

# LEGAL APPRAISAL OF NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY (NIMASA) THROUGH CABOTAGE VESSEL FINANCING FUNDS

OKEMDI C. NNUBIA \*

## Abstract

Shipping plays an important part in the economic life of nations. This is because it provides an inexpensive way of carrying people and goods from one place to the other, compared with other modes of transport. It may be between one country and another or even within a particular country, moving from one coast to the other. The demand for shipping is an indirect one as it is not demanded as an end in itself, but only as a means to an end. In other words, it is a derived demand, since it does not create its own demand, but its demand is derived from trade in goods. Despite the existence of the Cabotage policy as enshrined in the Cabotage Act, in addition to the provision of vessel purchase fund, the development of indigenous shipping has not significantly improved. The Nigerian Cabotage Act appears to be skewed in favour of foreigners and to the disadvantage of Nigerians. The renewed efforts of government, especially NIMASA, if sustained, will change the situation for the better. Also, on the Cabotage Vessel Financing Fund (CVFF), government should make haste to ensure that all impediments to access the Fund by indigenous operators are promptly removed and commence disbursement of the Fund. This will ensure the acquisition of relevant and needed vessels by the indigenous shipping operators, thereby giving them the necessary impetus to actually participate in the cabotage trade to the benefit of Nigerians and the achievement of the objectives of the Cabotage Act.

**Key words: Cabotage, Maritime, Financing, Funds, Policy**

## 1. Introduction

Generally, shipping activities have been going on for a very long time. The first known sea trade network was developed about 5,000 years ago between Mesopotamia, Bahrain and the Indus River in Western India.<sup>1</sup> In modern times, shipping has assumed an important position in the carriage of goods and passengers across the globe. It constitutes an important component in world trade, carrying about 90% by volume of cargoes generated globally.<sup>2</sup>

The modern international maritime transport system falls into three zones: interregional transport, which covers deep-sea shipping; short-sea shipping, which transports cargoes of short distances and often distributes cargoes brought in by deep-sea services; and inland

---

\* Dr. Okemdi C. Nnubia, ND-in-Law, LLB (Hons) RSU; BL; LLM, PhD (RSU), Lecturer, Department of Business Law, Faculty of Law, Rivers State University, Port Harcourt; Mobile: +2348033134307 OR +2348188274170; Email: okemdinnubia@yahoo.com OR okemdi95@gmail.com.

<sup>1</sup> M Stopford, *Maritime Economics* (3rd edn, Cornwall: Routledge, 2009).

<sup>2</sup> E Akabogu and V Onyuike, *Maritime Cabotage in Nigeria*, (Lagos: Linksoft 2004).

transport Stopford.<sup>3</sup> Deep-sea shipping is the only economic transport between the continental landmasses for high-volume inter-regional cargoes. On the other hand, short-sea shipping provides transport within regions. It involves distribution of cargo delivered to regional centres by deep-sea vessels. However, short-sea shipping is subject to many political restrictions, one of which is cabotage, the practice of enacting laws which reserve coastal trade to ships of the national fleet of a particular country.<sup>4</sup>

Ocean shipping is one of those three vital economic areas whose indigenous control or lack of it may make or mar the fortunes of a country's socio-political independence. Of the other two - banking and insurance - significant progress at such control has been made in Nigeria.<sup>5</sup> In the case of ocean shipping, Nigeria is still to have effective control in this area covering the supply and pricing of the services to the country. Generally, over the years, various countries have sought to protect their citizens by restricting participation in key sectors of the economy to the citizens, usually through restrictive/protectionist policies and although shipping is international, the maritime industries of some nations have not been immune from such policies. An instance of this is the restriction of participation in the coastal carriage of cargo of a maritime nation to the exclusive preserve of its citizens, otherwise known as cabotage.<sup>6</sup>

Maritime transport is very central to the Nigerian economy. This centrality is underscored by the very nature and structure of Nigeria's international trade. Nigeria's economy can be said to depend largely on the efficiency of international trade and commerce.<sup>7</sup> Consequently, the development of maritime transport capacity becomes important for her economic survival.<sup>8</sup> Realizing this importance, successive governments in Nigeria since independence have made considerable efforts through various policy strategies and administrative measures to encourage indigenous shipping capacity development, even in the face of threats from developed countries that have always monopolized the trade.<sup>9</sup> The climax of all these efforts was the promulgation of the National Shipping Policy Decree 10 of 1987 by the Federal Military Government. Thus, the National Maritime Authority was established to coordinate the implementation of the shipping policy.<sup>10</sup>

---

<sup>3</sup> Stopford (n 1) 50.

<sup>4</sup> M Igbokwe, 'The New Cabotage Act: Its Intended Effect on the Local Shipping Industry' (2003) a paper presented at the annual Maritime Seminar of the Nigerian Maritime Law Association held on May 13 and 14.

<sup>5</sup> Y Adeoye 'Collaboration key to Cabotage Law Implementation' <<http://www.vanguardngr.com/2012/04/collaboration-key-to-cabotage-law-implementation-maritime-expert/>> accessed 11 January 2024.

<sup>6</sup> Y Agidee, 'Cabotage- The Nigerian Perspective' (2003) <<http://www.trp-ng.com/pdffiles/Cabotage%20the%20Nigerian%20Perspective.pdf>> accessed 11 January 2024.

<sup>7</sup> I F George, 'The Impact of Protectionism in Nigeria's International Trade: An Appraisal' [2024] (4)(3) *The Journal of International Trade Law and Contemporary Issues*, 85-98.

<sup>8</sup> Nigerian Maritime Administration and Safety Agency, *Appreciating the Activities of Nigerian Maritime Administration and Safety Agency* (Vol.1 Lagos: Truevine Publishers 2009).

<sup>9</sup> NIMASA (n 8).

<sup>10</sup> S Adenekan, 'Developing Indigenous Capacity through Cabotage Law Implementation' (2010) <<http://www.punchng.com/Articl.aspx?theartic=Art201010081141084>> accessed 11 June, 2024.

This move was necessitated by the desire to fully promote and develop the nation's maritime resources, protect and encourage the indigenous shipping industry as well as generate accruable revenue for national development.<sup>11</sup> Furthermore, in order to ensure the development of domestic shipping in Nigeria, through the empowerment of Nigerians to be able to handle all aspects of coastal and inland waterways transport, the Coastal and Inland Shipping (Cabotage) Act was enacted in May 2003. However, years after the promulgation of the Cabotage Act, indigenous shipping development seems not to have improved, rather, it seems to be worsening.<sup>12</sup> Fleet expansion has not been achieved; instead, there has been a considerable depletion of the national fleet. It is in the light of this that the article analyses the Nigerian Maritime Administration and Safety Agency (NIMASA) through cabotage vessel financing funds.

## **2. Conceptual Clarification**

This section clarifies certain concepts used in this article.

### **2.1 Cabotage**

Cabotage simply means transport or navigation along the coastal areas of a country. It is the carriage of goods and passengers within the coastal waters of a particular country. Igbokwe defined cabotage as 'the carriage of goods and persons by ships between ports on or along the same coast or between ports within the same country and the exclusive rights of a country to operate sea traffic within its coasts'.<sup>13</sup> Similarly, Ndikom defined cabotage as 'an inland trade along coastal water. It is the trade along a country's coast; the transport of goods or passengers from port to port in the same country'.<sup>14</sup>

According to Ademuni-Odeke,<sup>15</sup> cabotage is a 'nautical term derived from Spanish, literally denoting navigating from cape to cape along the coast without going out into the open sea'. On his part, Akabogu, see cabotage as 'navigating or trading along the coasts of a territory, between the ports thereof'.<sup>16</sup>

From the foregoing, it can be seen that cabotage, essentially, is all about coastal shipping within a country's waterways. However, the exigencies of national interests, national security and agitations by the citizens are some of the determining factors deciding what type of policy the government of a particular state is going to adopt, with particular reference to cabotage. There are basically two options:

- i. Shipping liberalism
- ii. Protectionism

---

<sup>11</sup> O Ademuni, *Protectionism and the Future of International Shipping* (Boston: M. Nijhoff Dordrecht 2007).

<sup>12</sup> *Ibid.*

<sup>13</sup> Igbokwe (n 4) 1.

<sup>14</sup> O Ndikom, 'Nigerian Cabotage Act 2003: The Journey So Far' (2010) Paper presented at Management of Cabotage Operations Course Organised by the Nigerian Institute of Transport Technology, Zaria, July 26-30.

<sup>15</sup> Ademuni (n 11) 75.

<sup>16</sup> E Akabogu, *Maritime cabotage in Nigeria* (Lagos: Olisa Agbakoba & Associates, 2004) 27.

Shipping liberalism, according to Chrzanowski,<sup>17</sup> recognises the principle of free and fair competition in sea transport, irrespective of the flag the ship is flying. Under such policy, shippers have the right of a free choice of carrier; either home or a foreign-flag vessel. Hence, the basic principle of shipping liberalism is that the merchant marines operate on the freight market without any intervention of the public bodies/governments or their agencies. Government non-intervention is thus the very essence of the concept of liberal policy in shipping. Protectionism, on the other hand, is the adoption of some form of policy, aimed at giving preference and protection to the local or indigenous shipping companies in that state so as to ensure that they partake in the shipping activities of the country, being shielded from the undue advantage of foreign shipping companies in terms of better technical ability and competence.<sup>18</sup>

## 2.2 Maritime Industry

Companies and organizations whose activities supply innovative products and services related to the business of designing, constructing, manufacturing, acquiring, operating, supplying, repairing and/or maintaining vessels, or parts thereof; of managing and/or operating shipping lines and customs brokerage services, shipyards, dry docks, marine railways, marine repair shops, shipping, and freight forwarding services and similar enterprises

## 3. Cabotage Policy

Cabotage is one of the various protectionist policies adopted by a state in the protection of its domestic fleet in the carriage of cargoes within its coastal waters.<sup>19</sup> It is seen as a form of restriction used to promote the establishment and development of national merchant marines in a particular trade area through guaranteed supply and demand. To this extent, it is discriminatory, keeping foreign flags out of coastal waters, thereby shutting out foreign competition.<sup>20</sup>

Generally, however, cabotage is a practice worldwide and is over 100 years old; it is a contemporary economic approach for justifying intervention of this nature, to induce some determined results - as against the classical economic approach of free market forces - and it is seen as an acceptable tool for achieving set economic goals, especially where competition is unfair and dominance is prevalent.<sup>21</sup> Cabotage practice worldwide, both in the maritime and aviation industries, is often induced by diverse factors, such as the reservation of all or part of national market opportunity for national flag ships or aircraft, for political, socioeconomic, geo-cultural and security reasons.<sup>22</sup>

---

<sup>17</sup> I Chrzanowski, *Introduction to Shipping Economics* (Surrey: Fairplay Publication 1985) 34.

<sup>18</sup> George (n 7).

<sup>19</sup> W Eya, 'Local Firms Exploit Cabotage Trade' (2008) <<http://www.allafrica.com>> accessed 11 January 2024.

<sup>20</sup> M Glanson and M Jones, 'The origin of Evolution & Current Status of Cabotage' (2008) <<http://www.originofcabotagegooglesearch.com>> accessed 11 January, 2024.

<sup>21</sup> E Iheanacho, 'Cabotage and Nigerian Prospects, Constraints and Challenges' (2004) Paper presented at a Seminar on Cabotage and the Oil and Gas Industry, NIMASA, Lagoon Restaurant, Lagos.

<sup>22</sup> Eva (n 19).

Cabotage Law is a law empowering navigation and trading within a country's coasts or from port to port within a nation, which is to be reserved exclusively for and carried on by its national flagships and nationals. The Cabotage law may be in a single legislation or in a combination of shipping legislations of a country.<sup>23</sup> Cabotage law is principally a protective law that safeguards local shipping interests in the carriage of locally generated cargo. The law restricts the participation of foreign shipping companies in the carriage of such locally generated cargo. It refers to a body of law that deals with the right to trade or transport in coastal waters or between two points in a country.<sup>24</sup> A nation's cabotage laws are designed to guarantee the participation of its citizens in its own domestic trade, the presence of a strong merchant marine for defence, and for general economic support. In essence, cabotage law is enacted in order to safeguard the interests of the domestic shipping companies in the carriage of cargoes which are transported within the coastal waters of that particular country.<sup>25</sup>

Nigeria is a coastal country in the North Atlantic with a number of littoral states along the Atlantic Ocean coast. It lies between 14 degrees north of the equator on its northern part and 4 degrees north of the equator on its southern part. Nigeria is bordered by Niger republic on the north, the Republic of Benin on the west and Cameroon and Chad on the East. Like most coastal states, the majority of Nigeria's external trade is carried by maritime transport.<sup>26</sup> The major components of the export trade are crude oil and gas, which account for more than 90% of her total annual export trade. Complementing these are agricultural cash crops like cotton, cocoa, palm produce, crude rubber, cassava and gum-arabic, among others. On the other hand, the import trade is predominated by manufactured goods, machinery and equipment and food.<sup>27</sup> Nigeria, by providence is a maritime nation. The development and utilisation of her maritime endowment for the socio-economic advantage of the country and its citizens lies squarely on the shoulders of the Nigerian people.

#### **4. Types of Cabotage Policy**

Generally, there are two types of cabotage policy or law, which are being applied by different countries, depending on their objectives, national interests and local situations. There is the strict cabotage law as well as the relaxed or liberalised cabotage law.

##### **4.1 Strict Cabotage Policy Regime**

In a strict maritime Cabotage policy regime, the following elements of restriction are that domestic shipping trade is restricted to ships "built, owned, crewed and operated" by citizens of a country.<sup>28</sup> The best example of a regime of strict Cabotage laws is the one found in the United States of America by a combination of some of its shipping laws.<sup>29</sup> The kernel of the cabotage law is found in the Jones Act. Enacted in 1920, the law (actually Section 27 of the

<sup>23</sup> C A Iroegbu, 'Weaknesses of the Ongoing Reforms in the Maritime Industry', *The Frontier Post*, May 27.

<sup>24</sup> A Mohammed-Lawal and O A Atte, 'An analysis of Agricultural Production in Nigeria' [2006] (2)(1) *African Journal of General Agriculture, African Studies on Population and Health*, 19.

<sup>25</sup> Glanson and Jones (n 20).

<sup>26</sup> NIMASA (n 8).

<sup>27</sup> *Ibid.*

<sup>28</sup> Igbokwe (n 4).

<sup>29</sup> E O Omujine, 'Nigerian Cabotage: Its Policy, Problems and Prospects' (2009) <[http://www.scribd.com/doc/24383693/Nigerian-Cabotage-It-s-Policy-Problems Prospects](http://www.scribd.com/doc/24383693/Nigerian-Cabotage-It-s-Policy-Problems_Prospects)> accessed 15 January 2024.

Merchant Marine Act) simply requires that cargo moving between U.S. ports be carried in ships which are U.S.-owned, U.S.-built and U.S.-crewed.<sup>30</sup> The Passenger Vessel Services Act (PVSA) 1886 set the same requirements for the transport of passengers between U.S. ports. It stipulated that no foreign vessels shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of \$200 (now \$300) for each passenger so transported and landed. Other statutes apply the same ground rules to towing, dredging and salvage in U.S. waters. From all these and other similar shipping laws, transport of goods and passengers between US ports and within the coastal trade are exclusively in the hands of US citizens and ships. The laws are deliberate policies put in place so as to protect its domestic maritime industry from foreign participation, domination or control for the benefit of its nationals and its domestic shipping industry.<sup>31</sup> However, according to the Great Lakes Maritime Task Force,<sup>32</sup> the United States is far from unique in reserving its domestic waterborne commerce to vessels owned and crewed by nationals and built domestically. In a survey carried out by the U.S. Maritime Administration, it was found that 54 nations, including Canada, have cabotage laws that, like the Jones Act, are expressly meant to promote a national-flag fleet.<sup>33</sup>

#### **4.2 Relaxed Cabotage Policy Regime**

Cabotage law can be said to be relaxed or liberalised if the elements of restriction mentioned above are not required to be complied with or are not strictly enforced and there are some measures of foreign participation in the ownership or building of the vessels used and in the nationality of the operators involved (e.g., the crew) or of foreign-flagged vessels' involvement in a state's coastal shipping.<sup>34</sup> In the past decade or so, several countries have carried out reforms of their cabotage policies, aimed at making it more relaxed in terms of accommodating some level of foreign participation in the domestic shipping trade. Some of these countries include China, Korea, India, Brazil, New Zealand, Australia, Malaysia, etc. For instance, in 2003, cabotage regulations were eased by China to permit foreign lines to ship empty containers between domestic ports. Empty containers were considered as domestic cargoes and therefore subject to cabotage regulations. However, the amendments only applied to shipping companies of countries that have signed relevant bilateral agreements with China.<sup>35</sup>

#### **5. Cabotage Regime and Coastal and Inland Shipping Act in Nigeria**

The Coastal and Inland Shipping (Cabotage) Act, 2003 commenced on 30<sup>th</sup> April, 2003 but its provisions became enforceable one year after its commencement. The primary objective of the Cabotage Act is to reserve the commercial transport of goods and services within Nigerian coastal and inland waters to vessels flying the Nigerian flag, owned and manned by

<sup>30</sup> G Nekasil, 'Study Concludes Cabotage Laws are vital to National Security' (1996) <<http://www.mctf.com/press/pr.>> accessed 15 January 2024.

<sup>31</sup> Omuojine (n 27).

<sup>32</sup> Great Lakes Maritime Task Force, 'The Jones Act and Other U.S. Maritime Cabotage Laws' (2011) <[http://www.glmtf.org/position\\_paper8.html](http://www.glmtf.org/position_paper8.html)> accessed 15 January 2024.

<sup>33</sup> *Ibid.*

<sup>34</sup> U Nkoro, 'The Nigerian Cabotage Policy: Its Prospects and Opportunities' (2012) A paper presented for OCI Consultants Ltd, Labour House, Central Area, Abuja, Dec. 2012.

<sup>35</sup> V O S Okeke and E T Anichie, 'An Evaluation of the Effectiveness of the Cabotage Act 2003 on Nigerian Maritime Administration' [2012] (2)(1) *Sacha Journal of Policy and Strategic Studies*, 37.

Nigerians and built in Nigeria. The Act imposes a ‘strict’ cabotage policy on Nigeria which means that vessels not built in Nigeria but owned by indigenous shipping companies will not be qualified to be registered or licensed to participate in cabotage trade with effect from the commencement of the Cabotage Act. The Act is divided into nine parts and each part deals with separate issues; these are short title and interpretation (Part I)<sup>36</sup> restriction of vessels in domestic coastal trade (part II),<sup>37</sup> waivers<sup>38</sup> (part III)<sup>39</sup> licence to foreign vessels (part IV), registration (part V)<sup>40</sup> enforcement<sup>41</sup> (part VI), offences (part VII)<sup>42</sup>, Cabotage vessels financing fund<sup>43</sup> (part VIII)<sup>44</sup>, and miscellaneous<sup>45</sup> (part TX)<sup>46</sup>

## **6. Nigerian Maritime Administration and Safety Agency and the Implementation of the Cabotage Act**

The Nigerian Maritime Administration and Safety Agency (NIMASA) is the focal point for Cabotage implementation as the Cabotage Act provides that Cabotage vessels to be registered by the Registrar of Ships.<sup>47</sup> The Minister shall immediately after the commencement of the Cabotage Act create an enforcement unit<sup>48</sup> within NIMASA with appropriate operational guidelines and shall designate the officers in that unit as enforcement officers and fund to be collected by the National Maritime Authority and deposited in commercial banks and administered under guideline that shall be proposed by the Minister and approved by the National Assembly.

The objective of the NIMASA Act is to establish an agency saddled with the responsibility of executing the provisions of the NIMASA Act; the Merchant Shipping Act and its amendments and all other Federal Legislation on Maritime Labour, Safety and Security; the merger of the National Maritime Authority and Joint Maritime Labour Industrial Council; the transfer of the ownership of land and assets currently vested in the National Maritime Authority and the Joint Maritime Labour Industrial Council to the NIMASA; and the abolition of the office of Government Inspector of Shipping created under Merchant Shipping (Delegation of Powers) Notice, Merchant Shipping Act, and the transfer of the functions and powers in that Notice to the NIMASA.<sup>49</sup>

Generally, the functions and duties of NIMASA under the Act are:

(a) pursue the development of shipping and regulate matters relating to merchant shipping and seafarers; (b) administering the registration and licensing of ships; (c) regulate and

---

<sup>36</sup> Cabotage Act 2003, s 1 & 2.

<sup>37</sup> *Ibid*, ss 3-8.

<sup>38</sup> *Ibid*, s 7(1).

<sup>39</sup> *Ibid*, ss 9-14.

<sup>40</sup> Cabotage 2003 Act, ss 22-28.

<sup>41</sup> The Minister of Transport is empowered to create an Enforcement Unit (Cabotage Enforcement Unit) within the NMA with responsibility to enforce compliance with the provisions of the Cabotage Act.

<sup>42</sup> Cabotage Act 2003, ss 29-34.

<sup>43</sup> The Cabotage Vessel Financing Fund (CVFF) aimed at empowering shipping practitioners

<sup>44</sup> Cabotage Act 2003, ss 42-45.

<sup>45</sup> *Ibid*, ss 46-55.

<sup>46</sup> J Dennis, ‘Cabotage Law and its Benefits’ <<https://farriconsultingng.blogspot.com/.cobotage-law-and-itsbenefitson>> accessed 15 January 2024.

<sup>47</sup> NIMASA Act 2007, s 29.

<sup>48</sup> Cabotage Act 2003, s 2.

<sup>49</sup> NIMASA Act 2007, s 1(2).

administer the certification of seafarers; (d) established maritime training and safety standards; (e) regulate the safety of shipping as regards the construction of ships and navigation; (f) provide search and rescue service; (g) provide directions and ensure compliance with vessel security measures; (h) carry out air and coastal surveillance; (i) control and prevent marine pollution; (j) provide direction on qualification, certification, employment and welfare of maritime labour; (k) develop and implement policies and programmes which will facilitate the growth of local capacity in ownership, manning and construction of ships and other maritime infrastructure; (l) enforce and administer the provisions of the Cabotage Act 2003; (m) perform port and flag state duties; (n) receive and remove wrecks; (o) provide National Maritime Search and Rescue Service; (p) provide Maritime Security; and (q) establish the procedure for the implementation of conventions of the International Maritime Organisation and the International Maritime Labour Organization and other international conventions to which the Federal Republic of Nigeria is a party on Maritime Safety and Security, Maritime Labour, Commercial Shipping and for the implementation codes, resolutions and circulars arising therefrom...<sup>50</sup>

As an apex regulatory agency in the maritime sector vested with very important functions, the NIMASA Act copiously provides of the qualification of the Board members thus:

The President on recommendation of the Minister shall appoint to the Board only persons with relevant experience and capacity applicable to maritime administration, recognized expert knowledge, qualification and experience in one or more of the following fields: (a) Maritime Safety; (b) Maritime Security; (c) Maritime Pollution; (d) Nautical Sciences and Hydrography; (e) Marine Engineering; (f) Finance; (g) Marine Laws; (h) Transport Logistics; (i) Administration; and (j) Marine Labour.<sup>51</sup>

NIMASA is at the heart of the growth and development of the nation's maritime industry responsible for not only regulating shipping activities and dock labour but, also for developing Nigerian tonnage. The NIMASA Board is responsible for the determination of the general policy of the Agency with regard to the financial, commercial and operational programme and consist of the chairman of the Board, one representative not below the rank of a Director of the Federal Ministries responsible for marine transportation and labour relations, representative of the Nigeria Navy; three persons with cognate experience, in maritime, shipping or labour matters; the Director General and three (3) Executive Directors (EDs).<sup>52</sup> In line with the NIMASA Act, NIMASA is structured into three (3) directorates and each directorate is under the leadership of an ED with each directorate having two or more departments, headed by a director. There are eight (8) departments reporting to the EDs and nine (9) Departments reporting to the Director-General/Chief Executive Officer (DG/CEO).

The Cabotage Department (CD) is responsible for the application of Guidelines and Regulations in liaison with other Departments of NIMASA to ensure seamless procedures and processes; promotion of cabotage trade towards ensuring awareness, enlightenment and sensitization amongst stakeholders; updating of database on the Cabotage operational

---

<sup>50</sup>NIMASA Act 2007, s 22(1)(2).

<sup>51</sup>*Ibid*, s 6(1)(a).

<sup>52</sup> NIMASA Act 2007, s 5(1).

activities; identification of existing facilities like jetties, terminals, platforms, rigs, shipyards, etc. Other functions of the CD are to facilitate capacity building and development for staff and stakeholders on cabotage related issues; ensuring that all vessels that engage in coastal shipping in Nigeria are built in Nigeria, owned by Nigerians, manned by Nigerians and registered in Nigeria. Where a vessel is needed in Nigeria but does not meet any of the above requirements, the Cabotage Department is to process a waiver application from the charterer on the particular requirement they are seeking to be waived and ensure that no indigenous capacity is available in that area before recommending to the Minister for approval. In carrying out these functions, the Department is to ensure that the Oil and Gas Industry which is the mainstay of the Nigerian economy and provides over eighty percent (80%) of the cabotage trade business, is not destabilized. Collection of two percent (2%) of the gross contract sum performed by all Cabotage vessels in Nigeria for the CVFF to be used to help indigenous operators acquire vessels to gradually take-over fully from the foreign operators and disbursement of the CVFF to qualified indigenous companies for tonnage capacity building.

It has been observed that the benefits in the Cabotage Act have not been realized fully or at all by the indigenous shipping industry mainly because there has been, among other things, unnecessary political interference with the implementation of the Act. There has been no or enough political will and determination and patriotism to implement the Act fully and penalise or prosecute the violators of the offences created therein.<sup>53</sup>

NIMASA has consistently failed to deliver on its mandate since inception. The failure of NIMASA is the failure of the maritime industry and a disservice to the Nigerian economy. Two factors stand out strongly for the failure of NIMASA over the years. One is leadership instability while the other is the undue politicization of appointments into the board and top management positions of the agency. The offices of the DG and those of the EDs have been most hit by politics. Instability in the leadership of NIMASA is another key factor why NIMASA has grossly underperformed.<sup>54</sup>

#### 7. Financing Cabotage in Nigeria: Cabotage Vessel Financing Fund

The maritime industry is very capital intensive and requires a lot of money. To optimize Cabotage potentials, there is need to provide adequate funding support for vessels acquisition.<sup>55</sup> The acquisition<sup>56</sup> of ship and other vessels entail a lot of capital and only a few indigenous shipping companies that have the finance or the financial support of some financial institutions is able to acquire and invest in them. In view of the high capital required to acquire vessels and to meet up with the expectations of having a Cabotage law, which is to encourage and elevate the status of indigenous shipping in the maritime industry, Section 42

---

<sup>53</sup> O Consult, 'Survey into the Problems of the Nigerian Shipping Lines' (Unpublished report submitted to the National Maritime Authority 1994).

<sup>54</sup> J Iwori, 'NIMASA Partners ISAN on Local Content Development' Retrieved June 10, 2011, from allAfrica.com: <http://allafrica.com/stories/201105161871.html>

<sup>55</sup> E Philip, 'Cabotage Vessel Fund' <<http://www.shipsandports.detaildiscourse.php?id=3>> accessed 15 January 2024.

<sup>56</sup> M Igbokwe, *Nigerian Maritime Cabotage Policy and Law: The Case and Advocacy* (Lagos: One United Thursday Company Limited 2006).

of the Act established a Cabotage Vessel Financing Fund (CVFF) to promote the development of indigenous ship acquisition capacity by providing financial assistance to Nigerian operators in the domestic coastal shipping.<sup>57</sup>

The Cabotage Vessel Financing Fund to be collected by the Nigerian Maritime Authority will be deposited in commercial banks and administered, the guidelines proposed by the Minister and approved by the National Assembly.<sup>58</sup> In addition, only Nigerian citizens and shipping companies wholly owned by Nigerians are beneficiaries to the Cabotage Vessel Financing Fund.<sup>59</sup> The fund was to serve as a form of soft loan which could be assessed by local ship operators.

It has been reported that since the establishment of the Cabotage Vessel Financing Fund, the Government has not taken any steps to disburse the funds.<sup>60</sup> This has encouraged the continued participation of foreign shippers in the Nigerian maritime industry and the nation loses over \$1.5 billion yearly in wages paid to foreign seafarers working in the country. This then triggers questions such as, to what extent has the CVFF lived up to its expectations? In the event of failure of the CVFF to perform as expected, what other available means are there to assist in funding indigenous vessels? Should foreign vessel financing be encouraged and to what extent does it articulate or contradict the purpose of the Act which is to encourage local participation?

Should there be alternative sources of funding other than the government? Should loans from foreign governments be encouraged in order to finance the maritime industry? Should the Act as it is, be amended to provide for foreign financing of our indigenous ships as a means of supplementing the CVFF? Another question may be will the fund be applicable to just the building of vessels? (The Act uses the word vessels built in Nigeria) what about maintenance and the funding for vessels owned by Nigerians not built in Nigeria, but already engaging in local shipping? 'What is the future of foreign owned vessels already operating in Nigeria, under the Cabotage regime?

The Act envisages four avenues for financing the CVFF. That is through a surcharge of 2% of the contract sum performed by any vessel engaged in the coastal trade, a sum as shall from time to time be determined and approved by the National Assembly, monies generated under this Act including the tariffs, fines and fees for licences and waivers, such further sums accruable to the fund by way of interests paid on and repayment of the principal sums of any loan granted from the Fund. As it stands, the Act intends to complement the Fleet Expansion and Maritime Infrastructural Development (PEMID) and impact the local shipping industry in the area of provision of credit facilities to Nigerians and Shipping companies wholly owned by Nigerians for their acquisition of vessels for Cabotage trade.<sup>61</sup>

---

<sup>57</sup> Cabotage Act 2003, s 42.

<sup>58</sup> Cabotage Act 2003, s 44.

<sup>59</sup> *Ibid*, s 45.

<sup>60</sup> Cabotage Regime Still loses \$100M annually.

<sup>61</sup> K Beason, 'Myth and Conjecture? The cost of the Jones Act' [2016] (46) (1) *Journal of Maritime Law and Commerce*, 23-50.

If properly disbursed, the fund will allow Nigerians to own approximately 240 out of 400 Marine vessels, integration of indigenes and businesses residing in the oil producing areas and capture over 50 - 70 % of banking services, insurance risk placements, and legal services. By Regulation 7 of the Cabotage Vessels Financing Fund Guidelines 2006, the Fund shall be applied for the facilitation of acquisition and ownership of vessels to be employed in domestic shipping by indigenous companies and Nigerians, facilitation of vessel charters, development of shipyards/maritime infrastructure to facilitate vessel construction, repairs and maintenance and other auxiliary projects relating to the development of local tonnage capacity and shipyards. Unfortunately, a major weakness with the CVFF is failure of the government to disburse the funds accordingly. This has raised speculations of corruption and mismanagement of the funds by the appropriate authorities which is reflection of the corruption that has bedeviled our society. The non-disbursement of the funds is a contradiction to the whole idea of the fund which is to help sponsor indigenous ships be more actively involved in Cabotage trade in Nigeria. This has led stakeholders to describe the CVFF as ‘a document without any organic linkage with the aspirations of indigenous ship owners.’<sup>62</sup>

The non-disbursement of funds only means that the requisite funding to aid local shippers in the acquisition of vessels is not available. As a result, Nigeria continues to lose up to 2 trillion naira annually in capital flight to foreign countries which own vessels used to lift about 150 million tonnes of cargo, including oil products.<sup>63</sup> Also, had the disbursement been effective, the Cabotage sector of the maritime industry would have created approximately five million jobs directly and indirectly if local vessels were being engaged to lift the country’s oil and non-oil cargoes.<sup>64</sup> Indigenous ship owners are therefore worried that foreign shipping operators are flagrantly dominating the coastal trade meant for them, especially in the transportation of crude oil.<sup>65</sup>

## Conclusion

Despite the seemingly unimpressive impact of the cabotage policy regime on the indigenous shipping operators in Nigeria, the policy remains one of the best things to happen to indigenous shipping development in the country, given the loud clamour for its enactment by various interests and the relief that greeted its promulgation into law in the year 2003. Also, there are facts to show that in the long run, the situation of the indigenous shipping operators will be the better for it, with all the government efforts aimed at ameliorating the unfavourable conditions of Nigerian shipping companies, shipbuilding and ship repair yards and seafarers and also ensuring that the set objectives of the Cabotage Act are attained. These efforts have been described in this dissertation and it is believed that with sustained commitment and interest shown by the leadership of NIMASA and given government

---

<sup>62</sup> F Akanbi, ‘Vested Interests Frustrate Enforcement of Cabotage Law’ (2011) <<http://www.thisdaylive.com/articles/vested-interests-frustrate-enforcement-ofcabotage-law/98677/>> accessed 15 January, 2024.

<sup>63</sup> C Asoluka, ‘Cargo Support: Tool for Building Indigenous Competitive Maritime Industry’ in C A Phillip (ed), *Nigerian Maritime Resources and Development- Issues and Challenges* (Vol. 1. Lagos: El-Machi Publishers Ltd. 2003).

<sup>64</sup> Asoluka (n 63).

<sup>65</sup> H Dimowo, ‘The Cabotage Regime in Nigeria: The Journey So Far’ [2010] (3)(1) *The Voyage*, 12.

support and cooperation from other relevant government agencies, those laudable objectives will be achieved. In order to seamlessly access the Cabotage Vessel Financing Fund, government should make haste to ensure that all impediments to access the Fund by indigenous operators are promptly removed and commence disbursement of the Fund. This will ensure the acquisition of relevant and needed vessels by the indigenous shipping operators, thereby giving them the necessary impetus to actually participate in the cabotage trade to the benefit of Nigerians and the achievement of the objectives of the Cabotage Act.