacy paper for the Promulgation of Nigerian Maritime Cabotage Law Part II: Present and Potential Problems of Cabotage and Recommended Solutions'. Pages 42-47 and 213-224 "Supporting Documents for the making of A Maritime Cabotage Law in Nigeria" presented at the public hearing on Cabotage Bill, House Committee on Transport, (National Assembly Complex, Abuja) April 2001.

lined from taking part due to lack of apposite legislation. With regular collaboration of Nigerian players, in the industry, non-Nigerians have been eating fat on these trades, to the detriment of qualified Nigerian citizens.

Factually, it is evident that France had established cabotage law long ago in the 16th century, through the reservation of all shipping activities in the ports within her coasts, solely for her ships. Albeit, numerous transformations, have been recorded in the past and few years. France has undoubtedly consolidated the position that the salient element or objective of the cabotage law nevertheless is still being retained till date.

Well over fifty nations worldwide are operating cabotage laws which they put in place for the purpose of having exclusive rights to their coastal waters, protecting their nationals from competing with foreign operators in coastal shipping. Today, the strongest cabotage policy in the world is the America's Cabotage which is based on Jones' Act, 1920. This Act is so strict and is enforced in favour of the Americans in their coastal shipping (Kareem, 2005).

Most people may be curious whether the Nigerian cabotage law is not in friction with "international maritime law, Nigeria's membership of WTO and the universal principle of free trade". The practicable feasible response to this can be that with almost 50 nation states presently taking advantage in cabotage trade in different countries with USA and France as main actors, without any form of dispute or challenge, Nigeria has done nothing illegal about Nigeria's decision.

On perusing the Cabotage Act, one wonders if Nigeria possesses the capability to thoroughly carryout its provisions, particularly as ship owning, building and crewing is concerned. Conceivably, the government is aware of these constraints, therefore it adopts what is termed liberal cabotage policy that allows the inclusion of waiver in situations where the country is lacking or bereft in capacity. The minister of Transport is authorized to give exemptions where necessary.

4. Relevance of Marine Cabotage Laws in the Nigeria's Shipping Industry

Any business' success is measured by the level of need, demand and the patronage for the advantage it brings. Opportunity for utilization is based on the demand and available market. Cabotage being protected by the maritime industry has the need, demand and ready market. There is an enormous market for potential investors in the industry. If thoroughly exploited, the earnings from maritime industry stands a chance of exceeding that of the oil industry.²⁴

Doubtfully, Nigeria's merchant fleet cannot amount up to 3 per cent of global merchant fleet. Factually, the NNSL was floated during the 3rd National Development Plan (1975-1980). An order for 19 multipurpose cargo ships costing #200m was made. These ships were bought with funds from Nigeria's petro-naira and were constructed in the then Yugoslavia and South Korea. It was only the African Ocean Lines Limited that placed orders for the acquisition of these vessels; and until 1987, no other shipping company placed any orders.

The story of NNLS is now history and known to all. No trace of the company nor the ships it possessed is seen. This ugly scenario constituted a serious problem which led to the depletion of the country's available merchant fleet.²⁵ Now, Nigeria has about 33 functional registered ships grappling with her maritime trade. These ships are owned by:

- "Morlap Shipping Company Limited
- Genesis International Worldwide Shipping
- Al-Dawood Shipping Lines
- Daped Nigeria Limited
- Ship and Shore Services Agency
- Sea Force Shipping Limited (Zenon)
- Tukuma Maritime Limited (OBAT)
- Pokat Nigeria Limited
- Helko Marine Services Limited
- Sea Services Agency
- West Coast Shipping Line"²⁶

What Nigeria requires to meet her international tonnage can be estimated at about 300 vessels (Emah, 2008).

Apparently, shipping business is a big business. Experts in the financial sector will quickly affirm that they lack the financial muscle for such enormous scheme. Reasonable attention need be drawn to the public sale of GSM²⁷ licenses for mobile phones in the telecommunication sector. This entailed huge sums of money. One may ask, where did these huge sums come from? Privatization, concessions and competitiveness are now global economic trends. The federal government has a lot to do in its policy thrust. It is sufficient to assert that strategic efforts be made to acquire the needed tonnage for its inclusion in the country's ship register. Let it be equally significant for the government at the federal level to enact monetary, credit and fiscal legislation which would cause ship procurement to be more alluring. This should be aimed at making Nigeria a regional centre for a gamut of maritime services such as ship building, ship maintenance and dry docking.²⁸

The connection between transportation and communication should not be ignored. Nigerians are always extremely on the move. Given all the power and zeal exhibited by Nigerian citizens, it is surprising that Nigerians cannot utilize the available opportunities in this area of enterprise due to external or foreign dominance and control.

²⁴ Ibid, 24.

²⁵ Ibid.

²⁶ Ibid, 25

²⁷ Global System for Mobile Communications.

²⁸ A. Nweze, [2] 106.

"Any ship building company in Nigeria can rake in fabulous profits if it dares to explore the potentials available in passenger and commuter ferries, leisure crafts, cruising yachts, off-shore support vessels, fishing vessels, barges and coastal trade and transportation needs." Ezem (2011) The construction of the small ships can be cheaper than building big seagoing ones. Various opportunities also abound if the inter-coastal passenger and freight liner services are explored within and around the West-Central African sub-region. It is estimated that Nigeria generates about 70 percent of the total volume of cargo traffic in the West and Central African Regions, which should be carried by Nigerian shipping companies".²⁹

5. Cabotage and Cargo Reservation for Nigerians

The rationale for cargo support programme in cabotage business is always put in place by governments interested in developing and sustaining the growth of their merchant fleet so that such merchant fleets would be able to support its naval fleet in times of war, or national emergency, and to take part sufficiently in lifting of foreign and domestic commerce. This is the case of the US Cargo preference Act, 1904 by which only US vessels can be used to ship supplies by sea for the US Armed Force (Maritime Administration MARAD, 1999). This purpose cannot be attained in Nigeria because beneficial implementation is far-fetched due to defects in its policy thrust.

Another essence for Cargo support programme is to give an incentive to indigenous ship owners to keep their vessels registered in the registry of its country thereby giving its nationals the opportunity to be employed on board the vessels that would have got registered in another country. Nigeria has in her laws, some form of cargo support programme, which provides for the sharing of all cargoes for carriage by its designated national carriers.³⁰ Although the Act seems to give the impression that cargo sharing and cargo reservation are for the benefit of Nigerian shipping companies engaged in international deep sea and not applicable to cargo and Nigeria shipping companies on the Nigerian coastal or in inland waterways, which are routes that cabotage is concerned which the cargo sharing/allocation policy enshrined in the National Shipping Policy Act was suspended in 1997 (Igbokwe, 2001) This policy needs be revisited, restored and effectively applied and monitored to eliminate fraudulent and corrupt practices that trailed its previous application that led to the suspension.

Without Cargo, there is nothing for ships to carry or transport; this does not augur well for the running cost of ships which accumulate daily and investors will be discouraged from putting their money into hardware shipping as opposed to software aspect of shipping. In this regard, a well-articulated and implemented policy would induce sufficiency of cargo for carriage by indigenous shipping companies and ship owners as well as capacity building and increased tonnage for the shipment of the increased cargo (Aigba, 2006).

Basically, the problem with the Nigerian maritime cabotage is not that of Cargo because, the wet cargo from the oil industry and gas sector can solve the problem of cargo. So, a well-articulated policy which is implementable, having regards to Nigeria's peculiar situation in the area of technology, economy and corruption, if enacted, can forestall the current provisions of the extent Act and would suffice. These provisions as earlier mentioned include the waiver clause and the licensing of foreign operators among others.

If the Nigerian maritime cabotage policy were to be fully and beneficially implemented the opportunities available in dredging and movement of dredging equipment would be enormous. But because some provisions of the cabotage Act are contradictory to interventions of government in enacting the law, all vessels involved in dredging presently, are foreign owned, and that includes manning. All of these would be opened to Nigerians and local shipping operators in the cabotage trade (Usoro, 2005). This position can be gleaned from the influence on inter-stage trade in Nigeria due to cheaper cost of transportation consequent on the movement of haulage from land to water and vice-versa. This would equally relieve the burden on roads and highway transportation of goods on the waterways thereby encouraging internal trade.

There is a lack of infrastructure to support the implementation of cabotage in Nigeria. This is so because there is still overwhelming dominance of the maritime industry by foreigners. Much is still being desired of the ports by way of reforms, laws on trade liberalization needs be expanded and strengthened. Laws that will help in channeling money toward non-oil sectors need be enacted to boost the nation's transportation system which by extension will make the cabotage trade a huge success.³¹

Government policy in port infrastructure and concession in addition to the improvement on safety at sea which have not reached the needed threshold should be reconsidered, while efforts should be geared towards aggressive amendments. The law of carriage of goods by sea in line with Hague, Hague-visby and Hamburg rules and containerization should be harnessed in Nigerian maritime laws for effective navigation and resulting liabilities along the coasts. Shipping technology should be pursued as necessary measures to help the success of the policy. Presently, there is no effort geared towards this, hence, the paradox of non-beneficial implementation.

What is required, and quickly too, is the articulation on the adequacy, effectiveness and relevance of the existing framework to take the Nigerian maritime cabotage policy out of the woods. To critically evaluate all ancillary institutions and extant maritime laws that can bring success beneficially to Nigerians. This can be achieved by playing down on the registry requirement, granting of waivers, etc. These glaring inadequacies with the difficulties in owning, crewing and managing of cabotage vessels work against smooth and beneficial implementation of the cabotage policy since its coming into force over 15 years ago. The area of special fiscal and financial inadequacies

²⁹ Ibid, 10.

³⁰ Sections 9.5(1), 14&18 of the National Shipping Policy Act Cap. 279, LFN 1990. Repeated by NIMASA Act. No.17 LFN 1/2007.

³¹ Ibid.

can be stemmed by establishing a cabotage bank to facilitate the building and owning of ships by Nigerians. A fiscal frame work is not to be over-emphasized in this regard.

6. Conclusion

Cabotage Act in Nigeria was enacted in 2003 to add more value to the Nigerian maritime industry, especially, in the area of indigenous fleet expansion and human capacity development. The main objective was the human capacity development and indigenous ship-owning and shipbuilding; the aim was to curtail foreign dominance and unequal competition by non-Nigerians.

Since the enactment and subsequent implementation, the purpose of that enactment has not yet been attained. What is still applicable is foreign dominance and unfair competition, arising possibly from policy failure, institutional ineffectiveness as in the case of the Nigerian Maritime Administration and Safety Agency (NIMASA), lack of stable local capacity and confusion among the players in the maritime industry.

The main problem identified in this article is that the Nigerian Cabotage Act was skewed in favour of foreigners and to the disadvantage of Nigerians. The solution to this lies in an attempt at making provisions to benefit and protect Nigerians. For example, the insertion of the waiver clauses and issuance of special license to foreign-owned ships,³² have rendered the policy too relaxed and open to all, contrary to the spirit of the law. This is not so in other climes like the United States of America or France, where the policy and regulation is deliberately couched to make the terrain more difficult for foreigners, and to make indigenous operators to thrive.

Reference

- Agbakoba, O. and Associates, 2019. "Guild for the cabotage financing for the financial sector in Nigeria." In *NIMASA Seminar on Economic Potentials of Maritime Industry in Nigeria, Lagos, 17th and 19th May, 2002*.
- Aigba, P. (2006). *Efficient port operations and the benefit of actors: A case study of tunician island port goterborg university, graduate business school*. Integrated Masters Programme. 40.
- Airahnobhor, A. (2008). *'Nigerian maritime industry: High investment opportunities, low investment flow', the vanguard*. Lagos.
- Asoluka, C. (2003). *Nigerian maritime resources development: Issues and challenges*. A National Maritime Authority Publication: Lagos, Nigeria. 3: 69-70.
- Asoluka, C. (2010). Ships and ports: The voice of the maritime industry. *Eco-Maritime Digest*, 6(24): Available: www.airpower.maxwell.of.mil
- Christie, D. R. and Dickman, D. (2020). Review of united states ocean and coastal law: The evolution of ocean governance.
- Emah, O. J. (2008). *Mechanics of ports operation and management*. Daniel Jackson Publishers: Nigeria Uyo. 17: 105.
- Ezem, F. (2011). *Cabotage act is defective: Admits federal government*. National Mirror. 8.
- Gould, R. A. (2000). *Archaeology and the social history of ships*. Cambridge University Press: Cambridge. 92.
- Igbokwe, M., 2001. "The new cabotage act: Its intended effects on the local shipping industry." In *A paper presented at the annual maritime seminar of the nigerian maritime law association*. p. 78.
- Kareem, W. A., 2005. "Reflections of the challenges in the maritime sector: A private sector perspective - shipping." In *Conference organized by Lagos Business School, Pan-African University*. pp. 22-23.
- lane, R. C., 1992. "Cabotage." In *Encyclopedia of Public International law*. pp. 519-20.
- Maritime Administration MARAD (1999). US Department of Maritime and Administration Publication. 38.
- Merchant Shipping Act (2007). LFN which repealed the NSPA Cap.279 of 1990. (27).
- Nweze, A. (2006). *The impact of cabotage act on entrepreneurial opportunities and nigeria's economic growth*. Ph.D thesis, St. Clement's University, Caico Islands, West Indies. 100: www.stclement.edu.gradnwez.pdf
- Odita, S. (2008). NIMASA, Ensuring effective implementation of coastal inland shipping policy. *The Vanguard*, 17: 19.
- Offshore Marine Service Association OMSA (2005). *Maritime Services Business Expansion Plan Publication*: New Orleans, USA. 6: 14.
- Ogah, D. (2009). *Nigeria's maritime industry groaning under unsteadily leadership*. The Vanguard.
- Okoroji, L. and Ukpere, W. I. (2011). A strategic reposition of the maritime industry for economic recovery and sustainability: The cabotage act. *Africa Journal of Business Management*, 14: 56.
- Ola, T. (2004). Ships and ports: Nuggets to move the shipping sector forward. *Heritage Business Magazine*, 1(1): 10.
- Olukaju, A. (2008). *Liverpool of west Africa: The dynamic and impact of maritime trade in Lagos*. Africa World Press. 61.
- Usoro, M. E. (2005). Strengths and weakness of short sea shipping. *Fortune and Class Magazine*: 18.

³² Sections 9-14; 15-21 Coastal and Inland Shipping (Cabotage) Act, No.5 of 2003 LFN, as revised in 2007.